

ESSAY QUESTION NO. 7

Answer this question in booklet No. 7

In early March, an Alaska State Trooper was sitting in his patrol car at a busy intersection near downtown Anchorage. As he waited for the light to turn, he heard radio traffic concerning a burglary that occurred fifteen minutes prior at a vacant warehouse about five miles away. The description of the suspect vehicle was a pickup driven by a bearded man wearing a baseball cap. Moments later, the trooper spotted a pickup driven by a person wearing a baseball cap. The trooper was going to call in the license plate but couldn't because it was covered with snow. Under Alaska law, it is a misdemeanor to have an obscured license plate. The trooper had a strong feeling that this was the pickup and suspect involved in the burglary, and upon that basis he activated his lights and pulled over the vehicle.

As the trooper approached on foot, he could see an empty gun rack through the back window of the cab. As he arrived at the driver's side, Dana Daniels, a woman, turned to face the trooper and said "What the hell do you want with me?" The trooper realized at that point that this was not the get-away vehicle. As the trooper started to ask for her license and registration, Dana Daniels got angrier, saying, "You think you have all the power. I think a good cop is a dead cop." At that point, the trooper asked her to step out for a pat-down search. As he conducted the pat-down, he felt a soft container in her pocket, perhaps a baggie, that he thought might contain marijuana. When he pulled it out, he saw that it was indeed a baggie containing a very small amount of marijuana.

The trooper placed Daniels under arrest for the license plate offense and marijuana possession and transported her to jail. Daniels posted bail immediately and was released pending trial.

1. Explain the possible bases the state could argue to uphold the stop of Daniels' vehicle and whether they will be successful.
2. Daniels moves to suppress the marijuana, arguing that, even if the trooper lawfully stopped her, he had no grounds to conduct a pat-down search for weapons. What should the state argue to defeat the motion?
3. Daniels also moves to suppress the marijuana on grounds that the trooper exceeded the scope of a weapons pat-down. Explain whether Daniels' motion will be granted.
4. The state offers, as an alternative ground to uphold the search of Daniels' pocket, that the marijuana was seized pursuant to a search incident to arrest for the driving violation. Explain whether the search of her pocket will be upheld on such grounds.

GRADER'S GUIDE

*** QUESTION NO. 7 ***

SUBJECT: CRIMINAL LAW

1. Explain the possible bases the state could argue to uphold the stop of Daniels' vehicle and which will be successful. (35 pts)

Under Alaska law, an investigative stop is permitted where an officer "has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred[.]" *Coleman v. State*, 553 P.2d 40, 46 (Alaska 1976). In determining the legality of a stop the court uses a flexible approach, balancing the seriousness and recency of the suspected crime and the strength of the officer's suspicion against the intrusiveness of the stop. *State v. G.B.*, 769 P.2d 452, 455-56 (Alaska App. 1989). A well-founded suspicion that a crime is in progress or has just been completed may justify a stop even though the crime itself is not a particularly serious one. Conversely, a crime that is a more serious threat to public safety may provide sufficient basis for a stop based on reasonable suspicion even after considerable time has passed. *Hays v. State*, 850 P.2d 651, 652 (Alaska App. 1993)

The report the trooper received was not of a minor crime. It was, however, only a property crime, involving a vacant warehouse and no apparent suggestion of an imminent threat to public safety. Geographically, five miles in a metropolitan area is a tremendous area in which a suspect could have gone anywhere in the time span of fifteen minutes. Additionally, the trooper's observations of a person of unknown gender driving a pickup and wearing a baseball cap were hardly specific to even the fairly general description of the suspect and vehicle. Police cannot base an investigory stop on generalized suspicion. *Metzker v. State*, 658 P.2d 147, 150 (Alaska App. 1983). Under these facts, a court would be unlikely to uphold an investigative stop based upon the trooper's suspicion that Daniels' truck was the one from the burglary.

After he made contact with the driver, the trooper realized Daniels was not the suspect. But although the trooper's subjective reasoning for pulling over Daniels' vehicle was not enough, alone, to support the stop, the stop was justified nonetheless on the objective basis that he knew the vehicle's license plate was covered with snow before he commenced the seizure of the vehicle—i.e., before he turned on her overhead lights and signaled her to stop. This fact is sufficient to establish the legality of the ensuing traffic stop. *Hamilton v. State*, 59 P.3d 760 (Alaska App. 2002).

