

ESSAY QUESTION NO. 4

Answer this question in booklet No. 4

Police Officer Smith was on patrol early in the morning near the coastal bicycle trail when he received a report from the police dispatcher. The report stated that an anonymous caller had reported that two men on bicycles were drinking beer in the parking lot where the coastal trail began. A municipal ordinance made it a misdemeanor to drink alcoholic beverages on public property.

Officer Smith drove to the parking lot, arriving within a couple of minutes of the report. He saw two men straddling bicycles in the parking lot. They were the only people in the parking lot. Both men were talking and drinking from opaque plastic sports bottles.

Officer Smith pulled into the parking lot and parked his car about 10 feet from the bicyclists. He parked between them and the start of the coastal trail. He turned on his overhead lights as he parked. Officer Smith got out of his car and told the bicyclists to stay put.

David, one of the bicyclists, took off across the parking lot on his bicycle and began riding cross-country toward the trail. David threw his plastic bottle away as he rode. David crashed and fell off his bicycle. Officer Smith picked up the plastic bottle that David threw away and determined that it contained beer. He then arrested David.

1. Discuss whether Officer Smith had probable cause to arrest David.
2. Discuss all arguments that David could raise to suppress the plastic sports bottle of beer.
3. Discuss whether David's act of throwing the plastic bottle away impacts his argument for suppressing the beer.

GRADER'S GUIDE

*** QUESTION NO. 4 ***

SUBJECT: CRIMINAL LAW

1. Officer Smith's Arrest of David (20 points)

Officer Smith arrested David for drinking in public. A police officer must have probable cause to arrest someone, and probable cause exists when an officer has "reasonably trustworthy information sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed." *State v. Campbell*, 198 P.3d 1170, 1173 (Alaska App. 2008). Officer Smith had probable cause to arrest David because he had information sufficient to warrant a person of reasonable caution to believe that a crime had been committed. He saw David drinking from a plastic bottle in a public parking lot. The bottle contained beer. Thus, he had information that David had committed the crime of drinking in public.

2. David's Argument For Suppression of the Beer (60 points)

Article I, section 14 of the Alaska Constitution prohibits unreasonable searches and seizures. Evidence obtained from an unconstitutional seizure is inadmissible. *Hartman v. State, Dept. of Admin., Div. of Motor Vehicles*, 152 P.3d 1118, 1122 (Alaska 2007).

a. The Seizure

An encounter between a police officer and a citizen becomes a type of seizure called an investigatory stop when, in light of the totality of the circumstances, a reasonable person would not feel free to leave. *Ozhuwan v. State*, 786 P.2d 918, 920 (Alaska App. 1990). In *Ozhuwan*, a police officer saw two cars positioned driver's door to driver's door near a boat launch at night. *Id.* The officer partially blocked the exit by positioning his patrol car between the cars and the exit to the boat launch area. *Id.* He then turned on his high beam headlights and his overhead red lights. *Id.* The court of appeals concluded that a seizure occurred because a reasonable person would not feel free to leave under these circumstances.

The facts in the question are similar to but not exactly the same as those in *Ozhuwan*. Officer Smith pulled into the parking lot at the bicycle trail head. He positioned his patrol car between the bicyclists and the trail head. His action did not block the only exit from the parking lot, but by

blocking the trail head Officer Smith blocked the one sure escape route down which the bicyclists could flee. This indicated that Officer Smith did not want the bicyclists to leave. Officer Smith then activated his overhead lights and told the bicyclists to stay put as he exited his patrol car. Under these circumstances a court could conclude that a reasonable person would not feel free to leave.

b. Reasonable Suspicion

The Alaska Supreme Court has held that an investigatory stop is reasonable when the officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred. *State v. Miller*, 207 P.3d 541, 544 (Alaska 2009). An inchoate suspicion or hunch is not sufficient to justify a stop. *Id.* The officer must be able to point to specific and articulable facts justifying the stop. *Id.* When reviewing a stop, a court must consider the officer's experience as well as all of the circumstances known to the officer. *Id.* The supreme court first announced this standard in *Coleman v. State*, 553 P.2d 40 (Alaska 1976).

In applying the *Coleman* standard, the supreme court considers four questions: (1) How serious was the alleged crime to which the officer was responding? (2) How immediate was the alleged crime to the investigative stop? (3) How strong was the officer's reasonable suspicion? And (4) How intrusive was the stop? *State v. Miller*, 207 P.3d 541, 544 (Alaska App. 2009); See also *State v. G.B.*, 769 P.2d 452, 455-56 (Alaska App. 1989). Analysis of these questions indicates that Officer Smith seized David without having a reasonable suspicion that imminent public danger existed or that serious harm to persons or property had recently occurred.

