

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 30

December 17, 1979

SEARCH OF A VISITOR'S PURSE ON PREMISES

Reference: Michael CARMAN
v.
State of Alaska

Alaska Supreme Court
File No. 3555
658 P.2d 131

November, 30, 1979

FACTS:

On December 7, 1976, an armed robbery was committed by two men wearing ski masks. Money and a .357 revolver with a brown holster were taken. Police investigation focused on CARMAN and one of his roommates. CARMAN lived with his co-defendant and four other persons in an apartment. A search warrant was issued to look for fruits of a crime as well as clothing worn by the suspects. When the police served the search warrant, there were other persons on the premises, including Cherie Carman, sister of the defendant, who was a visitor at the apartment. The police required all persons on the premises to line up along the living-room wall while the search was conducted.

In a back bedroom where Ms. Carman had been when the police first entered the apartment, a police officer found a closed, opaque purse lying on the floor. Upon opening the purse, a brown leather holster matching the description of the one stolen was found and seized. The police officer learned the purse belonged to Cherie Carman.

ISSUE:

Was the search of the purse which contained the holster within the scope of the search authorized by the search warrant?

HELD: Yes.

REASONING:

1. The police did not know whether the purse belonged to a permanent resident of the apartment or a visitor. No one spoke out claiming ownership and that it should be exempted from the warrant; the police did not have a duty to solicit such a claim.
2. It could have contained the pistol for which the warrant was issued as readily as any other container on the premises.

NOTES:

The court, in the opinion, emphasizes that their holding is limited to the precise facts of this case.

What if Ms. Carman had voiced objection to the search of her purse claiming the police were not entitled to search it pursuant to the warrant? Could the purse have been seized (P.2d 131) brought to the police station, and another search warrant sought?

In a related type search, the U.S. Supreme Court (Ybarra v. Illinois, 26 CrL 3017, 11/18/79) held it was unconstitutional for the police to search a bar patron during the warrant-authorized search of the bar itself. "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." The police did not recognize Ybarra as a person with a criminal history; he gave no indication that he possessed a weapon; and, his conduct was generally non-threatening. Thus, the officers lacked any specific articulable facts justifying the suspicion that Ybarra was armed and dangerous. In the above case, the bar patron was "patted down for weapons" and later searched and drugs were found in a cigarette pack.

In Ybarra, the police had a warrant to search the premises and the bar tender for narcotics. The warrant gave them no authority whatever to invade the constitutional protections possessed individually by the taverns customers. The "narrow scope" of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an authorized narcotics search is taking place.