



## DPS TRAINING BULLETIN



### LEGAL BULLETIN NO. 380

July 20, 2016

**Reference:** Frederick A. Pitka  
V  
State of Alaska

Alaska Court of Appeals  
Opinion No. 2502  
June 17, 2016

### **SEARCH AND SUBSEQUENT SEIZURE OF DRUGS FROM VEHICLE ASHTRAY RULED UNLAWFUL**

#### **FACTS:**

Fairbanks police officer observed a car stopped in the middle of a street. A man was standing in the street and was leaning into the car through the open passenger door. The police officer believed he was witnessing a drug transaction and activated his overhead lights. At this time, the pedestrian quickly put his hands in his pockets and fled the area. The car drove away from the scene, but was stopped by the police. The driver of the car was identified as PITKA.

During the contact with PITKA, officers detected a strong odor of alcohol on his breath, observed his eyes were bloodshot and watery, and observed he was unsteady on his feet. PITKA performed poorly on various field sobriety tests, and admitted it probably was not safe for him to be driving. A portable breathalyzer showed PITKA had a blood alcohol level of .163. PITKA was arrested for driving under the influence. The passenger in the car told the officers she and PITKA had purchased and smoked marijuana earlier that evening. This led police to believe PITKA was not only under the influence of alcohol, but also under the influence of some other substance.

The police directed a drug-sniffing dog to walk around PITKA's car. After the dog alerted, police searched the car's interior. During the search, an officer opened the ashtray and found a bundle of cocaine. PITKA admitted that the cocaine was his.

PITKA was charged with drug offenses and DUI. PITKA moved to suppress the cocaine found in the ashtray. The superior court upheld the seizure as "incident to arrest." PITKA appeals the ruling.

#### **ISSUE:**

Did the warrantless search of the ashtray violate Article I, Section 14 (search and seizure provision) of the Alaska Constitution?

#### **HELD:**

Yes: The intended function of an ashtray is to serve as the repository for cigarette ashes and butts. The State presented no evidence vehicle ashtrays are generally used as containers for small personal items.

## **REASONING:**

1. The police may not search closed containers within the vehicle unless: (1) the container is within the arrestee's immediate control at the time of the arrest; (2) the container is large enough to contain evidence of the crime for which the person is being arrested; and (3) the container is of a type "immediately associated with the person" of the arrestee. (See CRAWFORD v State, bulletin No. 279 (upheld by Alaska Supreme Court) where search of vehicle console upheld as "incident to arrest.")
2. In this case, the first two conditions (see no. 1 above) were met, but the third requirement failed to establish whether the car ashtray was the type of container "immediately associated with PITKA'S person."
3. Before police search a container without a warrant, they must have some articulable basis for believing the container is generally used, or is actually being used in that particular instance, to store items that would normally be kept in a pocket or purse. (See HINKEL v Anchorage, bulletin No. 41, where search of purse left in vehicle occurred after arrestee was secured in back of locked police car; upheld as incident to arrest.)
4. Because the record fails to support a finding that PITKA's vehicle ashtray was a container that was immediately associated with his person, the bundle of cocaine as well as PITKA'S associated statements to the police are suppressed.

## **NOTES:**

A review of Sections E "Incident to Arrest", and I, "Investigatory Seizures" is recommended. Alaska courts have upheld a number of cases that began with a Terry stop and lead to probable cause to arrest. See also DUNBAR v State, bulletin No. 134 where the Alaska Court of Appeals upheld the search of the glove compartment of a vehicle based on an "investigatory stop." See DEEMER v State, bulletin No. 351 where troopers stopped a vehicle for a driver's infraction. The driver said she did not have her license, and gave a phony name. When the driver was identified, troopers learned there was an outstanding warrant for her arrest. Troopers placed her in handcuffs and then searched the car. DEEMER's coat, which was in the back seat, was searched and drugs found. Search was upheld as incident to arrest.

It is interesting that for a number of years' manufacturers of motor vehicles have not put cigarette lighters in vehicles, and most, if not all car rentals are "non-smoking." A lot of ashtrays in this day and age are used as containers for change and other personal items.

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