In *Whren v. United States*, 517 U.S. 806 (1996), the U.S. Supreme Court rejected the doctrine of the "pretext" traffic stop and held instead that, no

matter what may have prompted police officers' interest in a vehicle or its occupants, a traffic stop is legal so long as the officers had probable cause to believe that a violation of the traffic code or any other violation of the law had occurred in their presence. As long as an officer has a lawful reason to make a traffic stop, the stop is permissible under the Fourth Amendment to the United States Constitution. The officer's *subjective* intent to use the traffic stop to enforce other laws is irrelevant in determining the lawfulness of the stop. See *Way v. State*, 100 P.3d 902, 904 (Alaska 2004). An officer's motivation is irrelevant in the absence of proof that the decision to stop the vehicle represented a departure from reasonable police practice, given the circumstances of the case. *Nease v. State*, 105 P.3d 1045 (Alaska App. 2005).

Here, even though it was not his subjective reason for stopping Daniels' vehicle, the trooper objectively had probable cause to believe that Hamilton's vehicle was being driven in violation of a statute requiring that license plates not be obscured. It is irrelevant that the trooper did not actively consider or subjectively rely on this basis for the traffic stop. Under Alaska law, the trooper was authorized to stop Daniels and either arrest her or cite her for this violation. AS 12.25.030(a)(1) (a police officer may arrest a person without a warrant when the person commits a crime in the officer's presence); AS 12.25.180(a) (a police officer who stops or contacts a person for committing a misdemeanor may either arrest them or issue them a citation, at the officer's discretion); see also *Hamilton, supra*.

2. Daniels moves to suppress the marijuana, arguing that, even if the trooper lawfully stopped her, he had no grounds to conduct a pat-down search for weapons. What should the state argue to defeat the motion? (20 pts)

"The right to seize temporarily is not necessarily the right to search." *Gutierrez v. State*, 793 P.2d 1078, 1081 (Alaska App. 1990). The fact that the police have sufficient justification for conducting an investigative stop does not invariably mean that they will have justification for performing a weapons pat-down. *Albers v. State*, 38 P.3d 540, 542 (Alaska App. 2001) (reversed on other grounds). "The test is whether the officer was aware of specific and articulable facts that would support a reasonable inference that the detainee was armed or possessed some other article that could pose a danger to the officer." *Id.* However, the overarching rationale for pat-down searches is officer safety. *State v. Wagar*, 79 P.3d 644, 648 (Alaska 2003).

In *Terry v. Ohio*, 392 U.S. 1 (1968) the United States Supreme Court held that when a court evaluates whether a pat-down search for weapons was justified, the court may take into account the nature of the criminal activity that the officer reasonably suspects is occurring. The Alaska Supreme Court has held that when a court evaluates the legality of a pat-down search conducted during

an investigative stop, the court can take into consideration the presumption that people engaged in felony conduct are more likely to be armed and/or to resort to violence when confronted by the police. See *Gutierrez v. State*, 793 P.2d 1078, 1081 (Alaska App.1990)

Here, Daniels was not detained on a felony or a serious or dangerous offense. Her detention, after the trooper realized she was not a burglary suspect, was based upon a minor violation of a traffic law. Nonetheless, from the beginning of the contact, she was very hostile and angry. The trooper was working alone. In response to a request for identification, Daniels got angrier and made the comment about "dead cops". The gun rack gave the trooper notice that she was familiar with firearms and could be carrying one in the vehicle. Under the totality of the circumstances approach, a court would likely uphold the pat-down for weapons. Contrast *Adams v. State*, 103 P.3d 908, 910 (Alaska App. 2004) (pat down not justified of passenger where no crime committed and based only upon passenger's acting nervously and putting hands in and out of pockets).

