

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 15

October 9, 1978

PLAIN VIEW SEARCH

Reference: Stewart Peter KLENKE - Alaska Supreme Court
v. File No. 3203
State of Alaska 581 P2d 1119
Opinion No. 1686
August 4, 1978

FACTS:

Police officers arrested KLENKE for burglary. A search warrant for his residence was obtained listing items stolen during the burglary. Before executing the search warrant, the investigating officer checked with other officers regarding KLENKE and was advised that KLENKE also was a suspect in other burglaries. The officer was given the descriptions of numerous items which had been stolen in other recent burglaries. At the time the search warrant was executed, many of the described items were located and seized. During the search, other items (not named in the search warrant) were observed and found to fit the descriptions of property stolen in other burglaries. These items were seized on the warrant and used against the defendant.

ISSUE:

Could the officers seize the property not mentioned on the warrant and use it against the defendant?

HELD: YES.

REASONING:

1. The additional property was inadvertently discovered while the officers were lawfully present. They were executing a search warrant and the incriminating nature of the evidence was immediately apparent.
2. Before executing the search warrant, a check was made with other officers who were aware that the defendant was a burglar. The officers gave descriptions of recently stolen property.
3. The officers found themselves literally surrounded by property generally matching the descriptions of items known to have been stolen in recent burglaries in which KLENKE was a suspect. Some of the items had serial numbers removed and other items were hidden or had the names of other persons on them.

4. When an officer has probable cause to believe that objects he discovers in the course of a valid search conducted under a valid warrant are the fruits of a particular theft, that officer may seize those items even though they are neither listed on the search warrant nor related to the crime which served as the basis for the warrant.

NOTES:

In this opinion, the Supreme Court reaffirmed their opinion in State v. DAVENPORT, 510 P. 2d 78 (Alaska 1973). In the DAVENPORT case, officers had a search warrant for a gun used in an A.D.W. case. Before the search warrant was executed, the officers were told that DAVENPORT was thought to be in possession of furs stolen from a fur store. Upon service of the warrant, the gun was not found but the furs were discovered and seized. The court upheld the seizure of the furs using the language in "Reasoning No. 4", above. The officer will be in a position to articulate his "probable cause" for the seizure of another crime.

In the present case, the "expectation of privacy" (see A.P.D. Legal Bulletin No. 9) argument raised in ANDERSON v. State, 555 P. 2d 251 (Alaska 1976), is also discussed.