



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 149
September 18, 1990

INVENTORY SEARCH INCIDENT TO INCARCERATION

Reference: Terry L. Gray
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1077
P.2d
September 14, 1990

FACTS:

A police officer stopped a car in which Gray was riding as a passenger. He was subsequently arrested on an outstanding misdemeanor warrant for contempt of court. Bail on the warrant had been set at \$500.00. He was frisked for weapons at the scene and transported to the Matanuska Pretrial Correctional Facility. When asked if he could post bail, he said he hoped a friend was bringing it for him. At that time, the jailer began searching Gray and removing articles from his pockets. A clear plastic bag containing white powder was discovered. Gray stated, "That's not mine. I don't know how that got there and I don't know what it is." The packet contained cocaine and Gray was charged with possession.

An Assistant Corrections Superintendent testified that persons arrested for minor offenses are allowed approximately an hour after arrival at the institution to make arrangements for bail. Immediately upon arrival, however, arrestees were subjected to a "pat-down" search. The arrestee is required to remove the contents from his/her pockets. The contents are inventoried and placed into a property bag. The arrestee is then placed in a holding cell to await arrival of bail.

ISSUE:

Should Gray have been allowed a reasonable opportunity to attempt to raise bail before being subjected to the remand and booking procedures and the incident inventory search?

HELD: Yes.

REASONING:

1. Because he had been arrested for a minor misdemeanor on which bail already had been set, he should have been allowed an opportunity to post bail before being subjected to an inventory search (citing Zehrunge v. State, Legal Bulletin No. 1).

2. A warrantless jailhouse inventory is without justification when an arrestee is not going to be incarcerated and it is, therefore, constitutionally impermissible. (emphasis added)

3. The routine emptying of an arrestee's pockets, such as occurred in this case, cannot be justified merely by labeling the procedure a "pat-down" search for weapons.

4. Absent an individualized showing of exigency, Zehrun (see Legal Bulletin No. 1) precludes inventory searches of persons arrested for minor offenses for which bail has been set until they are given a reasonable opportunity to post bail.

NOTES:

Nothing in this opinion restricts a "pat-down" search for weapons. If a weapon is found, the officer can then search as "incident to arrest." The Court of Appeals in this case (see Footnote 3 in the opinion) has indicated it might be time for the Alaska Supreme Court to re-evaluate the Zehrun case which set the precedent for this case.

The Office of Special Prosecutions/Appeals have indicated they will appeal this case--as they have Stirling Jackson v. State, Opinion No. 1040 (no Legal Bulletin) pertaining to a similar issue--to the Alaska Supreme Court.

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