3. Daniels also moves to suppress the marijuana on grounds that the trooper exceeded the scope of a weapons pat-down. Explain whether Daniels' motion will be granted. (20 pts)

A police officer conducting a pat-down search for weapons is only permitted to engage in a limited external patting of the outer clothing of the person detained. *Terry*, supra, *Minnesota v. Dickerson*, 508 U.S. 366 (1993). The officer is not permitted to manipulate the contents but rather is limited to patting. *Id.* An officer can justifiably remove and examine an object from a pocket during a frisk for weapons if the officer reasonably believes that the object could be used as a weapon. *State v. Wagar*, 79 P.3d 644 (Alaska 2003).

The trooper exceeded the scope of a permissible weapons pat-down search when he searched inside her pocket on the basis of feeling a soft baggie. Nothing in the fact pattern indicates that the nearly empty baggie resembled a weapon. The trooper simply believed that it was possible that it was a baggie that could contain contraband. He had no belief that the baggie of marijuana was any type of weapon. On this ground, the search of Daniels' pocket was not justified.

However, an exception exists to the above limitation where the circumstances and evidence lead the officer performing a search to believe with near certainty that what they have perceived is contraband. It is similar, but more restrictive, than the "plain feel" doctrine adopted by the U.S. Supreme Court in *Minnesota v. Dickerson*, 508 U.S. 366 (1993). For example, in *McGuire v. State*, 70 P.3d 1114, 1115 (Alaska App. 2003), the supreme court allowed the seizure of

cocaine bindles during a pat-down for weapons where the trooper felt, through the detainees' lightweight cargo pants, a plastic baggie that "made the crackling sound consistent with a plastic baggie" and where the officer also felt "the 90 degree rectangular ... corners of paper bindles." *Id.* The court similarly allowed a seizure of contraband where an officer, while conducting a weapons pat-down, located an object that was "immediately recognizable" as a crack pipe, where the officer had "extensive experience with crack pipes, seizing 'at the very least one a night.'" *Dollison v. State*, 5 P.3d 244, 246-7 (Alaska App. 2000).

But the trooper's actions here did not fit under either U.S. constitutional law ("plain feel") or under Alaska law, for which the parameters of the "plain feel" doctrine is still an open question. It is clear from the fact pattern that the trooper had only vague suspicions as to what the pocket contained: he felt something that *might* have been a baggie that *could* have contained marijuana. The trooper did not immediately recognize the baggie as a vessel for contraband. Thus, a motion to suppress based on the scope of the pat-down search would likely be granted, and the marijuana would be suppressed as evidence obtained from a illegal search.

4. The state offers, as an alternative ground to uphold the search of Daniels' pocket, that the marijuana was seized pursuant to a search incident to arrest for the driving violation. Explain whether the search of her pocket will be upheld on such grounds. (25 pts)

As discussed above, the trooper had probable cause to stop to believe that Daniels' truck was being driven in violation of the statute requiring that license plates not be obscured, a misdemeanor. Under Alaska law, the trooper was authorized to stop Daniels' truck and either arrest her or cite her for this violation. AS 12.25.030(a)(1) (a police officer may arrest a person without a warrant when the person commits a crime in the officer's presence); AS 12.25.180(a) (a police officer who stops or contacts a person for committing a misdemeanor may either arrest them or issue them a citation, at the officer's discretion); *see also Hamilton v. State*, 59 P.3d 760 (Alaska App. 2002). The state thus could argue that the trooper rightfully searched Daniels incident to arrest. *See Uptegraft v. State*, 612 P.2d 5, 9 n.7 (Alaska 1980).

Under federal law, a police officer who has legally arrested a person may search that person incident to the arrest. Alaska law places more stringent requirements on the officer's ability to search incident to arrest. For a search incident to arrest to go beyond a weapons search, the arrest must be for an offense for which evidence may be found on the suspect's person; if the offense qualifies, the police may only search for evidence of that offense and the search must be reasonable. *Joubert v. State*, 20 P.3d 1115 (Alaska 2001). For

example, in *Joubert*, the court held that evidence of auto theft, such as keys altered to fit vehicle or small tools, could be concealed on defendant's person, and thus a pat search of defendant upon arrest for suspicion of auto theft was justified. *Id.*

