



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 360

February 26, 2012

**SEIZURE OF BOOTS FROM JAIL IS INCIDENT TO ARREST - NOT INCIDENT TO INCARCERATION - IF POLICE STATION IS WITHIN SAME FACILITY**

**Reference:**

Michael D. Phillips

Alaska Court of Appeals

v.

Opinion No. 2345

State of Alaska

P.3d

February 17, 2012

**FACTS:**

Officer Danny Michels of the Cordova Police Department was dispatched to investigate a complaint of noise coming from behind a hotel. When he arrived, he discovered Phillips standing, with his pants down and his genitals exposed. Lying on the ground was K.M., a female, who was disrobed and "barely conscious." K.M.'s eyes were nearly swollen shut and she had blood around both eyes and appeared to have a laceration on her left breast, and her mouth was bloody. As a result of the attack K.M. required stitches above each eye, her chin, and genital area.

Officer Michels could see that Phillips's hands were injured; his knuckles and fingernail tips were red and swollen. Phillips also had injuries to his face.

Phillips was taken to the Cordova Police Station where he was told that he was under arrest for sexual assault. Phillips's clothing and boots were seized as evidence. The boots were subsequently sent to the crime laboratory that determined bits of tissue stains and blood collected from the boots were consistent with K.M.'s.

The Cordova Police Department also serves as the jail and Officer Michels served not only as the arresting officer but the booking officer as well.

Phillips did not challenge the seizure of his clothing but argued that the warrantless seizure of his boots was illegal and that all evidence collected from the boots must be suppressed. He argued that the boots were seized during an inventory search incident to his incarceration, not a search incident to his arrest. He argued that the police needed a warrant to seize the boots from the jail.

**ISSUE:**

Were the boots lawfully seized following his arrest, and all forensic evidence collected from the boots properly admitted into evidence?

**Held.** Yes. The boots were validly seized as part of the search incident to Phillips's arrest.

**REASONING:**

1. The police had ample probable cause to believe that Phillips had committed a sexual assault and ample reason to believe that Phillips's outer clothing might contain trace evidence of that assault (such items as hair, fiber, blood, and other bodily fluids).
2. The boots were seized during the same search incident to arrest as the other articles of Phillips's clothing.
3. Officer Michels served not only as the arresting officer but the booking officer as well. Michels seized Phillips's boots shortly after their arrival at the station, immediately after Michels informed Phillips that he was under arrest, and while Michels was collecting other items of Phillips's outer clothing (his jacket, hat, sweatshirt, and belt).

**NOTES:**

This case may answer questions for some Alaska cities whose police departments also house detention facilities and where police officers have the dual role of corrections officer.

The Court of Appeals compared this case with Reeves v. State (see Bulletin No. 27) where the Alaska Supreme Court ruled that evidence discovered by a corrections officer during a booking was seized during the inventory process by the corrections officer as incident to incarceration and police were required to obtain a warrant to seize it from the corrections facility.

Several other cases have been decided on inventory searches conducted by corrections officers during the inventory process. See for example, Zehrunge v. State (Bulletin No. 1) where a corrections officer discovered a credit card in someone else's name and called the arresting officer who had departed back to the facility. It turned out the credit card had been stolen during a sexual assault some months earlier. The officer seized the credit card. The Alaska Supreme Court in Zehrunge ruled that the police were required to obtain a warrant prior to seizing. This was an inventory search conducted by a corrections officer, not search made incident to arrest by an arresting officer.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 360 numerically under Section R of the manual.