

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN #17

November 30, 1978

### WARRANTLESS SEARCH BY A PRIVATE CIRIZEN

Reference: Burr SNYDER  
v.  
State of Alaska

Alaska Supreme Court  
File No. 3321  
*585 P.2d 229*  
Opinion No. 1744  
October 13, 1978

### FACTS:

Two persons delivered a trunk and a box described as "personal effects" to an airline freight agent at Los Angeles International Airport. The articles were destined for Anchorage. The two persons acted suspicious to the agent who accepted the shipment. One of the men stood by the front door; the other spelled the name "Snider" on the weigh bill instead of SNYDER. The return address was of a street in Los Angeles that the agent did not believe existed. The agent also could smell a "strong perfumed odor" coming from the package.

The agent was suspicious enough to record the license number of the vehicle which he said was parked in an "odd manner". When the men left, the agent cut open the box and found a large plastic bag that has been sealed with electrical tape. The agent opened the bag only to find yet another bag filled with "bricks" of what he thought was marijuana. At that time, the agent called the police.

The policeman indicated that the "bricks" of marijuana were in his "plain view" when he arrived at the air-freight office. A field test was performed with a positive reaction for marijuana. The shipment (minus 17 bricks which were kept in Los Angeles) was sent to Anchorage where local police, acting as airline agents, released it to two females. The females brought the shipment to SNYDER who was arrested and convicted. SNYDER appealed his conviction of several issues, one being the search of his effects by the airline agent.

### ISSUE:

Can the evidence seized by a private person without a warrant be used against SNYDER?

HELD: Yes.

### REASONING:

1. The airline employee was not acting as an "agent of the police".
2. There is no contention that the police requested a specific search of SNYDER's package or participated in the initial discovery of the contraband.
3. The airline employee was not hired by, paid by, nor involved in a "joint operation" with the police.

4. The airline employee was performing his duty as a private employee of a private company in opening the package received under circumstances reasonably arousing suspicion.
5. The zealous citizen does not subject his activities to the requirement of the Fourth Amendment.
6. The airline employee's conduct did not constitute governmental activity because he could articulate reasonable suspicions that the articles were mislabeled and could contain contraband.

NOTES:

The key to this case, like all the warrantless searches by private persons, is that the "citizen" was not acting as a police agent. You cannot ask a citizen to do something you cannot legally do yourself. When a citizen has seized evidence under circumstances which would be illegal if done by police, the evidence may still be used against a defendant as long as the citizen was not "put up to the search" by the police.

The court has answered warrantless airline searches in; Strange v. STATE, 559 P2d 650, (Alaska 1977) and Bell v. STATE, 519 P2d 804, (Alaska 1974).

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WARNING

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This warning is not related to the SNYDER case and is included in this bulletin for informational purposes.

Several months ago (May 5, 1978), a memo was written on a case (White v. State, 577, P2d 1056, Alaska 1978) where certain evidence was returned to its owner prior to trial. The state Supreme Court was upset because the defense did not have the material available to them. In another case, Michael Catlett v. State of Alaska, published October 27, 1978, the court added this footnote:

"Although in this case the destruction of the photographs did not amount to due process infringement, the preservation of photographs and other real evidence is of special importance to defense preparation. Evidence in question should not be destroyed based on investigating officer's evaluation of its usefulness. We believe that this due process right is so important that airport security police and other state investigative agencies should have standard procedures for the preservation of evidence obtained in the course of an investigation."

It is suggested that the prosecuting attorney be consulted for advice prior to the release of any evidence. The prosecutor can contact the defense attorney and possible stipulations can be made. Be sure to document by supplemental report the disposition of any property and what attorney was contracted.