



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 117
April 27, 1988

INVESTIGATIVE SEIZURE OF PERSON
AND LUGGAGE AT AIRPORT

Reference: Jerome LeMense
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 802
P.2d
April 22, 1988

FACTS:

A police officer was at Anchorage International Airport observing passengers as they deplaned an Alaska Airlines flight arriving from Los Angeles and Seattle. After all passengers and part of the flight crew deplaned, the officer saw LeMense leave the aircraft. He walked very slowly toward the terminal. He was not wearing a jacket, but carried a briefcase. His shirttail, designed to be tucked in, was hanging out. LeMense stopped between two gate areas, placed his briefcase on top of the standing divider and removed what appeared to be a napkin from his pocket. He gestured as though to be blowing his nose, but did not appear to actually be doing so. He was simply holding the napkin in front of his face and looking up and down the concourse.

LeMense went to the baggage-claim area and retrieved a suitcase. After examining the suitcase, he left the terminal and hailed a taxi.

The officer approached LeMense, identified himself, told LeMense he was not under arrest and was free to leave if he wanted. The police officer also told LeMense that he was conducting an investigation and would like to talk to him. When asked, LeMense furnished identification that included a picture of himself. LeMense told the officer he had thrown away his airline ticket. The officer informed LeMense that he was conducting a drug investigation and asked him if he brought any drugs with him. LeMense indicated he had not. The officer observed that LeMense had begun to shake excessively and speak with a slight stutter. His hands were trembling. The officer asked permission to look in his suitcase, but LeMense said he did not have a key. The officer asked if he was sure it was locked. LeMense pointed out a lock that was attached to a brown strap wrapped around the middle of the bag. At that time, LeMense stated the suitcase was not his and he must have gotten someone else's suitcase. The officer invited LeMense to return to the terminal to find the rightful owner. A tag attached to the side of the suitcase had the name Jeffrey Jones on it. Airline agents checked the flight manifest, which revealed no persons by the names of Jeffrey Jones nor Jerome LeMense had been on that flight and no person named Jones had inquired about any luggage.

FACTS (continuation):

At some point, LeMense asked if his conversation was being recorded and the officer assured him that it was.

LeMense told the officer he decided not to travel under his own name because of marital problems. On the trip to Los Angeles, he used the name Jerry Johnson. He returned to Anchorage under the name of Chris Walls. LeMense finally admitted the suitcase was his, but still maintained he did not have a key to open it. The officer informed LeMense that he was going to seize the suitcase and subject it to a drug-detection dog. LeMense accepted the officer's invitation to observe the "sniff test" by the dog and stated, "If there's something there, I don't know what's there."

The drug-detection dog alerted on the suitcase. The officer again informed LeMense that he was not under arrest, but he would like to ask him some questions. At that point, the officer gave LeMense his Miranda rights. During the interview, LeMense indicated the suitcase belonged to him.

The officer informed LeMense he was going to seek a search warrant for the suitcase and he would be contacted at his residence after completion of the search. LeMense was further advised that the suitcase would be returned to him immediately if the search warrant was not granted.

The entire contact with LeMense lasted no more than thirty minutes. A warrant was issued; the subsequent search resulted in seizure of five pounds of cocaine.

ISSUE:

Was the investigative stop of LeMense and subsequent seizure of his suitcase permissible?

HELD: Yes.

REASONING:

1. The officer was entitled to approach LeMense and inquire whether LeMense would answer questions and produce identification.
2. Any reasonable person in LeMense's position could well have concluded that he or she was free to terminate the encounter and walk away.
3. The officer had sufficient reasonable suspicion to allow him to detain LeMense and his suitcase, at least for the limited purpose of checking out his story about it.
4. When the story did not turn out to be true, the officer had sufficient reasonable suspicion to subject the suitcase to a limited search by a drug-detection dog. Once the dog alerted to the suitcase, the officer had sufficient information to seize the suitcase and obtain a search warrant.
5. LeMense was not in custody for purpose of Miranda warnings until police gave those warnings after the dog alerted to his suitcase.

NOTES:

In this case, unlike the Garcia case (see Legal Bulletin No. 116), the officer recorded the entire contact with LeMense and there was no mention of his race as there was in Garcia's case. LeMense was told on several occasions that he was not under arrest and was free to leave.

Review of United States v. Raymond Place, Legal Bulletin No. 75, is recommended. In addition, review of those cases cited on Page 2 of State of Alaska v. Dennis Garcia, Legal Bulletin No. 116, would be helpful.

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