

ANCHORAGE POLICE DEPARTMENT



LEGAL BULLETIN NO. 10

BUREAU BULLETIN



May 18, 1978

PLAIN VIEW SEARCH OF VEHICLE

Reference: David DAYGEE
v.
State of Alaska

DAYGEE v. STATE
514 P.2d 1159
(1973 Alaska)

FACTS:

A police officer observed a vehicle on a public street angle parked in a suspicious manner. When the operator of the vehicle saw the police, he accelerated to a high rate of speed. It was 10:00 p.m. on a March evening. The police officer was able to stop the vehicle for speeding. The officer then approached the vehicle and contacted the driver, DAYGEE; there was also a passenger in the car. The officer smelled the odor of burning marijuana. On the rear seat of the vehicle the officer observed a plastic bag of marijuana; he was using his flashlight at the time he saw the bag. Both occupants denied knowing who the owner of the bag was when asked by the officer. The officer asked that the bag be handed to him, which was done. Both occupants were asked to exit the vehicle. The passenger was found to be in possession of a pipe which was still "warm" and the pipe contained marijuana. The driver, DAYGEE, was arrested as was the passenger. In the rear of the vehicle, there were two shopping bags which contained wrapped packages in the form of "bricks". The officer seized these items and put them in the trunk of his car. Upon completion of his tour of duty, he brought the bags to the police station and discovered they were warm. On the advice of a Fire Marshal, the officer opened the "bricks" and discovered fifteen (15) pounds of marijuana. Also in the shopping bags were four thousand (4,000) tablets of LSD. The officer said the "inventory" was standard procedure. DAYGEE was convicted of "possess for the purpose of sale" and he appealed his conviction on search-and-seizure issues.

ISSUES:

Did the officer have the right to seize the plastic bag he saw with his flashlight on the rear seat of the vehicle? Could the officer search the other bags at the police station without a search warrant?

HELD: Yes.

REASONING:

1. It is irrelevant that the officer's view, in this case, was aided by a flashlight. The flashlight's beam merely illuminated that which would have been visible in the light of day.

2. An officer may seize evidence which is legitimately in his plain sight.
3. When the officer smelled the marijuana and he saw the bag containing what looked like marijuana, he had cause to believe a misdemeanor was committed in his presence other than the traffic event of speeding.
4. The marijuana in the clear plastic bag was seized incident to the arrest.
5. The shopping bags (searched later at the police station) were properly removed from the car and taken to the police station for safekeeping; this would not be for "inventory" purposes but to prevent possible loss or destruction of evidence.
6. The contents of the shopping bags were subject to the same search and seizure incident to arrest.