

ANCHORAGE POLICE DEPARTMENT



LEGAL BULLETIN NO. 9

BUREAU BULLETIN



May 13, 1978

EXPECTATION OF PRIVACY

Reference: Michael J. ANDERSON
v.
State of Alaska

ANDERSON v. STATE
555 P.2d 251
(1976 Alaska)

FACTS:

Members of the Drug Unit went to the residence of ANDERSON to execute a search warrant directing the seizure of marijuana and related paraphernalia. Juvenile officers accompanied the Drug Unit and had an arrest warrant charging ANDERSON with lewd and lascivious acts towards a child. ANDERSON was arrested and transported to jail. The officers at that time commenced the search. The officers found some slides on a shelf in the small apartment and held them to the light. The slides revealed images of nude, male children. Additional slides were found to be images of nude, male children, also. The slides, along with a projector, were seized. The individuals depicted on the slides were identified and upon contact by the police stated ANDERSON had performed oral copulation on them. ANDERSON was charged with lewd and lascivious acts toward a child and contributing to the delinquency of a minor. ANDERSON was convicted and appealed to the State Supreme Court.

ISSUE:

Did the police have the authority to seize the pornographic slides under authority of the search warrant?

HELD: No

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Could the pornographic slides be seized under the "plain view" doctrine?

HELD: No

REASONING:

1. ANDERSON could reasonably expect the slides to remain private.
2. While the warrant permitted an intrusion of substantial magnitude (looking for marijuana in places it could be stored), it did not provide authorization for a general search.
3. The warrant authorized a search for marijuana; it did not authorize a search of ANDERSON's slides.

4. There was nothing to suggest the slides contained marijuana. ANDERSON had the right to expect the slides would remain private. The Fourth Amendment "protects people" not places or things. ANDERSON did not expose the slides to the public but was seeking to preserve them as private.

NOTES:

ANDERSON did not leave the slides where they were exposed to anyone who might be in his small apartment. To the contrary, the officers had to hold the slides to the light to see what they depicted. It is not a search to observe that which is in the "plain view" of an officer who is rightfully in position to have that view. If the officers did not lift the slides to the light, the incriminating nature of the slides would not have been revealed. Remember . . . If you are in a house legally (serving a warrant or with consent) and you see evidence, contraband, or fruits of a crime, you do not have to "close your eyes" or "turn your back". You can seize the property. What a person knowingly exposes to the public, even in his own home or office, is not a subject of the Fourth Amendment protection.