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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 168  
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INVESTIGATIVE SEIZURE OF CARTON  
CONTAINING ALCOHOL PRIOR TO  
ISSUANCE OF A SEARCH WARRANT

Reference: Teddy Willie  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1211  
P.2d  
March 27, 1992

FACTS:

Napakiaak, a Yupik village located on the Kuskowkim River south of Bethel, prohibits (AS 04.11.496) the importation and possession of alcohol. Norman Black, a resident of the village, contacted Village Patrol Officer Patrick Black and informed him that John and Teddy Willie were selling alcohol. Norman said that they had been at the residence of Alice Gray with a box in their possession which they had just brought to Napakiaak from Bethel.

Officer Black contacted Village Public Safety Officer (VPSO) Wasssillie Roland. The two officers traveled by snow machine to look for John and Teddy Willie. They found the two men on an all-terrain vehicle (ATV) heading toward the Napakiaak airport; John was driving and Teddy was the passenger. The vehicle was stopped. Both subjects appeared to have been drinking; John was very intoxicated. Believing that John was too intoxicated to drive, Roland instructed Teddy to drive the ATV to John's residence. The officers followed them to the residence.

On the back of the ATV was a gray plastic bag wrapped around what appeared to be a box measuring approximately one foot by one and one-half feet. Roland asked what was inside the box and Teddy responded that it contained groceries. Roland asked Teddy if he would allow him to look inside the box. Teddy refused. Roland then told Teddy that he was going to seize the box and apply for a search warrant.

The box was transported to the Public Safety Building. Both the weight of the box and the sloshing noises emanating from it suggested that the box was filled with bottles of liquid rather than groceries.

The Judge issued a search warrant and the box was found to contain ten bottles of whiskey and a bottle of port.

ISSUE:

Was the initial warrantless seizure of the box and subsequent issuance of the search warrant based on probable cause?

HELD: Yes

REASONING:

1. Roland had received information that John and Teddy Willie had been at Alice Gray's residence, that they were selling alcohol and that they had a box in their possession.

2. Despite the fact that Napakiak is a "dry" village, both men had been drinking. On the back of the ATV was a gray plastic bag wrapped around a box. Roland's knowledge of these facts gave him probable cause to seize the box so he could apply for a warrant to open it. (emphasis added)

3. By the time Roland applied for the warrant, he had, in addition to the knowledge that had given him probable cause to seize the box, new information obtained from his handling of the box--the facts that the box felt like the type of cardboard used to transport liquor, that the contents of the box made a sloshing noise characteristic of liquid in bottles, and that the box weighted what one would expect if its contents were bottles of liquor. Thus the Judge was furnished with ample probable cause to justify the issuance of the search warrant. (emphasis added)

NOTES:

VPSO Roland should be commended for a job well done. He made the initial investigative seizure of the box based upon probable cause and applied for a warrant prior to opening it. Remember to always make a seizure prior to a search. Absent an exigency or a search as incident to arrest, application for a warrant should be made prior to a search.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Sections I--"INVESTIGATORY SEIZURES" and M--"WARRANTS AFFIDAVITS AND INFORMANTS" of your Contents and Text. File Legal Bulletin No. 168 numerically under Section R of the manual.