



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 268

July 13, 2003

CONCEALMENT OF EVIDENCE DOES NOT CONSTITUTE "ABANDONMENT"

Reference: Brian Young
V.
State of Alaska

Alaska Court of Appeals
Opinion No. 1886
_____ P.2d _____
July 3, 2003

FACTS:

Anchorage police responded to a disturbance at the Mush Inn Motel, which had a reputation as a place where illegal drug deals and usage occurred. While officers were wrapping up their investigation, one of them noticed Young poke his head around the corner of a building. When Young saw the officers, he looked surprised and then ducked back out of sight. One of the officers decided to investigate; he saw Young crouching down on his knees, using both hands to shove something under a doorway. The officer believed Young was trying to hide something from him.

The officer immediately handcuffed Young, saying he did so for his own safety even though Young was not armed and had not made aggressive movements toward the officer. After Young was in custody, the officer asked him what he had shoved under the door. Young replied that he did not shove anything under the door and was simply picking up a condom he had dropped.

The officer swept his fingers under the door and discovered two opaque pieces of crumpled tissue paper. The officer opened the tissue paper and found several rocks of crack cocaine. Young was charged with fourth-degree controlled substance misconduct.

ISSUE:

Did Young abandon the tissue paper bundles (for purpose of search and seizure law) when he tried to hide them under the door? (emphasis added)

HELD: No--he did not abandon them; he was trying to conceal them.

REASONING:

1. Abandonment occurs only when the property owner has discarded the property--that is, done something to objectively manifest the intent to give up any and all expectation of privacy with the property--now and in the future.

2. Abandonment does not occur simply because a person temporarily relinquishes possession or control of an object. (emphasis added)

3. Young did not throw the tissues away; he simply crouched down and hid them in a location within his reach.

4. Young did not discard the tissue paper bundles in a public place where anyone might discover them--rather, he placed the bundles in a location where they would be concealed (beneath the door of a locked closet) and not readily accessible to the public.

5. When the officer handcuffed Young, there was no reasonable suspicion to justify an investigative detention. Hence, even if Young's denial of having slipped something under the door could be viewed as tantamount to a denial of ownership, this statement was the fruit of an illegal seizure of Young's person. (emphasis added)

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section A, "Abandoned Property," and Section I, "Investigatory Seizure of Persons and Things," of your Contents and Text. File Legal Bulletin No. 268 numerically under Section R of the manual.