



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 155
March 25, 1991

SNIFF TEST OF WAREHOUSE BY TRAINED NARCOTICS-DETECTION DOG

Reference: Joan A. McGahan
Rusty H. Seaman
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1112
 P.2d
March 15, 1991

FACTS:

McGahan and her son, Rusty Seaman, purchased a warehouse in an industrial area of Anchorage. Helmut Engelke owned a cabinet-making shop next to the warehouse. Engelke noticed that the new owners, McGahan and Seaman, quickly made several changes to the warehouse. They blackened out the windows, chained a sign across the exterior stairway warning to "keep out" and posted "private" sign on the door. Three air-intake canisters and two ventilators were built into the roof of the warehouse. A plywood cubicle enclosure was built in the garage and allowed only one vehicle to enter. It also blocked any view of the inside of the warehouse. The electric meters were replaced with larger ones capable of measuring more electric use. The new owners never took down the "old sign" with the name of the former occupants' business.

It appeared to Engelke that the warehouse was hot inside, although the furnace did not appear to be running--the gas furnace did not emit steam, yet steam was coming off the roof and the roof had no snow on it as others in the area did. The new owners were not friendly and did not answer the door on at least one occasion when Engelke knew they were inside. Engelke also never saw anyone come to do business with the new owners.

Engelke reported his suspicions to the police. A police officer spent several hours observing the building during normal business hours and observed the same circumstances as Engelke had reported. He suspected the warehouse was being used for growing marijuana.

A canine sniff test of the warehouse exterior was conducted by a trained narcotics-detection dog named, "Irma." The dog "alerted" to detection of controlled substance odor being present in the warehouse. Irma had made 574 sniffs for narcotics in the past and alerted 490 times, which resulted in discovery of controlled substances on 483 occasions. Based on Irma's alert, a warrant was issued three weeks later for an interior search of the building.

The search resulted in seizure of \$25,000 worth of growing equipment, 100 mature marijuana plants, 37 marijuana seedlings and five pounds of dried and packaged marijuana. As a result of this search, police sought and obtained warrants to search both McGahan and Seaman's residences. Those searches also resulted in the seizure of controlled substances.

McGahan and Seaman argued that they had an expectation of privacy in the warehouse and that police were required to get a warrant prior to the exterior dog-sniff test.

ISSUE:

Did police need a search warrant authorizing the initial sniff test?

HELD: No.

REASONING:

1. The officers only needed reasonable suspicion to use a reliable dog to conduct a "sniff" of the warehouse exterior, which was an area accessible to the public. (emphasis added)

2. The police received a tip from a citizen informant, Engelke, that the new warehouse owners did not appear to be operating a legitimate business.

NOTES:

The area around the warehouse structure was open to the public and the warehouse was not used as a personal dwelling. Keep in mind that if this had been an apartment building instead of a warehouse, the results could have been different. The Second Federal Court of Appeals has held that "the heightened expectation of privacy" in one's dwelling renders a canine sniff of the outside of the apartment door a search. [Reference: United States v. Thomas, 757 F.2d 1359, 1367 (2d Cir.1985)]

Review of Section I of your Alaska Legal Briefs manual is recommended. Pay particular attention to the following cases which address investigatory seizures of persons/luggage subsequently sniffed by a trained canine; or, in the case of Wilkie v. State, where a tracking dog is used to capture a sexual assault suspect:

U.S. v. Place, Legal Bulletin No. 75
Pooley v. State, Legal Bulletin No. 96
Gibson v. State, Legal Bulletin No. 98
Wilkie v. State, Legal Bulletin No. 100
State v. Garcia, Legal Bulletin No. 116
LaMense v. State, Legal Bulletin No. 117
U.S. v. Sokolow, Legal Bulletin No. 130

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I of your Contents and Text. File Legal Bulletin No. 155 numerically under Section R of the manual.