



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 342

July 8, 2009

### SEIZURE & SEARCH OF PLASTIC CONTAINER OBSERVED BY TROOPER ON FLOORBOARD OF VEHICLE UPHELD AS INCIDENT TO ARREST & PLAIN VIEW

**Reference:**

James S. Howard  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 2222  
\_\_\_\_\_P.3d.\_\_\_\_\_  
June 26, 2009

**FACTS:**

Alaska State Trooper Ballesteros conducted a valid traffic stop of Howard's vehicle because it did not have a front license plate. The trooper approached the car on the driver's side and asked Howard for identification. As Howard searched for his driver's license, the trooper saw that Howard was moving his hands "around (and that) they were going everywhere." Trooper Ballesteros became concerned for his own safety, so he watched the hands closely. While he was watching the hands, the trooper saw a plastic container on the floorboard, close to Howard's right leg. The container was a food storage container that was clear on the sides and had a blue plastic top. The trooper could identify an inhaler among several items in the container. Because the container was in an odd place and because there was a possibility that the container could contain weapons, the trooper asked Howard what was in the container. In response, Howard raised the container up to where the trooper could clearly see most of the contents through the clear plastic sides. Although Howard quickly placed the container back on the floor, the trooper did see a yellow lighter, an inhaler, and two foil packages, along with other objects he could not identify. The foil packages were roughly in the shape of triangles" approximately two and one-half inches by an inch or two.

Based on his training, the trooper believed that there was a good possibility that the foil triangles contained illegal drugs. He knew that it was common practice for cocaine and methamphetamine to be packaged in similar foil packets. The trooper asked Howard to raise the container up again. When Howard complied, he continued to move about in a way that convinced the trooper that something was wrong. The trooper asked Howard to get out of the vehicle. Howard complied and the trooper secured Howard in handcuffs behind his back and asked Howard what was in the package. Howard answered that he had methamphetamine. The trooper informed Howard that he was under arrest for possession of methamphetamine. The trooper then asked for permission to search his vehicle, Howard replied "Yeah." The search resulted in the seizure of methamphetamine and other drug paraphernalia. Howard was charged and convicted of misconduct involving a controlled substance and driving with a suspended registration.

Howard appealed his conviction alleging the admission he made ("Yeah") was in violation of Miranda because he was clearly in custody (handcuffed) when the trooper asked him what was in the container. The Court of Appeals agreed

with Howard and suppressed the statement because he was clearly in custody (handcuffed) when the trooper asked him what was in the container. The Court of Appeals agreed with Howard and suppressed the statement because of the Miranda violation.

The Court of Appeals remanded the case to the Superior Court to allow the parties (State & Defendant) to litigate what evidence, if any, should be suppressed because it was tainted by the Miranda violation.

**ISSUE:**

Did the Trooper have probable cause to arrest Howard for possession of illegal drugs thus justifying the search as incident to arrest?

**HELD:** Yes - The original stop of Howard for a traffic violation was lawful. Based on his training and experience, the trooper testified the articles in the plastic container (foil packets) were articles the trooper associated with drugs.

**REASONING:**

1. Trooper Ballesteros had probable cause to arrest Howard for possession of illegal drugs before he asked Howard what was inside the plastic container. (emphasis added)

2. The plastic container was immediately associated with Howard and therefore could be searched incident to his arrest. The container was right next to his leg.

3. Before he searched the container, the trooper had already seen the yellow lighter, the inhaler, and the foil packets, which he concluded probably, contained illegal drugs.

4. The trooper's search of the container was a lawful search incident to arrest, therefore he was authorized to open the foil packets without first obtaining a search warrant.

5. Under the circumstances of this case, the search was also justified under the plain view exception of the warrant requirement.

**NOTES:**

You should review *Crawford v. State* (see Bulletin no. 279) search of center console of vehicle upheld as incident to arrest by State Supreme Court; *Dunn v. State* (see Bulletin no. 63) search of jacket and bag in passenger compartment of vehicle upheld as incident to arrest; *Hinkel v. Anchorage* (see Bulletin no. 41) search of purse in vehicle upheld as incident to arrest even though defendant had been removed and secured in police car; *New York v. Belton* (see Bulletin no. 50) search of jacket in front seat of car upheld as incident to arrest; and *McCoy v. State* (see Bulletin no. 6) search of packet found in coat containing cocaine upheld as incident to arrest.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 342 numerically under Section R of the manual.