



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 132

April 28, 1989

SEARCH INCIDENT TO ARREST

Reference: Thomas Ricks
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 929
P.2d
April 14, 1989

FACTS:

Police secured a Glass warrant to record Ricks' conversation during a controlled drug transaction. The buy took place in the bar where Ricks was employed. In addition to the informant, several officers were in the bar and others were outside monitoring with electronic equipment. Ricks obtained the drugs from the pocket of his jacket, hanging on a coat rack near the bar, and delivered them to the informant.

When the informant left the bar upon completion of the sale, the officers stationed outside entered. Ricks was placed under arrest, relocated from the bar area to the back of the room and searched for weapons and drugs. At the time of his arrest, he was approximately fifteen feet from his coat. About fifteen minutes after the arrest, while Ricks was still being held at the back of the room, an officer retrieved Ricks' jacket and asked if it belonged to him. When Ricks said the jacket was his, the officer searched it and found a quantity of methamphetamines. Ricks was charged with an additional count as a result of this discovery and seizure.

ISSUE:

Was the search of the jacket incident to Ricks' arrest?

HELD: No.

REASONING:

1. The jacket was not in his immediate presence or control at the time of his arrest (emphasis added).
2. A warrantless search incident to arrest will normally be limited to the person arrested and the area within his immediate physical control (emphasis added, citing McCoy).

NOTES:

Alaska Court of Appeals has decided three similar cases--Dunn, McCoy and Hinkel--involving searches of articles worn by or in the immediate physical control of the defendant at the time of arrest. The searches and subsequent seizures of evidence were upheld in these cases because of the physical proximity of the garments/purse at the time of the arrests. In this case, Ricks' jacket would have qualified had it been in his immediate presence at the time of his arrest. What is important here is the item searched and seized incident to arrest must be associated with the arrestee as well as in his immediate physical control.

It is recommended the following cases be reviewed:

McCoy v. State, Legal Bulletin No. 6--search of jacket thirty minutes later; upheld as incident to arrest.

Hinkel v. Anchorage, Legal Bulletin No. 41--search of purse removed from vehicle after subject was handcuffed and placed in police car; upheld as incident to arrest.

Dunn v. State, Legal Bulletin No. 63--search of coat found in vehicle; upheld as incident to arrest even though subject had been removed and handcuffed prior to search.

Uptegraft v. State, Legal Bulletin No. 44--search of vehicle after subject had been removed and handcuffed; upheld.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section E, page 4, of your Contents and to Section E, page 5, of Text. File Legal Bulletin No. 132 numerically under Section R of the manual.