1. How serious was the alleged crime to which the officer was responding?

Officer Smith was not responding to a very serious offense. An anonymous caller had reported that two men were drinking in public. The Alaska appellate courts have not determined whether drinking in public is a sufficiently serious offense, but in *Joseph v. State*, 145 P.3d 595 (Alaska App. 2006), the court of appeals concluded that the use or possession of marijuana on a public street did not justify an investigatory stop. None of the facts indicated that the bicyclists posed an imminent public danger or that they had recently caused harm to persons or property. The bicyclists were merely straddling their bicycles, talking, and drinking from opaque plastic bottles.

2. How immediate was the alleged crime to the investigative stop?

In *Miller*, the supreme court held that a stop was “quite immediate” to a reported offense when an officer was on patrol in the area of the reported disturbance and was on scene within moments. In the question, Officer Smith was also on patrol in the area of the reported offense and was on scene within a couple of minutes. In *Saltz v. State, Dept. of Admin., Div. of Motor Vehicles*, 126 P.3d 133, 137 (Alaska 2005), the court of appeals emphasized that a trooper spotted the suspect vehicle within a minute of receiving the report of a drunk driver. The speed with which Officer Smith arrived on scene supports a finding of reasonable suspicion, especially given that the facts suggest that there were no other possible suspects in the parking lot.

3. How strong was the officer’s reasonable suspicion?

Officer’s Smith’s suspicion was not particularly strong, but it might be sufficient. He received a dispatch that an anonymous caller had reported that there were two men drinking beer at the trail head. An officer may base an investigatory stop on a report from an informant so long as there is reason to believe that the informant is credible and a basis for concluding that the information was based on personal knowledge. *State v. Miller*, 207 P.3d 541, 548 (Alaska 2009). Information provided by an anonymous caller will be sufficient if the tip has some indicia of reliability. In *Miller*, an anonymous caller reported a fight occurring between a man and a woman in a parking lot in front of a bar. *Id.* The caller described the man and woman and that they were getting into a white Subaru WRX. *Id.* The transcript of the call indicated that the caller was watching the fight as it occurred. *Id.* A police officer arrived on scene within moments and confirmed that a White Subaru WRX with more than one person in it was about to leave the parking lot. *Id.* The Alaska Supreme Court concluded that there were sufficient indicia of reliability. *Id.* In the question, Officer Smith based his stop on an anonymous call. The call was different from the one in *Miller* because the facts in the question do not indicate that the caller had personal knowledge of the events. Similarly, Officer Smith’s observations were not as corroborative of the report as the officer’s observations in *Miller*. Officer Smith saw two men straddling bikes, talking, and drinking from opaque plastic bottles. On one hand, Officer Smith saw two men at the trail head drinking a liquid. On the other hand, both men were on bikes at a bicycle trail head, and both men were drinking from opaque plastic bottles. Bicyclists commonly drink water from plastic bottles while beer drinkers rarely drink beer from them.

4. How intrusive was the stop?

In *State v. Miller*, 207 P.3d 541, 549 (Alaska 2009), the police officer stopped a moving vehicle in a parking lot and conducted a brief interview of the occupants through the open window of the car. The court concluded that this stop was minimally intrusive. *Id.*

Officer Smith's attempt to stop the bicyclists was arguably a little less intrusive than the stop in *Miller*. The bicyclists were straddling their bicycles, drinking from plastic bottles when Officer Smith arrived. He did not stop them while they were traveling from one point to another. Officer Smith then told them to stay put as he got out of his car. Officer Smith's command to stay put was an official show of force, but it was the minimum necessary to make a stop. If he had not issued the command, there would have been no stop at all because the bicyclists could have ridden off.

3. The Impact of David's Act of Throwing Away the Plastic Bottle Containing Beer (20 points)

David threw the plastic bottle away as he attempted to ride off, but that does not preclude suppression of the plastic bottle. Alaska applies the exclusionary rule to evidence seized while a suspect is attempting to flee from an illegal stop. In *Joseph v. State*, 145 P.3d 595 (Alaska App. 2006), the police attempted to detain Joseph for possessing or using marijuana in public. Joseph ran away and, during his flight, threw a bag of cocaine down. *Id.* at 601. The court of appeals rejected federal law and held that "when the police, whether by physical force or by show of authority, undertake to restrain the freedom of a citizen, the principles of the exclusionary rule apply equally regardless of whether the police succeed in unlawfully seizing the person or merely attempt to do so." *Id.* at 605.

Moreover, the exclusionary rule forbids the use of evidence seized as the result of an unlawful search or seizure unless the connection between the evidence and the unlawful search or seizure becomes so attenuated as to dissipate the taint. *Johnson v. State*, 919 P.2d 767, 769 (Alaska App. 1986). The taint is not dissipated if the police have acquired the evidence by exploiting the illegality rather than through means sufficiently distinguishable to purge the taint. *Id.* As noted above, Alaska applies the exclusionary rule to suppress evidence discarded by someone fleeing from an unlawful stop. As a result, Officer Smith's acquisition of probable cause through the seizure and examination of the contents of the plastic bottle was not through means sufficiently distinguishable from the illegal stop to purge the taint.