To justify the search of Daniels' pocket as one for evidence of the offense, the trooper would need to articulate what evidence of the crime of "obscured license plate" could be concealed on her person. Recently, the Alaska Supreme Court, in a decision involving the offense of a minor on licensed premises, declined to weigh as a factor the seriousness of the offense in its analysis of whether a search incident to arrest was lawful. *Johnson v. State*, 88 P.3d 1137, 1140 (Alaska App. 2004). The court opted instead to follow the "established Alaska rule: the police, incident to arrest, may search a person for evidence of a crime, for which they have probable cause, that could be concealed on the person." *Id.* Because the trooper already possessed the sum of all evidence regarding the offense of driving with an obscured license plate, and because no evidence of such offense could be concealed on the person, the trooper's seizure of the marijuana based upon such a search must be suppressed.

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Benchmark
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Alaska Bar Examination

JULY
2005

This Book is for your answer to

Question **No. 7** *Only*

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1. The state could argue that the officer had reasonable suspicion to make the stop, as a Terry stop, because the vehicle matched the description of the radical burglary vehicle and the driver was also wearing a baseball cap as in the suspect vehicle. There was therefore reasonable suspicion to make a stop and determine if this was the burglary suspect. Generally, vehicle stops are brief and not very inconvenient.

2/3 The state would argue that the officer conducted a pat-down search for his safety, because the defendant had been belligerent and made a thinly veiled threat saying, "a good cop is a dead cop." There was a gun rack, so it was reasonable

for the officer to search the defendant for any firearms in her possession, if any, to ensure his safety.

Doing so, the officer felt what he believed was clearly contraband. He merely had to touch the baggie to determine it was marijuana, and it was his duty to seize it at that point.

An officer may pat down a stopped person if he believes his safety is threatened, and if he detects an object that is clearly contraband, he must seize it.

Here, the trooper conducted a lawful pat-down and lawfully seized what he knew to be contraband.

4. The search of defendant's pocket would not be upheld on the ground that the search was conducted pursuant to a lawful arrest.

The officer did not inform defendant Daniels that she was under arrest for a traffic violation before he searched her, nor did the trooper inform Daniels of her Miranda rights before searching her.

According to the facts, the trooper told her to step out of the car and then searched her. He did not even tell her why she had been pulled over. The officer could have arrested Daniels for the misdemeanor, but he would have had to inform her that she was under arrest and read her her Miranda rights.

Since the officer failed to inform Daniels that she was under arrest, and failed to ~~get~~ read her miranda warnings, the search was not made pursuant to a lawful arrest, and the marijuana was unlawfully seized in violation of Daniels' 4th Amendment protections against unlawful search and seizure; therefore, under the state's alternative theory, the marijuana would have to be suppressed and is inadmissible.

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Alaska Bar Examination

JULY
2005

This Book is for your answer to

Question **No. 7** *Only*

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1) Investigative stop - Alaska ~~warrants~~ ^{considers} an investigative stop as one of the exceptions to search or warrant rules. The things to consider are: that the officer reasonably believed that the person was involved in a crime he was aware of and was recent, and, or, that it can reasonably imply a risk of imminent danger to the public if no action is taken. The trooper had reasons (baseball cap, radio traffic about a burglary) to stop the person if he truly believed or had reasons to believe this was the suspect. HOWEVER, the burglary was committed FIVE MILES away, no license plate was visible nor a description of the vehicle

matches the pick up truck, and the driver had a beard and this was ^a female.

The trooper does have the license plate violation but that was not the reason why he stopped the lady. A "gut" feeling is not enough, the test requires a suspicion, one that a reasonable person would have.

2) The trooper realized it was not the get-away vehicle, however, the hostile attitude of the driver might be ground to prove that the trooper felt apprehension and feared for his safety, therefore conducting the search. It was after Dana Daniels voiced as if truly believed and was willing to act as such, that

a good cop was a dead cop. The trooper can reasonably believe that Dasa could be willing to act to harm him. She looked erratic, overly upset, unreasonable, angry, and very hostile, it is indeed something that would at least make a reasonable person fear for their safety.

