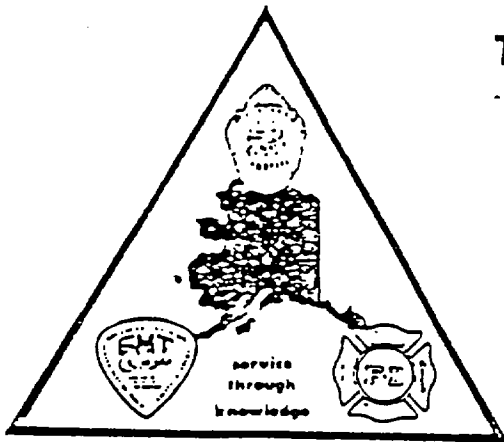


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 91
February 20, 1985



DELAYED WARRANTLESS SEARCH OF PACKAGES SEIZED FROM VEHICLE

Reference: United States
v.
Lyle Gerald JOHNS et al

United States Supreme Court
~~36 CrL 3134~~ 469 US
January 21, 1985

FACTS:

United States Customs agents were investigating a suspected drug-smuggling operation. Suspects were first observed at a residence, then followed to a remote airport about 100 miles away and 50 miles from the Mexican border. Several small planes landed and agents were able to see two trucks near the planes. One of the suspects covered the contents of the truck with a blanket. The agents approached the trucks and ordered the suspects to come out in the open and lie on the ground. The agents smelled marihuana and saw packages wrapped in dark green plastic and sealed with tape in the back of the trucks. Based on prior experience, they knew that smuggled marihuana is commonly packaged in this same manner.

The suspects were arrested at the scene and air surveillance of the two small aircraft led to the arrest of two other suspects when they landed at Tucson, Arizona.

The trucks were not searched at the scene after the arrest, but were instead driven to a Drug Enforcement Administration warehouse where the packages were removed and stored. Approximately three days later, the agents opened some of the packages without obtaining a search warrant and took samples which later proved to be marihuana. The Court of Appeals suppressed the evidence and the U.S. Government appealed.

ISSUE:

The issue in this case is whether or not Ross (see Legal Bulletin No. 59) authorizes a warrantless search of packages, which police had probable cause to believe contained contraband, several days after they were removed from vehicles.

HELD: Yes.

REASONING:

1. There is no requirement that the warrantless search of a vehicle occur contemporaneously with its lawful seizure. (emphasis added)

2. The justification to conduct such a warrantless search does not vanish once the car has been immobilized.

3. A vehicle lawfully in police custody may be searched on the basis of probable cause to believe that it contains contraband, and there is no requirement of exigent circumstances to justify such a warrantless search ("plain odor" may justify a warrantless search of a container).

4. The Government was entitled to seize the packages and could have searched them immediately without a warrant. The warrantless search three days after the packages were placed in the D.E.A. warehouse was reasonable and consistent with precedent involving searches of impounded vehicles.

NOTES:

Probable cause was not the issue in this case. The agents had ample information which they were able to articulate to justify the initial seizure. The delay of three days before searching the seized packages is the issue.

This case involves the "automobile exception" to the warrant requirement and the U.S. Supreme Court is setting guidelines for police to follow. They have recognized that, particularly in search cases, interpretations vary depending on which District Attorney, judge or appellate court the officer is dealing with. With that in mind, they are developing "bright lines" for police to follow to avoid confusion. The problem is that the various state Supreme Courts can and are interpreting their constitutions differently.

Remember, our court has not indicated a willingness to adopt the "automobile exception" to the warrant requirement. They have said such vehicle searches are "sub-categories" of exceptions to the warrant requirement.

You should review the following:

Legal Bulletin No. 24, McConnell v. State - upheld seizure of two cartons without a warrant and search of one carton two days later.

Legal Bulletin No. 50, New York v. Belton - upheld search of passenger compartment in vehicle.

Legal Bulletin No. 59, United States v. Ross - upheld automobile exception.

Legal Bulletin No. 68, Texas v. Brown - upheld seizure of drugs in "plain view" from vehicle.