



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 131
April 28, 1989

SEARCH BY PRIVATE SECURITY GUARD

Reference: Tracey L. Jones
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 927
P.2d
April 14, 1989

FACTS:

A store security guard saw Jones take some earrings, put them into her shopping bag and walk out of the store. The security guard followed Jones outside and asked her to return to the store for questioning. When they arrived at the guard's office, the police were called and she was asked to empty her shopping bag. She complied and the earrings fell out. The guard then directed Jones to empty her purse. As the contents of the purse spilled out, Jones grabbed something and attempted to hide it behind her back. The guard told Jones that he had a right to know what she was concealing. Jones revealed a plastic bag containing twelve smaller sealed bags inside, each having a white/tan substance inside. Police seized these bags as apparent contraband. Laboratory tests later revealed the substance to be 2.97 grams of crack and .80 grams of cocaine. Jones was charged with misconduct involving a controlled substance in the third degree. Jones moved to suppress the evidence seized by the security guard.

ISSUE:

Was this an unreasonable governmental search in violation of the Fourth Amendment of the United States Constitution and Article I, Section 14, of the Alaska Constitution?

HELD: No.

REASONING:

1. The security guard was not an employee nor acting as an agent of the State government at the time of the search.
2. When a search is motivated by a legitimate private interest, the fact that the government's interest in law enforcement is also advanced does not convert the search into State action.

NOTES:

The court also indicated that, if this arrest had been made by a police officer, the search of the purse and seizure of the cocaine and crack would have been upheld as "incident to her arrest."

Review of the following cases is recommended:

Snyder v. State, Legal Bulletin No. 17--search conducted by airline employee; upheld.

McCullom v. State, Legal Bulletin No. 78--search conducted by store detectives; upheld.

New Jersey v. T.L.O., Legal Bulletin No. 90, and D.R.C. v. State of Alaska, Legal Bulletin No. 58--searches conducted by school teachers; upheld.

Staats v. State of Alaska, Legal Bulletin No. 103--search of "double booked" hotel room with consent; upheld.

Edward P. Lowry, 707 P.2d 280(AK), no legal bulletin--warrantless search conducted by private security guard acting as agent of State; evidence suppressed.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section N, page 11, of your Contents and to Section N, page 4, of Text. File Legal Bulletin No. 131 numerically under Section R of the manual.