



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 379

July 20, 2016

Reference: Ethan Ryan Moore
V
State of Alaska

Alaska Court of Appeals
Opinion No. 2501
May 27, 2016

SEIZURE OF LUGGAGE AFTER JUDGE REFUSED WARRANT AND SUBSEQUENTLY SENT TO ANOTHER CITY RULED UNCONSTITUTIONAL

FACTS:

Acting on the tips from several informants, Dillingham police stopped MOORE at the airport shortly after he retrieved his two pieces of luggage from baggage claim. The officers informed MOORE they believed he was transporting marijuana, and asked his permission to search the luggage. MOORE, who was on his way to Togiak, declined consent to the search. The officers seized both pieces of MOORE's luggage, transported them to the Dillingham police station, and contacted the local magistrate to apply for a search warrant.

After hearing the warrant application, the magistrate concluded there was no probable cause for the search and refused to issue the search warrant. The magistrate concluded the officers failed to provide sufficient proof of the three informants' credibility to satisfy the Aguilar-Spinelli test. This is the "two-prong test" that requires (1) reliability, and (2) personal knowledge.

The officers did not acquiesce in the magistrate's decision to return MOORE's luggage to him. Instead, the officers kept MOORE's luggage overnight and the next morning shipped it to the Alaska State Troopers in Anchorage. After arrival in Anchorage, the luggage was subjected to sniffing by a drug-detection dog. The dog alerted, and the troopers applied for a search warrant which was issued by an Anchorage judge. The warrant was executed, and seven vacuum-sealed bags containing approximately seven ounces of marijuana was discovered.

MOORE was charged and convicted of fourth-degree controlled substance misconduct. He appeals his conviction.

ISSUE:

Did the officers exceed their authority when they retained MOORE's luggage overnight and shipped it to Anchorage for further investigation?

HELD:

Yes: It was unlawful for the Dillingham police to hold MOORE's luggage overnight and then ship it to Anchorage for further investigative measures, based merely on reasonable suspicion.

REASONING:

1. The police kept MOORE'S luggage for close to 24 hours. This is substantially longer than the 90-minute seizure of luggage that was disapproved by the U.S. Supreme Court. (See U.S. v PLACE, bulletin no. 75)
2. The fact police communicated to MOORE they were going to ship his luggage to Anchorage cannot turn an unconstitutional seizure into a lawful one.
3. Even if the Dillingham police had probable cause to seize MOORE'S luggage, the officers were only authorized to hold the luggage long enough to secure a search warrant.
4. The State is not allowed to rely on information that was adduced after-the-fact, such as the alert of the drug-detection dog.
5. The police violated MOORE'S rights under the Fourth Amendment when they continued to hold his luggage after the magistrate denied their application for a search warrant. All evidence derived from the later search of that luggage must be suppressed.

NOTES:

Although the U.S. Supreme Court has done away with the Aguilar-Spinelli two-prong test (see Illinois v GATES, bulletin no. 73) where they upheld a verified anonymous tip, the Alaska appellate courts still use this test. But the Alaska Court of Appeals has upheld some cases based on verified anonymous tips. See, for example, RYNEARSON v State, bulletin No. 221, where the court ruled the anonymous tip claiming the suspect was transporting drugs in her luggage satisfied "personal knowledge," and further information verified by police demonstrated "reliability." See also Williams v State, bulletin No. 315, where investigatory stop of vehicle suspected of transporting drugs based on anonymous source was upheld because police corroborated information prior to the stop. A review of Sections "I" and "M" of the Manual is recommended. There are a number of both U.S. Supreme Court and Alaska appellate court opinions in these sections which address informant-furnished information, as well as seizures of luggage conducted at the airport

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