



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 156
April 22, 1991

PLAIN VIEW SEIZURE OF
REGURGITATED BALLOON CONTAINING DRUGS

Reference: Kent Brown
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1122
P.2d
April 12, 1991

FACTS:

Brown was in custody at a pretrial facility awaiting sentencing on an unrelated charge and had a contact visit with Wendy Medcoff. A correctional officer saw Medcoff pass an object to Brown, who immediately swallowed it. The officer terminated the visit and placed Brown in a dry cell--one without water--and told him he could either pass the object or take Ipecac to regurgitate it. Brown took the Ipecac and about twenty minutes later regurgitated an orange balloon containing an unknown substance. The balloon was seized and turned over to police, who opened it without a warrant and examined its contents. The balloon contained .83 grams of marijuana.

ISSUE:

Was the warrantless seizure and opening of the balloon justified as an exception to the warrant requirement?

HELD: Yes.

REASONING:

1. Ample evidence established that the contraband nature of the balloon was immediately apparent to the officer who seized it from Brown. (emphasis added)
2. The corrections officer saw Brown swallow an object which had just been handed to him during the contact visit and the officer immediately recognized that the object probably contained contraband.
3. Both the corrections officer and the police officer who ultimately opened the balloon testified that, based upon their training and experience, they were aware that balloons like Brown swallowed are commonly used to carry illegal drugs.
4. The warrantless seizure and opening of the balloon in this case was justified under the plain view exception to the warrant requirement. (emphasis added)

NOTES:

Brown did not challenge the validity of the procedure of forced regurgitation which resulted in the seizure of the balloon; he contested only the warrantless search of the contents of the balloon.

Compare/contrast this case with Reeves v. State, Legal Bulletin No. 27, where a corrections officer seized a balloon from Reeves during inventory and released it to police who had it tested. The substance was found to be heroin. In Reeves, the corrections officer did not testify that he had cause to believe the balloon contained contraband prior to opening it.

After the Reeves case, the United States Supreme Court in Texas v. Brown, Legal Bulletin No. 68, relied on the "plain view exception" to uphold the warrantless seizure and search of a balloon that contained contraband. In that case, the court indicated three rules for the plain view doctrine: (1) lawful intrusion, (2) inadvertent discovery, and (3) immediately apparent. It should be further noted that in Horton v. California, Legal Bulletin No. 145, the United States Supreme Court indicated that the plain view doctrine does not require evidence seized during a "lawful" search to be discovered inadvertently.

In addition to the above-mentioned cases, a general review of Section K of the Alaska Legal Briefs manual is recommended.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section K of your Contents and Text. File Legal Bulletin No. 156 numerically under Section K of the manual.