

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 19

January 30, 1979

INVENTORY SEARCH OF IMPOUNDED VEHICLE PURSUANT TO POLICE REGULATION

Reference: State of Alaska
v.
Edward A. DANIEL

Alaska Supreme Court
File No. 3485
589 P2d 408
Opinion No. 1779
January 19, 1979

FACTS:

While a police officer was investigating a traffic accident in a parking lot, another vehicle entered the lot striking two parked cars. DANIEL, the driver, was contacted by the officer and he appeared to be under the influence. DANIEL was requested to stand outside his vehicle while the officer returned to the police car. Instead, DANIEL returned to his own vehicle, locked the doors, and threw the keys into a snow bank. DANIEL was arrested for O.M.V.I. and another police officer came to the scene to assist.

The officers decided to impound the vehicle. DANIEL was not asked if he had anyone who could take charge of his vehicle. The wrecker came and the vehicle's door was unlocked since it could not be determined whether or not the car was in gear for towing. DANIEL was enroute to police headquarters and the second officer began his inventory of the vehicle. On the back seat, the officer saw a brown Samsonite briefcase with the top down but latches open. The officer opened the briefcase and discovered a quantity of cocaine, some marijuana and an automatic pistol. The arresting officer was then contacted by radio and returned to the scene with DANIEL at which time he took possession of the briefcase and its contents. The following day, a search warrant for the remainder of the vehicle was obtained. No further evidence was located. DANIEL was subsequently arrested for the felonies of possession of cocaine, possession of marijuana for sale, and carrying a concealed weapon.

ISSUE:

Can the evidence found in the briefcase pursuant to an inventory search be used at trial against DANIEL?

HELD: No.

REASONING:

1. A search without a warrant is per se unreasonable unless it clearly falls within one of the narrowly defined exceptions to the warrant requirement.
2. The state had conceded that (a) search of the interior of the briefcase was not made incident to the lawful arrest of DANIEL because he had been transported from the scene; (b) there was a lack of probable cause to search for evidence of a crime; (c) there was no need for a search of the vehicle for the officer's own physical protection;

(d) DANIEL did not consent to a search of his vehicle---in fact, he threw his keys away; and (e) there was nothing in the closed briefcase in plain view which would permit seizure.

3. The Alaska Constitution contains an even broader guarantee (our Founding Fathers chose to add the phrase, "and other property") against unreasonable searches and seizures than is found in its federal counterpart.

4. The protection of the interiors of closed luggage, briefcases, containers, and packages transported in a vehicle reflects fundamental expectations of privacy which Alaskan society would recognize as reasonable.

5. Routine police inventorying of the contents of a vehicle is a search with the intentment of Alaska's Constitution.

6. In conjunction with impounding a vehicle, the police, as a matter of routine inventory procedure, are entitled to catalog all articles which are not in closed or sealed containers, luggage, briefcases, and packages. It is sufficient for inventory purposes that the officer merely list the item as a closed or locked package, foot-locker, or container and remove the same for safekeeping if deemed necessary.

NOTES:

It doesn't matter that the briefcase was not locked. The court felt that as a matter of right the defendant had a reasonable expectation of privacy for the contents of his briefcase. Remember---the contents were not exposed or in "plain view" of anyone who might look into his vehicle. Remember what the U.S. Supreme Court said in KATZ v. United States, 389 U.S. 347 (1967), where the "expectation of privacy" doctrine was adopted:

"The Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."

If evidence is discovered in "plain view" during the inventory it may be seized.

For additional review, see ZEHRUNG v. State (A.P.D. no. 1) regarding inventory search of a person by jailor, McCOY v. State (A.P.D. no. 6) on search incident to arrest; OPPERMAN v. South Dakota (A.P.D. No 8) pertaining to marijuana found in plain view pursuant to impounded vehicle inventory search; DAYGEE v. State (A.P.D. No. 10) regarding plain view search of vehicle; CLARK v. State (A.P.D. No 12) on search of car "exigent circumstances" to prevent destruction of known evidence.