34) The marijuana was in a container that was detectable by pat-down. In former cases, Alaska courts have suppressed this evidence but although similar, not quite the same circumstances. One thing is not feeling any weapons, nor any objects and then searching (intrusion into seclusion) pockets "hunting" for something

therefore violating and exceeding the scope.

Another thing is detecting a possible illegal weapons or substance (if a container this size and shape was reasonably believed or usually used to carry marijuana), and then reaching inside the pocket to find out what it is. I understand that the search did not exceed the scope once the trooper detected the container.

4) Rovin v. State determined that marijuana did not overweight the public safety if purely used privately, extending this to the person, car, or any property where an expectancy of privacy could be ~~is~~ proven.

The question should be if a ^{covered} license plate was the reason to stop Dana Daniels, that by itself is not enough, even if the stop was legal. The hostile attitude that Dana showed is most likely to trigger the pat-down search. However, it is not the usual and normal practice to search the person and/or ask the person(s) to step out of the vehicle for a mere traffic violation.

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Alaska Bar Examination

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Part 1:

Search and seizure is governed by the 4th amendment to the federal constitution and is applicable to the states through the 14th amendment. The Alaska constitution specifically protects personal privacy and thus acts to strengthen some of the protections under the 4th amendment. Generally, police must have a "reasonable suspicion" that a crime has been or will be committed before being able to stop a vehicle. This requires that the officer be able to relate specific and articulable facts which form the foundation of that suspicion. Here, the officer clearly has reasonable suspicion to stop the vehicle. Indeed, the officer, upon noticing that the license plate was covered with snow had probable cause, a more stringent standard than reasonable suspicion, to pull over and cite Dana.

The police officer probably cannot maintain that the stop was valid even without the PC from the license plate. The officer was aware that the burglar suspect was driving a truck and wearing a baseball cap. However, such a vague description is unlikely to support probable cause. The geographic proximity of the truck he spotted to the crime does little to help. The report from the dispatcher did not indicate which direction the truck was heading, nor any additional information that the officer could have used to select Dana's truck from possible hundreds of others in a 5-10 mile radius around the crime scene. Thus, the officer's "specific and articulable" facts amount to: 1) the driving of a truck and 2) the wearing of a baseball cap. This is clearly not enough.

Dana may argue that the license plate stop was a mere pretext for stopping the vehicle so that

the officer could question her regarding the burglary. This argument will fail. A pretext stop generally takes place when an officer suspects a person of wrong doing then targets, follows or waits for that person to commit a crime. In the case here, he did not wait, he was merely opportunistic upon seeing the license plate violation.

Part 2:

An officer may perform a limited pat-down search for weapons if the officer has reason to believe (reasonable suspicion) that the suspect may be dangerous and carrying a weapon. This is a close call in this case. The officer initially did have cause to suspect the person was dangerous. He believed the suspect to be the perpetrator of a burglary, and he saw the empty gun rack in the back of the vehicle. Upon approaching the vehicle, and noticing that the suspect could not have been the suspect involved in the burglary the reasonable suspicion had lapsed and the officer could not have ordered the search. However, the woman became irate and then what could amount to a threat of physical harm to the officer, stating "a good cop is a dead cop." While this could be interpreted as a bland, almost cliché, statement of personal philosophy, the combination of the statement with the empty gun rack COULD support the officer's pat-down. Thus the state should argue, that because of the threat and the apparent absence of a deadly weapon, the officer was correct in ordering the suspect out of the vehicle and ensuring her that she did not have a 12 gauge hidden on her person.

Part 3:

Here the officer has no leg to stand on. Dana's motion will be granted. An officer's search or pat-down for weapons based on a reasonable suspicion is strictly limited to the search for

conventional weapons unless the officer has reason to suspect that the suspect possesses an unconventional or atypical weapon. Here there is no reason to suspect Dana was carrying anything other than a rifle-sized weapon; the weapon absent from her gun rack. Upon feeling the SOFT baggie in Dana's pocket the officer should not have concluded that it was a shotgun or any other conventional weapon and no reason at all to suspect she was in possession of an atypical, soft, baggie-like weapon.

Part 4:

The state could argue that because the officer was planning to arrest her on the license plate violation the search was incident to arrest. A search incident to arrest subjects all objects in the suspect's control.

