

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



~~LEGAL BULLETIN NO. 24~~

May 11, 1979

### WARRANTLESS SEARCH BY AN AIRLINES EMPLOYEE

Reference: Gary McCONNELL  
v.  
State of Alaska

Alaska Supreme Court  
File No. 3872  
595 P.2d 147

#### FACTS:

A flight agent for Western Airlines at Los Angeles Airport became suspicious of a shipment bound for Anchorage and opened the cartons. The agent discovered drugs and spread them on a table so that they were in the "plain view" of the police. The Los Angeles police, upon their arrival, seized the drugs, tested them, and sent them on to Anchorage with a police report attached to the cartons. The cartons were received by a police officer who pretended to be an employee of Western Airlines. The officer made telephone contact with McCONNELL who came to Western Airlines over an hour later to pick up the cartons. The same police officer who was posing as the Western employee loaded the cartons into McCONNELL's truck. McCONNELL was kept under surveillance and subsequently arrested without a warrant.

The cartons were also seized without a search warrant. One carton was opened the day of the arrest and the second carton the following day. The defendant appealed saying that, first, the search by the airline agent in Los Angeles was unlawful; and, second, the police should have obtained a search warrant before opening the cartons.

#### ISSUE:

Was the airline employee acting as an agent of the police and thus requiring a search warrant?

HELD: No.

#### ISSUE:

After having arrested McCONNELL and seizing the cartons, did the police need a search warrant for the contents of the cartons?

HELD: No.

#### REASONING:

1. The airline employee was not acting at the direction of the police...see A.P.D. Legal Bulletin No. 17, "Warrantless Search by a Private Citizen", reference Burr Snyder v. State of Alaska, 585 P.2d 229, Alaska (1978).

2. Contraband must be placed in transit from one person to another.

3. Contraband must initially be discovered through lawful means, such as a search by private citizen.
4. Law-enforcement officials must come into lawful possession of the contraband--seizure of contraband after it is observed in plain view is one method of acquiring lawful possession.
5. Authorities in possession must forward the parcel to the authorities at the intended destination under controlled circumstances.
6. The parcel must be under security or under reasonably continuous surveillance by authorities once it arrives at its destination--the reasonably continuous surveillance must continue after the consignee claims the package.
7. Finally, any substantial break in the chain of custody will vitiate (void) the lawfulness of the search.

NOTES:

The Alaska Supreme Court, in this case, adopted the "reassertion of control" doctrine announced in United States v. DeBerry, 487 F.2d 448 (2d Cir. 1973). First they said the airline employee was not acting as a police agent and therefore did not need a search warrant. When the police arrived, the drugs were in "plain view" and the seizure was lawful. Prior to the arrival of the boxes in Anchorage, both of them had been opened by law-enforcement agencies in Los Angeles. The cartons were in the custody of the Los Angeles police for two or three days. The court says for this warrantless search of the cartons in Anchorage to fall within the "reassertion of control" doctrine, Reasonings No. 2 through No. 7, above, must be met. If surveillance of the package is not continuous, after released to the suspect, a warrant must be obtained for the second search.

To avoid the court calling the package inspector a "police agent", no inducements or rewards with the exception of letters of commendation are permissible.

The major differences between this case and the Snyder case referenced previously is the "reassertion of control" issue.