



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 106
July 14, 1986

WARRANTLESS SEARCH BY A PRIVATE CITIZEN--
PROBABLE CAUSE TO ARREST

Reference: Donal Michael Webb
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 631
720 P.2d 953
June 20, 1986

FACTS:

During a routine inspection of air freight at their California office, an employee of Purolator Express Service discovered marijuana in a package being sent to Mike Webb in Anchorage. The package contained an Anchorage address and phone number in Webb's name. After examining the contents of the package, police in California contacted police in Alaska and advised them of the shipment. The package was opened by Alaskan police upon arrival and the contents, four and one-half pounds of marijuana packaged in nine individual baggies, were photographed. The listed phone number was called and Webb was informed that his package had arrived.

Webb appeared at the freight office and obtained the package. He placed the unopened package in his vehicle and drove away. A short time later the police stopped Webb and ordered him out of his vehicle; he was frisked for weapons and advised of his Miranda rights.

Police seized the unopened package. Webb was told that he was not under arrest, but when he asked for the return of his driver's license the officers informed him that it would not be returned unless he accompanied them to their airport office to make a statement. Webb agreed to go. He drove his own vehicle, but was escorted by a police car in front and behind his vehicle.

At the airport office, he was again advised of his Miranda rights. He subsequently told the officers that the package contained marijuana which he intended to sell. His license was returned and he was allowed to leave.

Webb was later arrested. He moved to suppress his confession, alledging it was the result of his illegal seizure. He further alledged that police could not claim that he knew the package contents since he had not opened it prior to his being stopped.

ISSUE:

Did the officers have probable cause to make a warrantless seizure of the package and Webb and was the subsequent confession voluntary?

HELD: Yes.

REASONING:

1. The warrantless search of the package by a private person who discovered the contraband and turned it over to the police, who were then authorized to forward

it to its destination for a controlled delivery, is justified under the "re-assertion of control" doctrine (see McConnell v. State, Legal Bulletin No. 24).

2. The officers merely reasserted control over a package that had been first lawfully seized and searched and then remained under continuous police control or surveillance. No warrant was required, even though ample time may have existed to allow a warrant to be obtained.

3. Even though Webb did not open the package prior to being stopped, the totality of the circumstances known to the officers when they stopped Webb was sufficient to support an inference that his possession was probably knowing. He was contacted at the stated phone number and personally claimed the package a short time later. He did nothing specific to indicate he was unaware of the contents of the package.

4. Because the officers had probable cause to arrest Webb, they were necessarily empowered to seize his driver's license.

5. Webb was twice informed of his Miranda rights and expressly indicated that he understood those rights. His decision to waive his rights made the statement voluntary.

Review of the following cases is recommended:

Snyder v. State; Legal Bulletin No. 17--search of air freight by private person not acting as agent of police.

McConnell v. State; Legal Bulletin No. 24--establishing the "re-assertion of control" doctrine in Alaska.

Cullom v. State; Legal Bulletin No. 78--search made by private security guard not acting as agent of police; Fourth Amendment protection does not apply.

Staats v. State; Legal Bulletin No. 103--search of suitcase by guest who was double-booked into a hotel room.