This cannot be considered a search incident to arrest. The arrest came after the search and subsequent discovery of the baggie. A proper search incident to arrest must be done contemporaneously after the arrest and is performed to collect evidence of the crime and to ensure the suspect has no dangerous instruments. Here the search was presumably done either in fear of Dana having a weapon or in retaliation for the comment she made. It is highly unlikely that the officer would have arrested Dana for the license plate infraction and if he was so planning, should have effectuated the arrest immediately, prior to the search if he wanted to claim it was a search incident to arrest.

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Alaska Bar Examination

JULY
2005

This Book is for your answer to

Question **No. 7** *Only*

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1. Bases for stop of vehicle

There are 2 possible bases for the officer's stop of the vehicle. First, the pickup had a license plate covered up in snow. It is a misdemeanor to have an obscured license plate, so the officer was justified in pulling over the pickup to provide the driver w/ a ticket for the obscured license plate. Since the officer couldn't read the plate because it was obscured, it was necessary for the officer to pull the vehicle over to give driver the ticket because he had no other way to notify driver that the plate was obscured. While questionable in actual motive to pull over, this basis would probably be successful at court.

Second basis is the radio call. An officer can stop a vehicle if he has reasonable suspicion that a ~~crime~~ potentially serious crime has recently occurred & the person ~~possible~~ being stopped is believed to be the one who committed the crime. The officer heard over ~~his~~ his radio that a burglary had recently occurred - 15 minutes

prior. A burglary is a serious crime. The description of the suspect vehicle was ~~that~~ a pickup driven by a bearded man wearing a baseball cap. When the officer ~~minutes~~ moments later saw a pickup being driven by a person wearing a baseball cap, he could reasonably believe that that person was the one who committed the crime.

The officer was justified in pulling over the vehicle based on his reasonable suspicion that person driving that vehicle had recently committed a burglary.

2. Motion to suppress marijuana in ground for pat-down search. Daniels is arguing that once the officer realized that she was not the suspect mentioned in the radio call, because Daniels was a woman + not a bearded man, he should have let her go, + therefore that the pat-down search for weapons was ~~also~~ unconstitutional. The state will have to argue that its search was reasonable under the circumstances ~~that~~, the officer was alone, + an

Officer who is alone has the right to search a person if he feels threatened or in danger of harm. In this case, the officer noticed an empty-gun rack. He also observed the woman to be hostile to him, including a direct threat that "a good cop is a dead cop." It is possible, based on those factors that the cop could have reasonably believed that the woman had a gun + would shoot him if or when she got a chance. To be safe, the officer patted her down for weapons. ~~It~~ ~~was~~ ~~also~~ ~~he~~ ~~said~~ ~~that~~ ~~the~~

3. Exceeded scope of patdown: Daniels is claiming that the officer exceeded the scope of the patdown + that as a result, the officer discovered the marijuana. Under AK law, an officer is only allowed to feel for weapons. There is no plain feel exception allowed. The officer was not reasonable in his belief that the soft container might contain a weapon, unless it ~~was~~ ^{contained} some kind of corrosive agent, but since the officer was likely basing his search on the empty gun rack, he

would not be reasonable in thinking of the use of a corrosive agent - it might be different if he saw a container of corrosive agent on the seat of the car next to the driver, but the marijuana will most likely be excluded on this ~~objection~~ motion to suppress.

4. Alternate ground for search. The state is arguing that the search that revealed the marijuana was incident to a lawful arrest. This will also likely not go through + the evidence will be suppressed. ~~Mass~~ AK not have plain feel grounds - can only pat down for weapons @ post-arrest. Also, the offense was a misdemeanor driving violation involving an obscured license plate due to snow covering it - there was no suspicion that driver was under the influence of alcohol or other illegal substance, + therefore no reason to search for items such as marijuana. Even though the marijuana was found, it will be excluded/suppressed + the

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search will not be upheld.

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Alaska Bar Examination

JULY
2005

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1. Explain the possible bases the state could argue to uphold the stop of Daniels' vehicle and whether they will be successful.

