



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 160
July 30, 1991

SEARCH OF WALLET FOR WEAPONS AS INCIDENT TO ARREST

Reference: Sterling M. Jackson
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1040
P.2d _____
May 11, 1990

FACTS:

While on routine patrol, a police officer observed Jackson walking down a public street. The officer knew Jackson and had arrested him on five other occasions. The officer ran a warrant check on Jackson and was informed there was an outstanding failure-to-appear warrant on him. The charges were for shoplifting and driving while license was suspended.

The officer arrested Jackson and searched him for weapons. He removed Jackson's wallet to look for weapons because he had on other occasions found razor blades, stiletto-type knives and small sheath knives which would fit into a wallet this size. No weapons were found, but the officer did find a packet containing .17 grams of cocaine in the middle of the wallet. Jackson was charged with possession of the cocaine.

The officer testified that no concealed weapons had been found on Jackson when he arrested him on prior occasions.

ISSUE:

Under Alaska law, was the search of Jackson incident to a lawful warrant arrest and solely for the purpose of locating weapons?

HELD: No.

REASONING:

1. Under Alaska law, unlike federal law, each warrantless search for weapons incident to arrest must be considered and justified on its own facts. (emphasis added)
2. A search incident to an arrest, where no evidence of the crime charged could exist on the person, may extend to the person arrested and any containers associated with the arrestee which may hold a gun, a large knife or a club.
3. Search of smaller containers which could only contain atypical weapons such as razor blades, a small knife, a safety pin or a needle must be supported by specific and articulable facts which

would lead a reasonable person to believe that such an atypical weapon was in the small container.

4. The officer in this case could not point to any specific and articulable facts which would reasonably support a suspicion that Jackson was armed with an atypical weapon or that his wallet contained such a weapon.

NOTES:

Alaska's Attorney General appealed this case to the Alaska Supreme Court because the United States Supreme Court has ruled--see United States v. Robinson, 414 U.S. 218--that, as incident to a lawful arrest, police are permitted a virtually unlimited search for weapons. The Alaska Supreme Court declined to accept this case, which was decided on Alaska's constitution.

Review of Section E, "Search Incident to Arrest," of your Alaska Legal Briefs manual is suggested, specifically the following cases:

Zehrung v. State, Legal Bulletin No. 1--subject was arrested on failure-to-appear warrant and a credit card, later found to have been stolen during a rape/robbery, was suppressed because no evidence of "failure to appear" could be found in the wallet and there was no reason to believe it contained a weapon.

McCoy v. State, Legal Bulletin No. 6--subject was arrested for forgery, but police were permitted to open and look inside a small aluminum foil-wrapped packet that contained cocaine because evidence of the forgery could have been concealed on his person.

Dunn v. State, Legal Bulletin No. 63--shortly after the robbery and shooting of a police officer, a vehicle in which Dunn was a passenger was stopped and a coat and bag were searched; both objects were large enough to conceal evidence such as cash or a weapon.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section E, "Search Incident to Arrest," of your Contents and Text. File Legal Bulletin No. 160 numerically under Section R of the manual.