



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 320

June 11, 2007

NO EXPECTATION OF PRIVACY WITHIN
GARBAGE CANS PLACED WHERE
DRIVEWAY MET THE ROAD

<u>Reference:</u>	State of Alaska	Alaska Court of Appeals
	v.	Opinion No. 2105
	Jack L. Beltz	_____ P.3d _____
		June 8, 2007

FACTS:

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 purchase 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 appealed.

ISSUE: Did police have a right to conduct a warrantless search of Beltz's garbage?

HELD: Yes--under both the Fourth Amendment and Article I, Section 14, of the Alaska Constitution, Beltz had no "reasonable expectation of privacy" in this situation.

REASONING:

1. In California v. Greenwood, Legal Bulletin No. 119, the United State Supreme Court held that police seizure of garbage routinely collected is not subject to the warrant requirements of the Fourth Amendment.

2. It is, citing Greenwood, common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops and other members of the public. (emphasis added)

3. Police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.

4. A person has no legitimate expectation of privacy in information he voluntarily turns over to third parties. Removal of trash by garbage collectors who, minutes later, turn the trash over to the police is no different from direct removal of the same trash by police themselves.

5. The Alaska Supreme Court decided in the 1973 Smith v. State (510 P2d.793--no legal bulletin) ruling, some fifteen years before the United States Supreme Court's decision in Greenwood, that Alaska police could search, without a warrant, a tenant's trash which had been deposited in a dumpster that accommodated several apartments. The Court concluded that Smith's clear intent was to abandon the garbage.

6. Although Beltz lived in a single-family home, his action of placing his trash in plain view at the end of his driveway showed that Beltz did not harbor a reasonable expectation of privacy in the trash.

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