Police can make an investigatory stop of a vehicle if they have a reasonable suspicion that a imminent public danger exists, or serious danger to persons or property has just occurred. A reasonable suspicion needs to be based on the totality of the circumstances and be well articulated with supporting facts and reason. Information of dispatchers and other officers are imputed to the officer in question. Further, when a misdemeanor offense is committed in the presence of the officer, reasonable suspicion to pull the suspect over is warranted.

Burglary is a crime that equates to serious danger to persons or property. The officer in this case heard from dispatch that a burglary had just occurred and the description of the suspect vehicle was that it was a pickup truck driven by a bearded man wearing a baseball cap.

Moments later the officer saw a pickup truck with the driver wearing a baseball cap. Therefore the officer had a reasonable suspicion based on the totality of the circumstances that the truck he was pulling over was involved in the burglary, because the description of the driver and vehicle matched the dispatcher's description. Furthermore, the officer was witnessing a misdemeanor offense occurring - the covering of the license plate number with the snow, enhancing his reasonable belief to pull the truck over.

Therefore, because the officer had a reasonable suspicion that a serious danger to persons or property just occurred in a burglary, and the pickup truck driver reasonably matched the dispatcher's description of the suspect, this investigatory stop was warranted. Further, a misdemeanor offense occurred in the presence of the officer, with the suspect's license plate numbers covered by snow.

2. Daniels moves to suppress the marijuana, arguing that, even if the trooper lawfully stopped her, he had no grounds to conduct a pat-down search for weapons. What should the state argue to defeat the motion?

A pat-down search for weapons is warranted when the police officer has probable cause to believe that the suspect is armed and dangerous and an immediate pat down of her person is required as a matter of practical necessity.

Once the officer made the investigatory stop, he had to quickly affirm or disaffirm his reasonable belief that the suspect was involved in the burglary. Once he discovered the suspect was a female, any further detention required probable cause. The officer in this case saw an empty gun rack through the back window of the cab, and the suspect in the truck said that "I think a good cop is a dead cop." The police officer had probable cause to believe that the threat of a dead cop with an empty gun rack meant that the suspect was armed. The state will have to overcome the argument that it would be difficult to hide, say a rifle-a long gun that is usually in a gun rack, from the view of the officer when he approached the window. The state should argue that the gun rack could hold a smaller weapon that the officer could not reasonably see if it was removed from the gun rack and if the smaller weapon could be hidden on the suspect's person.

3. Daniels also moves to suppress the marijuana on grounds that the trooper exceeded the scope of a weapons pat-down. Explain whether Daniel's motion will be granted.

A pat-down is generally limited to the exterior of a person's clothing, however, the police officer can exceed the original scope of the pat down if the object felt reasonably feels like a knife, gun or club or if the police officer can point to an articulate certain facts that the object felt during the pat down feels like an atypical weapon that could be used in a certain circumstance.

The object felt by the trooper could have felt like a knife, gun or club, or other atypical weapon

because he felt a soft container in her pocket, perhaps a baggie containing marijuana.

Therefore, because the object of the pat down could not necessarily feel like a knife, gun or club, or other atypical weapon, the officer was not warranted in exceeding the scope of the pat-down search beyond the exterior of the suspect's clothing.

4. The state offers, as an alternative ground to uphold the search of Daniels' pocket, that the marijuana was seized pursuant to a search incident to arrest for the driving violation. Explain whether the search of her pocket will be upheld on such grounds.

A search incident to a lawful arrest is valid if four elements are met: (a) the arrest was lawful, (b) the search was roughly contemporaneous with the arrest, (c) the search was not just a pretext for pulling the suspect over, (d) the search was reasonably intended to find weapons or evidence for which the suspect is arrested for.

The arrest of the suspect was lawful, she was violating a license plate offense. The search was roughly contemporaneous with the arrest because it happened at the time of the arrest. The search was not just a pretext for pulling the suspect over because the officer witnessed the license plate offense personally, and furthermore reasonably believed that the suspect in the truck was involved in the burglary. However, the suspect was arrested for the license plate violation, and a search for drugs on the suspect had nothing to do with that type of arrest. Therefore, the search incident to a lawful arrest standard is not met, and the search was therefore invalid.