



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 348
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POLICE MUST SATISFY THREE REQUIREMENTS TO SATISFY THE WARRANTLESS SEIZURE OF GARBAGE PUT ON OR ADJACENT TO A PUBLIC STREET

Reference:

Jack L. Beltz
v.
State of Alaska

Alaska Supreme Court
Opinion No. S-12775
P.3d
December 8, 2009

FACTS:

The Alaska Court of Appeals (see Bulletin No. 320) upheld the warrantless seizure of the garbage involved in this case. Defendant BELTZ appealed to the Alaska Supreme Court who also upheld the seizure involved in this case but listed the criteria that must be met to justify these types of warrantless searches.

Police received information from employees of the Wasilla Carr's grocery store that an adult male was making repeated purchases of items commonly used to manufacture methamphetamine, including three boxes of Sudafed and thirteen boxes of book matches. Police identified the person making the purchases as Jack L. Beltz. They learned that Beltz lived in a single-family home with his father. Police, without a search warrant, took two large black bags of garbage from trash cans left at the end of Beltz's driveway. The cans had been left for normal pick-up.

Police later enlisted the assistance of the trash collector, who deliberately isolated Beltz's trash from the rest of the picked-up garbage and delivered it to awaiting police. The trash contained "numerous items that could be used in the process of making methamphetamine." It included eleven bottles or plastic containers with liquid or solid methamphetamine lab waste and by-product, one empty container of Coleman fuel, one empty acetone can, hundreds of matchbook covers with the striker plates removed, seven empty containers of Heet, twelve empty bottles of cold-allergy tablets, stained coffee filters, stained tubing and stained latex gloves.

Based on this information, police obtained a warrant to search Beltz's residence. When the warrant was served, no evidence was collected. During the non-custodial interview with Beltz, while police were executing the search warrant, he admitted he had "purchased multiple

items for a friend that he knew were being used to manufacture methamphetamine." He said he was paid by others to purchase these items and he also allowed "his friend" to cook methamphetamine at his house on one occasion. He further stated that he discovered someone had removed trash bags from the trash cans after he had taken them out. He suspected it was the police who took the garbage and "that it was only a matter of time before they were caught."

Beltz was subsequently indicted on four counts of misconduct involving a controlled substance in the second degree. Beltz moved to suppress all evidence police obtained by seizing his trash and the interview with him. The Palmer Superior Court Judge ruled that the evidence must be suppressed and that Beltz had reasonable expectations of privacy in his trash. The State filed a petition for review and the Alaska Court of Appeals reversed. State v. Beltz, 160 P.3d 154 (Alaska App. 2007; see Bulletin No. 320). Beltz then filed a petition for hearing with the Supreme Court of Alaska. The Supreme Court of Alaska affirmed. Beltz v. State, 221 P.3d 328 (Alaska 2009).

REASONING:

The opinion of the Supreme Court approves the warrantless seizure of garbage put on or adjacent to the street on or adjacent to a public area or street for collection by a trash collector. Three requirements must, however, be satisfied before the trash may be legally seized:

1. The police must have reasonable suspicion that the garbage contains evidence of a "serious crime" that has recently occurred, is occurring, or is about to occur. A "serious crime" is one that involves an imminent public danger or serious harm to persons or property. In Beltz, the possibility of methamphetamine manufacturing met this standard.

2. The trash must be retrieved in substantially the same manner as the trash collector would take it. The court approved of the police taking two bags of the defendant's trash and placing them in their patrol vehicle and waiting to examine them at the station - away from the defendant's residence and his neighbors. The court also approved of the fact that the police worked with the trash collector to collect some of the trash and keep it separate from the trash of the defendant's neighbors.

3. The police must ensure that they do not create a disturbance or create the appearance of a raid of the residence.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 348 numerically under Section R of the manual.