

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN NO. 1

October 11, 1977

SEARCH AND SEIZURE IN-CUSTODY INVENTORY SEARCH OF PERSON

Reference: Timothy ZEHRUNG
 V.
 State of Alaska

Alaska Supreme Court
File No. 2923
569 P.2d 189
Opinion No. 1501
September 30, 1977

FACTS:

ZEHRUNG was observed driving a vehicle which was emitting excessive smoke. While issuing the citation, the police officer routinely asked for a warrant check and learned there were two outstanding warrants: (1) failure to appear on a misdemeanor, and (2) failure to pay a \$25.00 fine. ZEHRUNG was arrested and the person in the vehicle with him immediately notified ZEHRUNG's employer. Upon arrival at the jail, ZEHRUNG was required to wait for another "booking." His employer had called to verify the bail of \$125.00 and then came to the jail to bail him out. Even though it was known that ZEHRUNG was to be bailed out, jail personnel conducted an "inventory search" of his personal effects. During the search, the jail personnel removed several credit cards from ZEHRUNG's wallet and discovered that they were in a different name. The police officer contacted the owner of the cards and learned they had been stolen during a rape and robbery. ZEHRUNG was arrested and charged. He attempted to have the credit cards suppressed because he said they were obtained as a result of an illegal search and seizure. The trial judge did not suppress the evidence, and ZEHRUNG appealed to the State Supreme Court.

ISSUE:

Can an inventory search be made on a person arrested for a minor offense who can immediately post bail? Can evidence obtained as a result be used against him?

HELD: No.

REASONING:

1. Bail had already been set in a "bail schedule" and ZEHRUNG should be allowed a reasonable opportunity to attempt to raise bail before being subjected to the remand and booking procedures and the inventory search.

2. Search "incident to arrest" allows a seizure of evidence of the crime charged. The police or jail personnel could not expect to find evidence of either the crime of "failure to appear" or "failure to pay a fine."
3. There was no need to make inventory of his valuable personal effects because they were not going to be removed from him since he was going to post bail.
4. It was not necessary to search ZEHRUNG's wallet to ascertain his identity because his identity was not an issue.
5. A search for weapons is not restricted in this opinion and for the safety of the officer is permissible.

NOTES:

The court seems to be saying here that the right to privacy will be respected and, on a predetermined bail schedule in minor offenses, the defendant should be allowed ample time to secure his bail. If he does not have funds, he should be allowed to call someone to post his bail before he is subject to incarceration. This does not mean that his fingerprints and photograph cannot be for identification. The court does not tell us in a time span what is a "reasonable opportunity."

With proper "warnings," the subject can give a "consent search," but it would be wise to get this in writing.