

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN #36

June 9, 1980

### SEARCH OF ABANDONED CARRY-ON LUGGAGE AT AIRPORT AND ABANDONED HOTEL ROOM

Reference: State of Alaska  
v.  
Michael SALIT

Alaska Supreme Court  
File No. 4456  
613 P.2d 245  
June 6, 1980

#### FACTS:

SALIT presented several "carry-on" pieces of luggage for examination before boarding an airplane. The screening of the luggage was required by the F.A.A. as a part of Federal anti-hijacking regulations. One of the handbags carried by SALIT was so dense it could not be x-rayed and it was determined that a hand search was in order. When the bag was removed from the conveyor belt, SALIT (who by now was in the sterile area) was asked if that was his bag; when he said it was, he was asked by the private security guard for permission to search it. SALIT gave his permission. Upon opening the bag, numerous "zipper type" small bags were observed. SALIT likewise gave his permission to search the smaller bags. The security guard observed what was thought to be narcotic paraphernalia (white powder) and an airport police officer was summoned.

The officer asked SALIT to accompany him to the airport police office and "patted him down". In the boarding area, the officer observed a "garment bag" and asked SALIT if it was his; he denied ownership. Another witness, however, stated that it did belong to SALIT. The other passengers had already boarded the plane but the plane had not left. The garment bag was opened and in it was a magazine that contained an envelope of what was later determined to be cocaine. The search was discontinued by the airport police and SALIT was given his rights; he elected to remain silent. Another officer arrived and a field test indicated the contents of the envelope to be cocaine. Subsequently, another envelope of cocaine was found in the garment bag. SALIT was also in possession of \$108,000.00. SALIT was arrested and transported to jail. At the jail, SALIT threw a paper bag in the trash can which had the phone number of a local hotel.

Upon checking the hotel, it was learned that SALIT was registered at the hotel and had an outstanding bill of \$600.00. The hotel manager was advised of the fact that SALIT had been attempting to leave the state. The manager then went to the room to determine if SALIT had in fact vacated the room. The manager invited the officer to accompany him. On inspection of the room, it was determined that SALIT had vacated the room but white powder and other paraphernalia was observed. The room was sealed and the officers obtained a search warrant for it; the evidence was seized as a result. At a suppression hearing, the Superior Court Judge suppressed the contents of the garment bag and found that the search of the hotel room was illegal. The state appealed.

ISSUE #1:

Was the seizure of the garment bag and warrantless search which resulted in the discovery of the cocaine a violation of SALIT's constitutional rights?

HELD: No.

ISSUE #2:

Was it proper for the police to make a warrantless entry into the hotel room with the manager?

HELD: YES.

REASONING:

1. SALIT denied ownership of the garment bag. One relinquishes the right to privacy of property by abandoning it.
2. The denial of ownership of the bag, when all other passengers had departed the area justified the officer in considering it abandoned. Under those circumstances, the opening of the bag did not violate SALIT's reasonable expectations of privacy.
3. Discovery of the fact that SALIT had been lodged at the hotel arose out of his incarceration. Since the validity of SALIT's incarceration depends upon there being probable cause for his arrest, which in turn is based on the validity of the garment bag search, evidence obtained from the hotel search is not tainted if the earlier garment bag search is legal. Under the circumstances, the police had the right to accompany the hotel manager, with his permission, when the abandoned room was inspected, resulting in information on the basis of which the search warrant was secured.

NOTES:

There is a lot of discussion in this opinion about other possible "exceptions" to the warrant requirement. The court addressed searches conducted under the Air Transportation Security Act and concluded the only legitimate purpose is to prevent weapons and explosives from being brought into boarding areas and onto planes. Thus, any other evidence found (drugs, etc.) must be inadvertently discovered while looking for weapons. If the search for weapons cannot be justified (say a soft garment bag), then anything else found may very well be suppressed.

In this case, the garment bag had already been subject to (and passed) an x-ray search. No evidence of weapons or explosives were discovered, but it was abandoned. There can be no "implied consent" (due to boarding regulations) because the mere fact that persons are on notice that they may be searched cannot, by itself, be the basis for implying consent.

If evidence of another crime is discovered during routine inspection of luggage, the person who discovered the evidence must be able to articulate what he was looking for at the time of the discovery; that is, weapons or explosives.

Incidentally, it makes no difference whether the discovery is made by private security

guards or airline employees as these inspections are made pursuant to government regulations and both are "agents" as such.

For additional reference, see Robert LUPRO v. State (APD Legal Bulletin No. 29) regarding search of an abandoned vehicle that had been involved in a traffic homicide.