ANCHORAGE POLICE DEPARTMENT

BUREAU BULLETIN

October 1, 1979

LEGAL BULLETIN NO. 27

SEARCH INCIDENT TO INCARCERATION CONDUCTED BY CORRECTIONAL OFFICER

Reference: Howard C. REEVES
v.
State of Alaska

Alaska Supreme Court
File No. 3161
599 P.2d 727
September 14, 1979

FACTS:

REEVES was arrested for O.M.V.I. It was learned that a "failure-to-appear" warrant had been issued over a traffic matter. REEVES was brought to the jail where the jailer, pursuant to jail policy, conducted an inventory search.

During this search, the jailer discovered a blue, opaque balloon which was tied tightly and felt soft. The jailer opened the balloon, discovered a brownish-colored powder, then proceeded to contact the arresting officer to request that he return to the jail. The officer conducted a field test on the powder and got a positive reaction for opium derivatives. Later examination of this material at a laboratory confirmed the presence of heroin.

ISSUE:

Was the warrantless search of the balloon and the subsequent seizure of the heroin conducted by the jailer permissible?

HELD: No.

REASONING:

1. There are two valid justifications for allowing a pre-incarceration inventory search:

   a. Prohibiting the introduction of weapons, illegal drugs, and other contraband or dangerous items into the jail environment (emphasis added).

   b. Protecting the arrestee's property and the jail against false claims.

2. In order for the seizure to be allowed under the "plain-view" exception to the warrant requirement, three criteria must be met:

   a. The initial intrusion which afforded the view must have been lawful.

   b. The discovery of the evidence must have been inadvertent.

   c. The incriminating nature of the evidence must have been immediately apparent (emphasis added).

The third requirement was not met in this case.

3. The Balloon seized was opaque. The correctional officer testified that he had "a feeling that the "brownish, sort of whiteish-colored substance inside" the balloon might have been contraband, but at no time did he testify that he had cause to believe the balloon contained contraband prior to opening it and observing its contents (emphasis added).

NOTES:

There was nothing stopping the officer (based on information received from the jailer) from applying for a search warrant.

This is another search conducted by the jailer after the arrest similar to the Zehrung case (see A.P.D. Legal Bulletin No. 1) where a credit card was found which linked Zehrung to a rape case---the evidence in that case, like this one, was suppressed.

Some of the other cases where evidence found "incident to arrest" by the arresting officer has been upheld are Wetlin v. State (A.P.D. Legal Bulletin No. 13), search incident to lawful arrest where drugs are found; McCoy v. State (A.P.D. Legal Bulletin No. 6), where McCoy was arrested for a forgery and the subsequent search of a package containing cocaine was upheld; Daygee v. State (A.P.D. Legal Bulletin No. 10), plain view search incider to arrest; and Klenke v. State (A.P.D. Legal Bulletin No. 15), plain view seizure of additional evidence pursuant to serving of search warrant.

You must remember to articulate your facts. If the jailer here, for instance had sufficient knowledge to form an actual subjective belief that the balloon contained contraband prior opening it, could the seizure then have been upheld? A footnote (#44) to this case states:

> "We have often reviewed the reasonableness of a plain view seizure in light of the seizing officer's special experience and knowledge. It is fundamental that an officer's observations can give rise to probable cause only if that officer had sufficient training and experience from which to draw the conclusions necessary to create a reasonable belief in the presence of contraband." (emphasis added)

Remember---it will be up to you to articulate the facts to conform to the above.