

ANCHORAGE POLICE DEPARTMENT



BUREAU BULLETIN



LEGAL BULLETIN #35

PLAIN VIEW SEARCH
MADE FROM PRIVATE PROPERTY

June 9, 1980

Reference: Eric CHILTON
v.
State of Alaska

Alaska Supreme Court
File No. 4148
611 P.2d 53
May 9, 1980

FACTS:

Two Juneau police officers on foot patrol came down a wooden stairway and heard voices coming from the rear of an apartment building. Knowing this area was sometimes frequented by persons smoking marijuana, the officers decided to investigate the voices. They moved off the public stairway through a gap in the handrailing and proceeded down a beaten path to a place where the rear of the building could be observed. From their vantage point the officers could see CHILTON through an open, undraped window, engaged in what appeared to be the separating and "snorting" of cocaine. The officers arrested CHILTON and seized a cigarette package which was later found to contain cocaine. CHILTON moved to suppress the evidence as a result of a warrantless search.

ISSUE:

Did the officers' observations from the path constitute an illegal search?

HELD: Yes.

REASONING:

1. The officers' observations were a direct result of their warrantless entry onto private property.
2. To allow police officers to venture onto private property merely because they hear voices coming from an area where past crimes have been committed would unduly infringe upon Fourth Amendment protections.
3. There is nothing in the record (emphasis added) to establish that at the time the observations were made the path was open to the public or was otherwise a place where the officers had a right to be.

NOTES:

This is an example of a case where the court must look at the "cold record" Some eight (18) months after the event photographs were taken in an attempt to prove the path was open to the public and had been for a number of years. Had there been more evidence the path was public, perhaps the result would have been different. The facts we "take for granted" should be discussed with the prosecutor so a "complete record" will be developed. As in this case, without "public access" you cannot have a "plain view" exception to the warrant requirement.

For additional comments on searches made as a result of "public access" see:

1. State v. MEYERS (APD Legal Bulletin No. 28) where the warrantless entry into a movie theatre and the arrest of the manager for a drug charge was upheld as "legitimate entry".
2. PISTRO v. State (APD Legal Bulletin No. 20) where observations made by police from a private driveway through the garage window was upheld as a search made from "public access".