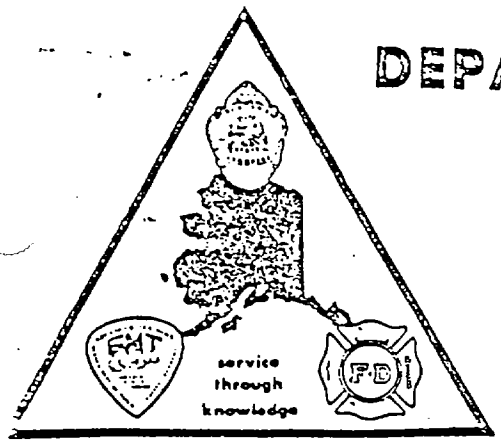

DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 41
October 28, 1980

SEARCH OF A PURSE INCIDENT TO ARREST

Reference: Ida M. HINKEL
v.
Anchorage, a
Municipal Corporation

Alaska Supreme Court
Opinion No. 2193
618 P.2d 1069
October 24, 1980

FACTS:

A police officer observed a vehicle run a red light and strike another vehicle. The officer checked the occupants of the vehicle which was hit and contacted the driver of the offending vehicle who was found to be HINKEL. When asked, HINKEL refused to get out of her vehicle. The officer placed her under arrest and a struggle between the two took place. During the initial stages of the struggle, HINKEL had her purse in hand. When the officer was finally able to remove her, the purse remained in the vehicle. The officer placed her in his patrol car. Shortly thereafter, a second officer arrived on the scene and removed the purse from HINKEL's vehicle and told the arresting officer that it seemed "quite heavy". While this was going on, a wrecker had arrived to tow the HINKEL vehicle from the scene; the officer had impounded it.

The officer searched the purse and discovered a handgun. HINKEL was arrested for carrying a concealed weapon. At a court hearing, the officer testified that it would have been normal procedure to return the purse to the arrested person, but not without searching it first.

ISSUE:

Was the warrantless search of the purse lawful and can the evidence (gun) be used against her?

HELD: Yes.

REASONING:

1. A container on the person of an arrestee at the time of arrest may be seized, opened, and searched as an incident to arrest, unless the container is too small to contain a weapon and the arrest is for a crime for which no evidence could exist in the container. (emphasis added)

2. HINKEL's purse was property immediately associated with her person and, therefore, was properly searched incident to her arrest. (emphasis added)

NOTES:

The purse in this case was construed to be "immediately associated" with her person, like the pockets in clothing. The court also cites other incidents where boxes being carried by arrested persons cannot be searched without a warrant or exigent circumstances.

The court relies on McCoy v. State (see Legal Bulletin No. 6) in upholding this search. McCoy had been arrested for passing a forged instrument and a search "incident to his arrest" produced drugs in a small packet. The court said evidence of the forgery could have been found in the pocket and upheld the search. In McCoy, like this case, two of our justices dissented, believing the evidence should have been suppressed. The court also cites Middleton v. State, 577 P.2d 1050, where the floor plan of a robbery was discovered in the purse of a defendant about a half-hour after her arrest. That search was upheld as "incident to arrest."

In Zehrung v. State (Legal Bulletin No. 1) where a credit card found in a wallet during inventory search at the jail could not be used because there was no evidence associated with the offense (failure to appear) he was arrested for. Again, this was an inventory search conducted by the jailer, not one by the arresting officer incident to arrest.

The dissent written in this case is strong and the author feels the evidence should have been suppressed and the McCoy case should have been overturned. Remember, there is currently a vacancy on the supreme court and th person who is appointed could very well be persuaded by the two dissenters in this case. It is better practice to first seize an item and then apply for a warrant to search it if at all possible. "Incident to arrest" searches are allowed to protect the officer from weapons or to seize evidence associated with the crime charged.