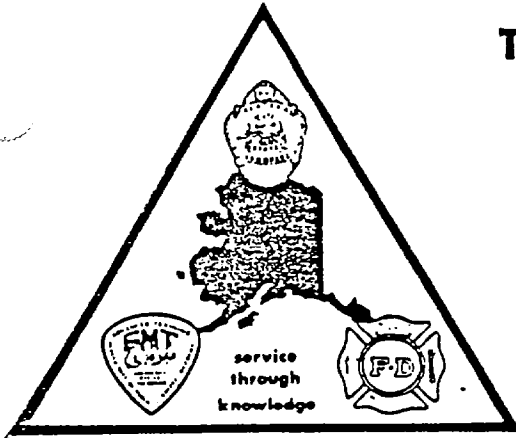


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 63
January 7, 1983

WARRANTLESS SEIZURE OF JACKET CONTAINING EVIDENCE INCIDENT TO ARREST



Reference: Roy Lee DUNN
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 158
653 P.2d 1071
November 5, 1982

FACTS:

A police officer on patrol saw DUNN come out of a liquor store; when DUNN saw the officer, he quickly returned to the store. The officer thought these actions were suspicious and decided to investigate. Before leaving the patrol car, the officer notified the dispatcher and gave a description of DUNN as being a black male with a short afro hairdo and wearing a fatigue-type jacket. The officer got out of his patrol car at which time DUNN again emerged from the liquor store. The officer called to DUNN who initially ignored him, but on the second command DUNN complied and walked toward the officer. DUNN was ordered to turn around and place his hands on his head. While being "patted down", DUNN pulled a revolver; during the ensuing struggle, the officer was shot several times in the chest. DUNN got into the officer's patrol car and drove it away. The officer managed to shoot out the rear window of the patrol car but did not hit DUNN.

DUNN abandoned the police car several blocks away and went to a residence where he asked the young girl answering the door if he could use the phone. Several minutes later, the girl's uncle, John Shelton, arrived and agreed to give DUNN a ride. In the interim, the area of the shooting was being investigated by various law-enforcement agencies. The description the officer had given had been broadcast to all responding units. DUNN got into the van with Shelton who is a white male.

Officers stopped the van and noticed that DUNN was perspiring heavily even though he was only wearing a T-shirt; they also noticed that his pant legs were wet up to the knees. This incident took place in February when there was snow on the ground. The officers saw a fatigue jacket rolled up next to the left leg of DUNN. The officer engaged Shelton in conversation but DUNN looked straight ahead and would not look at the officer. Both DUNN and Shelton were ordered out of the van and DUNN was subsequently arrested. The fatigue jacket was seized. In one of the jacket pockets, a paper bag was discovered and searched. The bag contained the money from the robbery. DUNN was convicted and appealed on several issues---only the search issue will be dealt with in this bulletin.

ISSUE:

Was the warrantless seizure and subsequent search of the jacket and bag lawful?

HELD: Yes.

REASONING:

1. DUNN was lawfully placed under arrest based on the existence of probable cause; nothing in the evidence indicates that his arrest was a sham or pretext to gain access to or search the contents of Shelton's van.
2. A warrantless search incident to a lawful arrest is permitted to assure the safety of the arresting officer and to avoid the possible destruction of evidence by the accused.
3. A four-part analysis for reviewing a claim that a personal search is justified as incident to arrest includes: (a) The arrest must be valid--probable cause for the arrest must exist or the search is unconstitutional; (b) The search must be roughly contemporaneous with the arrest; (c) The arrest must not be a pretext for the search; (d) The arrest must be for a crime, evidence of which could be concealed on the person.
4. DUNN's jacket was seized at about the same time his arrest was effected and it was searched immediately upon seizure. (emphasis added)
5. As long as the jacket was in DUNN's immediate control as he sat in Shelton's van, it is not important that the jacket and its contents were first searched after DUNN was in custody and could not have gained access to the jacket.
6. The jacket, therefore, was subject to a search incident to DUNN's arrest and officers conducting the search were authorized to open and inspect any containers found in the jacket which were reasonably capable of containing evidence (gun or money) of the crime for which the arrest was made. (emphasis added)
7. It is permissible for the officer to open and inspect the contents of any closed containers found, unless under the circumstances it could not reasonably be believed that the container would yield a weapon or evidence of the crime for which the arrest was made.

NOTES:

This case defines a warrantless search made incident to a lawful arrest. It is important to understand that this case is not related to inventory searches of impounded vehicles nor of arrested persons by the jailer during booking.

To better understand "incident to arrest" searches and to contrast them with "inventory" type warrantless searches, it is suggested that the following bulletins be reviewed:

Incident to Arrest:

McCoy v. State (Bulletin No.5)
Weltin v. State (Bulletin No. 13)
Hinkel v. State (Bulletin No. 41)
NY v. Belton (Bulletin No. 50)
U.S. v. Ross (Bulletin No. 59)

Inventory (Evidence Suppressed):

Zehrunge v. State (Bulletin No. 1)
State v. Daniel (Bulletin No. 19)
Reeves v. State (Bulletin No. 27)