



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 176
April 18, 1993

IMPROPER STATE/FEDERAL SEIZURE OF SUSPECTED DRUG MONEY FOR ADMINISTRATIVE FORFEITURE

Reference: Perry D. Johnson
v.
Don P. Johnson,
Kenneth Steinnerd .
(police officers)
and the City of Fairbanks

Alaska Supreme Court
Opinion No. 3943
 P.2d
April 9, 1993

FACTS:

On February 1, 1990, Perry Johnson was arrested on a domestic violence charge outside his residence. After Johnson was placed in the patrol car, officers entered his residence and observed evidence of illegal drug activity. Police obtained a search warrant for the residence and proceeded to seize drugs, drug paraphernalia, weapons and \$44,850 in cash.

On February 2, 1990, police contacted the Drug Enforcement Administration (DEA) who told them that the DEA would "adoptively seize" the money through a federal forfeiture proceeding. The \$44,850 was transferred to the DEA and the Fairbanks police received \$17,940 in consideration of their participation.

On February 7, the grand jury returned a 14-count indictment against Perry Johnson for numerous theft, weapons and drug violations.

As a result of a suppression hearing, a Superior judge on May 7 granted Johnson's motion to suppress the evidence. The judge ruled that the warrant had been issued as a result of an illegal entry on the part of the police. The State of Alaska dismissed the charges filed against Perry Johnson.

Perry Johnson moved to have the cash returned to him and the Superior Court ordered police to do so.

The City of Fairbanks and the Federal Government argued that Johnson lost his title and interest in the money before it was even seized based on a Federal Statute [21 USC 88 (1h)] which provides for the seizure of money traceable to the use or exchange of

controlled substances.

Johnson, on the other hand, argued that the State Court System should have maintained control of the money until the criminal case was resolved and should not have transferred the money to the DEA until after completion of the State forfeiture proceedings.

ISSUE:

Did the City violate state law regarding the disposition of seized property by transferring the money without State Court approval?

HELD: Yes.

REASONING:

1. The State may only transfer seized property to the DEA after it has completed forfeiture proceedings. [AS 17.30.114(b)]
2. After the property has been forfeited [AS 17.30.116-130], it may be transferred to another agency of the State or political subdivision of the State for use in furtherance of the administration of justice.
3. The seized property may also be forwarded to the DEA of the (US) Department of Justice for disposition. [AS 17.30.122(6)]
4. Once property is seized by a State warrant, police must inventory the property and return the warrant and a copy of the inventory to the court. [AS 12.35.025]
5. It follows then that the State Court in this case had jurisdiction over the money "to the exclusion" of the DEA as a result of the State search warrant.
6. Because the State District Court was the first to obtain jurisdiction over the property and because the City of Fairbanks transfer violated the State law, the DEA'S forfeiture had no effect.

NOTES:

The City of Fairbanks must return the money to Perry Johnson. It should be noted that when answering a similar question, the Fifth Circuit Court of Appeals reached the same conclusion as the Alaska Supreme Court did in this case.

Prior to the release of money or any other seized property (such as vehicles, weapons, etc.) to another agency you should check with your City Attorney, if applicable, and the District Attorney.

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