

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 13

August 8, 1978

SEARCH INCIDENT TO ARREST

Reference: Kent C. WELTIN
v.
State of Alaska

Alaska Supreme Court
File No. 2932
574 P.2d 816
Opinion No. 1568
February 17, 1978
574 P.2d 816

FACTS:

Fairbanks police observed WELTIN make an improper turn. When WELTIN was stopped, the officer routinely checked him out and learned that a misdemeanor warrant was in existence for WELTIN's arrest on a traffic matter. The officer began a "pat down"; when he reached the area of WELTIN's shirt pocket, WELTIN pushed the officer's hand away and told the officer he could not search without a warrant. The officer had felt a hard object in the shirt pocket. WELTIN was placed in handcuffs and the officer then removed a nail which had been flattened into a spoon shape and a clear, glass vial containing a white, powdery substance. By this time, a crowd gathered and WELTIN was put in a police car so he could be searched at the police station.

Upon arrival at the police station, WELTIN told the police that he had ditched a gun in the police car. The gun was located. The officers field-tested the white powder and it produced a positive reaction for cocaine. WELTIN appealed to the Supreme Court on the ground that the vial was seized as a result of an unconstitutional search and seizure and, once it was removed from his pocket, the police had no right to open the vial without a search warrant.

ISSUE:

Did the officer act reasonably in removing the glass vial and subsequently testing its contents without a warrant?

HELD: Yes.

REASONING:

1. The warrantless search of WELTIN's shirt pocket was permissible under the "search incident to lawful arrest" doctrine. The officers had a right to search WELTIN for weapons to protect themselves.
2. Opening the vial and testing the substance contained therein were justified under the "plain view" doctrine.

NOTES:

The officer was making a search for weapons; after feeling a hard object, he removed the nail and the vial. The vial was clear and the officer could see inside (plain view), thus discovering the white powder. The nail was bent in such a way it could have been used for "snorting" cocaine or heroin. The cocaine was discovered "inadvertently" while the officer was making a search for weapons. The arrest itself was lawful and the search for weapons incident to the arrest was justified. You will see the difference when comparing this case of "incident to arrest" done by the arresting officer with the ZEHRUNG v. State case (reference A.P.D. Legal Bulletin No. 1) of exploratory inventory search of ZEHRUNG done by the jailor.