

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 6

November 30, 1977

SEARCH INCIDENT TO ARREST

Reference: Charles G. McCoy
v.
State of Alaska

McCoy v. STATE
491 P.2d 127

Alaska 1971

FACTS:

A man by the name of RUND was rolled and his credit cards were among the items stolen. On the day of that event, a plane ticket was purchased with one of the credit cards in the name of R. JACKSON. The ticket was for a Seattle flight and police officers "staked out" the airport. McCoy, using the JACKSON ticket purchased with the stolen credit card, appeared at the airline to check in for the flight. McCoy was arrested without a warrant for attempting to pass a forged instrument (the ticket) and patted down for weapons. He was handcuffed and brought to the police station where a complete search was made in a police-interview room. During that search a small package was found in his coat which was later found to contain cocaine. McCoy was charged with the possession of cocaine and convicted. McCoy appealed his conviction to the State Supreme Court alleging that the seizure of the package was illegal.

ISSUE:

Was the arrest of McCoy at the airport without a warrant lawful? Was the search conducted at the police station thirty (30) minutes after his arrest at the airport incident to his arrest? Once the package was removed from McCoy and no danger existed could the police seize and search the package without obtaining a search warrant?

HELD: Yes.

REASONING:

1. The arrest itself was lawful and probable cause was sufficient to arrest McCoy without a warrant.
2. The search of an arrestee remains incident to arrest when it is conducted shortly thereafter. The interview-room search of McCoy was incident to his arrest at the airport.
3. It is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. The package might well have contained evidence of the forgery.

4. Adequate protection of the arrestee's interest in privacy will be provided by the following restrictions on warrantless "incidental searches" of the person: (a) The arrest must be valid. (b) The search must be roughly contemporaneous with the arrest. (c) The arrest must not be a pretext for the search; the arrest cannot be a "sham" used to conduct a search. (d) The arrest must be for a crime, evidence of which could be concealed on the person.

NOTES:

When this case was decided, two dissents were filed; in other words, three justices said "yes" and two said "no". The two who said "no" are still members of the court and two new members have been added. It is not known how a case with the same set of facts would be viewed by our current court.

You should not confuse the facts in this case with ZEHRUNG v. State (see A.P.D. Legal Bulletin No. 1) because the issues are different. In ZEHRUNG, an "inventory (exploratory) search" was made by the jailor in the jail. The search in ZEHRUNG could not be justified as a "search incident to arrest" in that it failed to meet the fourth (see "d" above) requirement of McCOY. In ZEHRUNG the crime was not one in which evidence could have been concealed on his person. Thus, unlike McCOY, the search could not be justified as one necessary to preserve evidence of the crime for which the defendant was arrested.

In this case, the court said that the arrest was lawful and a search can be made of the person incident to the arrest. The officer was allowed to search for evidence the crime charged. In this case, the court said evidence of the forgery could have been found in the package. Because cocaine was found in a place that "evidence of the crime charged" could have been concealed, the cocaine could be used against McCOY.