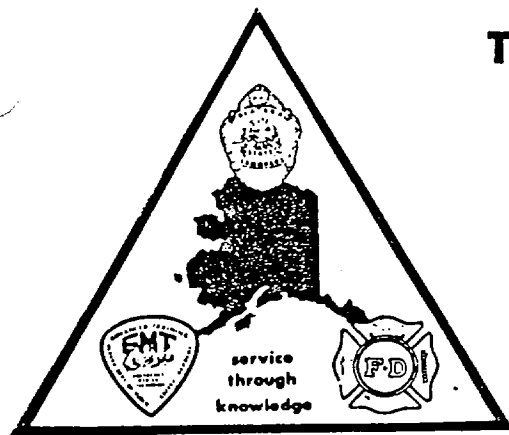


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 68
June 20, 1983



PLAIN VIEW SEARCH OF AUTOMOBILE

Reference:

Texas
v.
Clifford James BROWN

United States Supreme Court
No. 81-419
April 19, 1983

FACTS:

During a routine "drivers license checkpoint", BROWN was stopped by the Fort Worth, Texas, police. A police officer stood alongside the drivers window and asked BROWN, who was alone, for his license. It was after midnight and the officer shined his flashlight into the car and saw BROWN withdraw his right hand from his pants pocket. Between his fingers was an opaque, green party balloon knotted about one inch from the tip. BROWN let the balloon fall onto the seat and then opened the glove compartment. The officer shifted his position in order to obtain a better view of the interior of the glove compartment. He noticed that it contained several plastic vials, quantities of loose powder and an open bag of party balloons. After rummaging through the glove compartment, BROWN told the officer that he had no license in his possession. BROWN was ordered out of the car and told to stand to the rear of it. The officer picked up the balloon which contained the white powdery substance; he arrested BROWN. The officer seized other items of evidence and contraband from the vehicle. At subsequent court hearings, the officer testified that he was aware that narcotics frequently were packaged in balloons like the one in BROWN's hand.

A police department chemist testified that he had examined the substance in the balloon and determined it to be heroin. He also testified that narcotics were frequently packaged in ordinary party balloons.

The Texas Court of Appeals suppressed the evidence and the State brought an appeal before the United States Supreme Court.

ISSUE:

Did the police officer lawfully view the green balloon in the interior of BROWN's car and did he have probable cause to believe that it was subject to seizure under the Fourth Amendment?

HELD: Yes.

REASONING:

1. The "plain view" doctrine permits the warrantless seizure by police of

private possessions where three requirements are satisfied: (a) the officer must lawfully make an "initial intrusion" or otherwise properly be in a position from which he can view a particular area; (b) the officer must discover the incriminating evidence "inadvertently" and cannot use plain view as a pretext; and (c) it must be "immediately apparent" that the items observed may be evidence of a crime, contraband or otherwise subject to seizure.

2. It is beyond dispute that the officer's shining of the flashlight to illuminate the interior of BROWN's car trenching upon no right secured by the Fourth Amendment.

3. The conduct that enabled the officer (changing positions, bending down, use of flashlight) to observe the interior of BROWN's car and of the open glove compartment was not a search within the meaning of the Fourth Amendment. (emphasis added)

4. The officer possessed probable cause to believe that the balloon in BROWN's hand contained an illicit substance; he testified he was aware that balloons tied in this manner were frequently used to carry narcotics.

5. The circumstances of the roadblock (to check for drivers licenses) gave no suggestion that it was a pretext whereby evidence of narcotic violation might be uncovered in "plain view" in the course of a check for drivers licenses.

NOTES:

You should review the following cases which the Alaska courts have decided on similar issues:

1. Daygee v. State (Legal Bulletin No. 10)--officer used a flashlight and seized drugs from a vehicle--was upheld.
2. Clark v. State (Legal Bulletin No. 12)--"no pretext" was used to arrest and subsequent seizure of drugs upheld as "exigency".
3. Reeves v. State (Legal Bulletin No. 27)--balloon seized by jailor during inventory search was suppressed because it was not "immediately apparent" to the jailor that it contained drugs.
4. Elson v. State (Legal Bulletin No. 51)--during OMVI arrest and patdown, officer seized a cocaine snifter which was immediately apparent to the arresting officer.
5. U. S. v. Ross (Legal Bulletin No. 59)--search of vehicle upheld by U. S. Supreme Court as "automobile exception" to the warrant requirement.