

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 28

October 23, 1979

SEARCH CONDUCTED INCIDENT TO LEGITIMATE ENTRY

Reference: State of Alaska
v.
Michael Myers,
Lorraine Chilton,
and Gary Herman

Alaska Supreme Court
File No. 3931/3932
601 P.2d 337
October 12, 1979

FACTS:

Two officers were making routine security checks of all the local businesses in their patrol area. It was their practice whenever they found "open doors" to examine the premises for possible burglaries and then contact the owners or persons responsible for those businesses.

At 2:30 a.m., the police officers discovered an open rear door to a movie theater. When they entered the theater, they observed a light emitting from the hallway and heard voices. During further investigation, they also observed the three defendants (one was the manager of the theater) sitting on the floor with cocaine paraphernalia scattered about them. The three persons were arrested and the evidence was seized.

ISSUE:

Did the warrantless entry and subsequent seizure of the evidence violate the Fourth Amendment of the U.S. Constitution (or Article I, Section 14, of the Alaska Constitution)?

HELD: No.

REASONING:

1. It is only reasonable to assume that the vast majority of proprietors subjectively expect and encourage the police to be vigilant in protecting their business premises; they are aware that, when a normally deserted and locked building is discovered by the police to be unsecured, such vigilance may require trespasses that would not be tolerated in private homes.

2. Law-enforcement personnel may enter commercial premises without a warrant only when, pursuant to a routine after-hours security check undertaken to protect the interest of the property owner, it is discovered that the security of the premises is in jeopardy and only when there is no reason to believe that the owner would not consent to such an entry (emphasis added).

3. Any search conducted incident to a legitimate entry must be brief and must be limited and necessary to the purpose of insuring that no intruders are present on the premises. In addition, someone responsible for the premises must be informed as soon as practicable of the protective measures taken.

NOTES:

The Chief Justice wrote a concurring opinion but felt this search came under the "emergency search" exception to the warrant requirement. The Chief Justice offers the following three components for an emergency search (People v. Mitchell, 347 N.E.2d 607, N.Y.1976):

- (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
- (2) The search must not be primarily motivated by intent to arrest and seize evidence.
- (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.