



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 257

June 5, 2002

**INVESTIGATORY SEIZURE OF PACKAGE
LACKED REASONABLE SUSPICION
TO CONDUCT "ITEMISER" SNIFF TEST**

Reference: Sam W. McGee
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1804
_____ P.2d _____
May 24, 2002

FACTS:

Police intercepted a Federal Express package addressed to McGee and tested it with an Ion Track Instruments "Itemiser," an ion mobility spectrometer. The test revealed traces of a controlled substance. Based on this test result, the police obtained a search warrant to open the package. When police opened it, they found seven (7) ounces of cocaine. McGee was subsequently arrested and charged.

McGee argued that police did not have a reasonable suspicion to make a warrantless seizure of the package.

ISSUE:

Did police have reasonable suspicion to temporarily remove McGee's package from the normal flow of commerce and test it with the Itemiser?

HELD: No.

REASONING:

1. The State conceded that, until police tested McGee's

package with the Itemiser, the police did not have reasonable suspicion that McGee's package contained, or constituted evidence of, criminal activity.

2. In Gibson v. State, this Court ruled that the police need reasonable suspicion of criminal activity before they can temporarily detain a package and subject it to sniffing by a drug-detection dog. This same rule applies to temporary detention of a package for the purpose of subjecting it to ion mobile spectrometry.

NOTES:

The Court compared this case with Gibson v. State (see Legal Bulletin No. 98) and concluded that, unlike Gibson, the police lacked the reasonable suspicion to justify the initial seizure of the package.

Review of Section I of your Alaska Legal Briefs Manual is recommended, especially the following cases:

- U.S. v. Place, Legal Bulletin No. 75--dog sniff.
- Pooley v. State, Legal Bulletin No. 96--dog sniff.
- Gibson v. State, Legal Bulletin No. 98.
- State v. Garcia, Legal Bulletin No. 116--no probable cause for dog sniff.
- LeMense v. State, Legal Bulletin No. 117--dog sniff.
- Wright v. State, Legal Bulletin No. 147--dog sniff.
- Bond v. U.S., Legal Bulletin No. 240--manipulation of carry-on luggage lacks probable cause.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizure of Persons and Things," and Section L, "Electronic Monitoring" (formerly Participant Monitoring), of your Contents and Text. File Legal Bulletin No. 257 numerically under Section R of the manual.