ANCHORAGE POLICE DEPARTMENT

BUREAU BULLETIN

LEGAL BULLETIN #18

November 30, 1978

"PLAIN SIGHT" IS NOT "PLAIN VIEW" SEARCH

Reference: State of Alaska
v.
John SPIETZ

State v. SPIETZ
531 P.2d 521
Alaska 1975

FACTS:

Police went to the residence of SPIETZ to serve a warrant of arrest for assault with a dangerous weapon. The residence was a small quonset hut. When the officers arrived, SPIETZ came out the door and was "patted down" and arrested. There was another man in the residence who also came out of the building; he, too, was arrested. While all this was going on, the door to the residence was open but the police had not stepped inside; they were still on the outside of the threshold.

The two men were "secured" and one officer could clearly see a galvanized washtub which appeared to contain marijuana. The officers entered the residence and located more tubs which were also found to contain marijuana. Later in the day, another warrantless search of the premises was conducted and additional evidence was found, SPIETZ was then arrested for "possession for sale". A suppression hearing was held and the superior Court ordered the marijuana suppressed as it had been seized without a search warrant; the state appealed.

ISSUE:

Can the marijuana which was seized by the police without a warrant be used against SPIETZ?

HELD: No

REASONING:

1. There were no exigent circumstances present to justify entry into the home without first obtaining a warrant. Plain view alone is never enough to justify the warrantless seizure of evidence.

2. The seizure cannot be justified as "incident to arrest" because the search must be limited to the arrestee's person and the area within his immediate control. Both SPIETZ and the other person were already in custody on the porch outside the house.

3. The entry into the house cannot be justified as "exigent circumstances involving possible destruction of evidence" because there was nothing to suggest to the officers that the marijuana was about to be removed or destroyed. When the two men were under arrest on the porch, it was impossible

for them to destroy the evidence. There was ample time to secure a search warrant. A guard could have been left at the premises while another officer obtained a search warrant.

4. The entry cannot be justified as a "protective search for accomplices" because the open door provided a substantial view of the house and there was nothing to suggest (no testimony) that additional suspects were present; therefore, there was no threat to the safety of the arresting officers.

5. The intrusion into the privacy of SPIETZ's person by his arrest outside the dwelling did not change the protected status of the house. Plain view alone could not justify the warrantless entry through the doorway into the constitutionally protected area of the SPIETZ house.

NOTES:

There was nothing to stop the officers from leaving a guard at the premises and having a police officer obtain a search warrant. What was observed during the arrest would constitute "probable cause" to obtain a search warrant.

The state conceded that the later more extensive search was illegal. The court was only concerened with the evidence within the officers "plain view" immedeately following the defendants arrest on the warrant. It seems that the court put special emphasis on the fact that the case involved an intrusion into the defendants house, saying "The home has traditionally been afforded special protection" under the state and Federal Constitutions.

You should not try to take what appears to be "the easy way out"; spend a couple of extra hours and get a search warrant. For additional "plain view" search guidelines, see A.P.D. Legal Bulletin No. 9 (Michael ANDERSON v. State) regarding "expectation of privacy"; No. 10 (DAYGEE v. State) regarding "plain view search of a vehicle"; No. 15 (KLENKE v. State) regarding "plain view search".