



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 282

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**EVIDENCE DISCOVERED DURING ILLEGAL
PRE-INCARCERATION INVENTORY SEARCH MUST BE
SUPPRESSED, BUT MAY BE ADMITTED UNDER
INEVITABLE DISCOVERY DOCTRINE**

<u>Reference:</u> Jeffery W. Anderson	Alaska Court of Appeals
v.	Opinion No. 1936
State of Alaska	P.3d

	May 28, 2004

FACTS:

A Juneau police officer observed Anderson driving a van. The officer knew that Anderson did not have a driver's license. He called dispatch and verified that not only was Anderson driving without a license but he also had an outstanding warrant for his arrest. The charge on the warrant, a misdemeanor, was for failure to appear. Bail was endorsed at \$1,000.

The officer stopped Anderson and arrested him on the outstanding warrant and also charged him with the driver's license offense. The officer searched Anderson, but did not find any weapons or contraband. The officer did inform Anderson that his bail was \$1,000 on the bench warrant. The officer failed to inform Anderson that he could either post bail on the warrant or call someone to post it for him. He instead transported Anderson to the Lemon Creek Correctional Institution.

Upon arrival at Lemon Creek, a Corrections officer met the Juneau police officer in the sally port. The Corrections officer searched Anderson and found, among other things, a knife and a Tupperware-type plastic container. The Corrections officer handed the container to the police officer, who saw that it contained white powder and a red

straw--laboratory tests later revealed the white powder was methamphetamine.

After the search was conducted in the sally port, Anderson was placed in a holding cell. The officer again informed Anderson the amount of bail and, for the first time, asked Anderson if he could post bail. (emphasis added)

In Zehrunig, Legal Bulletin No. 1, the Alaska Supreme Court ruled that when a person is arrested on a minor charge for which bail has been set, that person must have a reasonable opportunity to raise bail before being subjected to booking procedures and a pre-incarceration inventory search. As it turned out, Anderson was unable to post bail and he was kept incarcerated at Lemon Creek for four days.

ISSUE NO. 1:

Was the search conducted at Lemon Creek an illegal pre-incarceration inventory search?

HELD: Yes. The search cannot be justified as a "weapons" search; the police officer had already done that and he should have been given the opportunity to post bail prior to booking.

ISSUE NO. 2:

Would the illegally obtained evidence have been discovered through predictable investigative processes?

HELD: Yes. The inevitable discovery doctrine applies here.

REASONING:

1. The scope of a patdown is exceeded when the search extends beyond the exterior of a person's clothing or possessions and intrudes into pockets and closed containers. In a patdown, an officer can intrude beyond the outer clothing of a suspect only if the initial exploration discloses potential weapons.

2. In order to justify a pre-incarceration inventory search of a person arrested for an offense with a pre-set bail, the State must demonstrate individualized exigency requiring the search.

3. If the prosecution can show, by clear and convincing evidence, that illegally obtained evidence would have been discovered through predictable investigative processes, such evidence need not be suppressed as long as the police have not knowingly or intentionally violated the rights of the accused in obtaining that evidence.

NOTES:

In this case, the arresting officer failed to inform the defendant before the booking process that he could post bail or be given a reasonable opportunity to have someone else post his bail for him. As it turned out, Anderson was unable to post bail and remained in custody for four days. The Court concluded that, even given the "reasonable opportunity" (about an hour) when bail was not posted, he would have been processed and the evidence would have been discovered during the booking procedure.

Review of the following cases is recommended:

Zehrunge v. State, Legal Bulletin No. 1

Gray v. State, Legal Bulletin No. 149

These regard pre-incarceration inventory searches on defendants who were arrested on warrants with pre-set bail--evidence was suppressed.

State v. Hazelwood, Legal Bulletin No. 183--addresses the inevitable discovery doctrine.

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Add this case to Section F, "Inventory," and Section Q, "Miscellaneous Cases of Interest," of your Contents and Text. File Legal Bulletin No. 282 numerically under Section R of the manual.