



DEPARTMENT OF PUBLIC SAFETY
TRAINING ACADEMY

LEGAL BULLETIN NO. 51
September 21, 1981

SEARCH OF PERSON INCIDENT TO ARREST

Reference: Joel Anthony ELSON
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 40
633 P.2d 292
September 10, 1981

FACTS:

A patrolling trooper clocked a vehicle operated by ELSON and found it to be speeding. The vehicle was stopped and the trooper detected an odor of alcohol on ELSON. When ELSON failed to perform the field-sobriety tests, he was arrested for driving while under the influence of alcohol. The trooper "patted down" ELSON for weapons and felt a hard object in his right pants pocket. Thinking it might be a knife, the trooper began to remove it and ELSON tried to stop him. A "Bic" lighter and an item which the trooper recognized as a "cocaine snifter" were removed. The trooper held the snifter to a street light and could see white residue adhered to it.

Later at the police station, the trooper "field tested" the residue for cocaine and got a positive reaction; the laboratory later confirmed the presence of cocaine. While at the police station, three more vials (from the same pocket) were removed from ELSON's pocket and all those vials also contained cocaine. At a subsequent suppression hearing, the judge ordered that the three vials found later at the station must be suppressed but allowed the state to use the "snifter" because it had been seized "incident to arrest".

ISSUE:

Did the trooper have the right to seize the snifter without a warrant?

HELD: Yes.

REASONING:

1. The trooper could both "pat down" ELSON for weapons and reach into his pocket to retrieve what he thought was a knife.
2. The trooper's testimony was unequivocal that at the moment he saw the cocaine snifter he knew what manner of object he held. (emphasis added)
3. Under the circumstances, the trooper raising a highly suspicious object to a street light at night does not constitute an unreasonable search.

NOTES:

This is an excellent case to point out the contrast between a search "incident to arrest" and an "inventory search". The best rule is to get a search warrant for all items seized as a result of an inventory. The "snifter" seized in the field incident to the arrest of ELSON was discovered inadvertently while looking for weapons. The three vials discovered later at the police station were seized as a result of an inventory search and a warrant should have been obtained before testing them.

A review of the following cases is suggested:

Zehrunge v. State (Legal Bulletin No. 1) where a credit card was removed pursuant to inventory at the jail. No warrant was applied for and it was suppressed.

McCoy v. State (Legal Bulletin No. 6) where McCoy was arrested for forgery and search of his person produced cocaine.

Anderson v. State (Legal Bulletin No. 9) where "expectation of privacy" is argued, like ELSON has done in the subject case.

Daygee v. State (Legal Bulletin No. 10) where a flashlight was used to illuminate the inside of a car.

Weltin v. State (Legal Bulletin No. 13) where Weltin was arrested on a traffic warrant and the "pat down" produced drugs on his person.

Reeves v. State (Legal Bulletin No. 27) where a balloon containing drugs was found by the jailor as a result of inventory and the jailor testified he did not know it might have contained drugs.

In this case, the trooper (unlike the jailor in the above referenced Re case) was able to testify that the "snifter" was immediately apparent to him because he had seen them before and had also received training in drug paraphernalia.