

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 12

August 8, 1978

VEHICLE SEARCH EXIGENT CIRCUMSTANCES

Reference: Richard CLARK
v.
State of Alaska

Alaska Supreme Court
File No. 2943
574 P.2d 1261
Opinion No. 1570
February 24, 1978
574 P.2d 1261

FACTS:

Ketchikan police developed CLARK as a suspect in drug dealing. CLARK had rented a car in Ketchikan and was thought to be associated with another male and a female. The police obtained a search warrant for the person of CLARK as well as his vehicle. Early in the morning, the rented vehicle was observed parked in front of a bar. A police officer saw three persons in the car. Later, CLARK and his female companion were inside the bar and police were advised by a reliable informant that CLARK was attempting to sell 2,000 tablets of LSD and that he had 120 tablets on his person. When CLARK and the female left the bar and approached the rented vehicle, the police arrested him. Both CLARK and the female denied having the keys to the car and CLARK resisted when he was searched.

In the meantime, police learned that the other male had checked out of his hotel room; his whereabouts was unknown. While searching CLARK, 75 tablets of LSD were found and a paper bag containing an additional 150 tablets was seized from the glove compartment of the car. CLARK was arrested and subsequently convicted.

At a suppression hearing, the judge felt the search warrant was proper for the search of CLARK's person but was invalid regarding the search of the vehicle. The judge did allow the evidence seized to be used against CLARK and CLARK appealed.

ISSUE:

Can the bag of LSD tablets found in the car be admitted in evidence against CLARK if the seizure was made without a search warrant?

HELD: Yes.

REASONING:

1. There was probable cause to believe that the vehicle contained evidence or contraband. Exigent circumstances were present to conduct the search of the vehicle without a warrant.
2. The car contained destructible evidence; the male associate of CLARK could have returned to the car and disposed of the evidence.
3. The car itself was parked on a public street and was movable.
4. There was no evidence to suggest that the arrest was on a mere pretext. The police had "probable cause" and had also obtained a search warrant.

NOTES:

The court allowed this warrantless search (you have to forget about the initial search warrant because it was found to be invalid regarding the car) of the vehicle to fit within the destructible evidence exception and set forth two conditions that must be met to allow the search. These conditions are set forth in "Reasoning #1", above. CLARK had no expectation of privacy using the paper bag; however, if the tablets would have been for example, in a locked suitcase, then a search warrant would have been necessary. It is also important that the car was parked on a public street as opposed to being in a private driveway. Exigent circumstances are not automatically fulfilled merely because the object searched is an automobile.

REMINDER:

Both the U.S. Supreme Court and the Alaska Supreme Court have said searches without a warrant are per se unreasonable unless made pursuant to one of the recognized exceptions to the search-warrant rule. Any time you make a search or seizure without a warrant, you must justify it by one of the following nine exceptions recognized by the Alaska Supreme Court (see SCHRAFF v. State; 544P2d 834; Alaska, 1975):

1. Abandoned property
2. Hot pursuit
3. Prevent destruction of known evidence--you must have probable cause
4. Movable vehicle
5. Inventory search
6. Consent
7. Emergency
8. Stop and frisk
9. Incident to arrest