



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 346

December 31, 2009

WARRANTLESS SEIZURE AND SUBSEQUENT SEARCH OF BUNDLE REMOVED FROM ARRESTEE FOUND DURING PAT-DOWN

Reference:

Peter F. Ambrose

v.

State of Alaska

Alaska Court of Appeals

Opinion No. 2249

P.3d

December 18, 2009

FACTS:

Trooper Nick Zito stopped a vehicle because it did not have a rear bumper. Ambrose was identified as the driver of the vehicle and when Trooper Zito conducted an APSIN check, he learned that Ambrose was a convicted sex offender who was not in compliance with registration requirements. Ambrose was arrested and handcuffed. During the pat-down search Trooper Zito felt a small rectangular object in Ambrose's left front shirt pocket. Removing the object, Zito discovered a rectangular folded piece of newspaper. Zito opened the paper, revealing a white powdery substance. Zito asked Ambrose if the powder was methamphetamine and Ambrose replied that it was cocaine. Ambrose was charged with misconduct involving a controlled substance. Ambrose moved to suppress the evidence arguing it was seized and searched illegally.

At the suppression hearing, Zito testified that he thought that the object he felt through Ambrose's shirt pocket could be something that Ambrose could use to harm him, such as a razor blade, or that it could be some type of drug paraphernalia. Zito also testified that once he removed the object, it appeared to be a bindle, a package that through his background and training he knew that individuals used it to carry illegal drugs.

ISSUE:

Was Trooper Zito authorized to remove the object from Ambrose's pocket, and after so removing, authorized to open it?

HELD:

Yes - based on the size and feel, Trooper Zito could reasonably assume it could contain a razor. Once removed, it was immediately recognized as a bindle - a single-purpose container used to carry illegal drugs.

REASONING:

1. The search was incident to Ambrose's arrest for failure to register as a sex offender. An arresting officer may remove an object from the arrestee's pocket during a search incident to arrest if the officer reasonably believes that the object might be used as a weapon.

2. A police officer may open a package in plain view if it is "immediately apparent" that the package is a single-purpose container used to carry illegal drugs. (emp added)

3. Trooper Zito testified that he immediately recognized the object he removed from Ambrose's pocket as a bindle, which is a single-purpose package used to carry illegal drugs. Accordingly, Zito was justified in opening the bindle and discovering the cocaine.

NOTE:

The Court cited the following cases in this opinion: McCoy v. State (see Bulletin no. 6) search of bindle upheld as incident to arrest because bindle could have contained evidence of a crime; McGee v. State (see Bulletin no. 38) where warrantless seizure of pistol upheld as "plain view" when defendant voluntarily showed the weapon to a trooper; Dunn v. State (see Bulletin no. 63) where search of jacket pocket and package contained therein upheld as "incident to arrest"; and State v. Wagar (see Bulletin no. 273), where during a pat-down search during investigative stop officer felt hard object in subject's shirt pocket. The object was removed and found to be a vial containing drugs. Court of Appeals ruled this a lawful search and the Alaska Supreme Court later upheld the Court of Appeals decision.

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