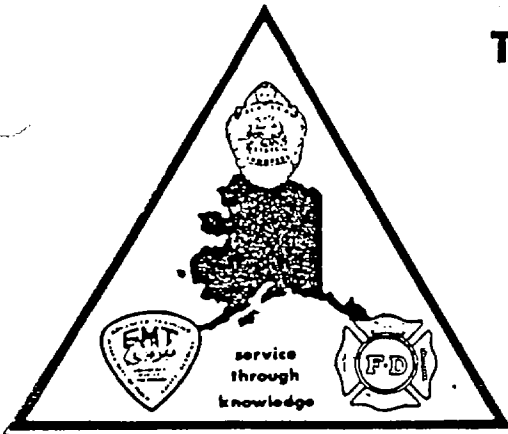


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY



LEGAL BULLETIN NO. 59
June 18, 1982

WARRANTLESS SEARCH OF A VEHICLE

Reference: United States
v.
Albert Ross, Jr.

United States Supreme Court
~~456 US 798 31 CrL 3051~~
June 1, 1982

FACTS:

A reliable informant contacted a Washington, D. C., detective and told him that a person he knew as "Bandit" was selling narcotics from the trunk of a car. The informant gave the detective a description of the car and its location and further stated that he had just observed a sale. The detective drove to the area of the alleged event and found a car matching the description given by the informant. A registration check was made and it was learned that the car was registered to Albert ROSS. A computer check revealed that ROSS fit the description of the suspect furnished by the informant and that he used the alias of "Bandit".

About five minutes after having seen the car parked, the detective saw the car being driven down the street by a man who fit the description of "Bandit". The car was stopped; ROSS got out and was searched. Another officer found a bullet on the front seat of the car and a pistol in the glove compartment. ROSS was arrested and handcuffed. A police officer took the car keys from ROSS and opened the trunk where he found a closed paper bag. The bag was opened and a number of glassine bags containing white powder were discovered. The car was then driven to the police station where a further search discovered a zippered red-leather pouch that contained \$3200 in cash. The white powder in the glassine bags was found to be heroin.

ISSUE:

In the course of a legitimate warrantless search of an automobile, are the police entitled to open containers found within the vehicle?

HELD: Yes.

REASONING:

1. The "automobile exception" permits warrantless searches which are no narrower than a magistrate could legitimately authorize by warrant. If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the

vehicle and its contents that may conceal the object of the search.
(emphasis added)

2. The probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officer. Good faith is not enough to constitute probable cause. (emphasis added)

3. In these types of cases, a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not actually been obtained.

4. Contraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container.

5. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

NOTES:

In two other cases, U.S. v. Chadwick and Arkansas v. Sanders, the U. S. Supreme Court suppressed the evidence seized from containers out of automobiles without warrants. In both of these cases, however, law-enforcement officers were monitoring the containers. In Chadwick, a footlocker suspected of containing drugs went across country and was picked up at the railroad station; it was then transferred to a car, at which time it was seized and then searched without a warrant. In the Sanders case, a piece of luggage suspected of containing drugs was retrieved at the airport, put in a taxi and then seized by officers and subsequently searched without a warrant. In these cases, the Supreme Court said the mere fact that the suitcase or footlocker had been placed in the trunk of the vehicle did not render the "automobile exception" applicable. The police should have seized the items and then applied for a warrant before making the search.

Caution: The Alaska Supreme Court has not, as yet, indicated a willingness to adopt the "automobile exception" to the warrant requirement. They have said that warrantless searches made from vehicles are merely "sub categories" of the other (incident to arrest, consent, emergency, prevent destruction of evidence, protective, hot pursuit, abandoned property, plain view) exceptions to the warrant requirement.

Because the "automobile exception" is still an open question in this state, review of the following is recommended:

Legal Bulletin No. 3, Coleman v. State--where evidence found in plain view on the floor of a car during an investigative stop was upheld.

Legal Bulletin No. 10, Daygee v. State--upheld evidence in plain view and as incident to arrest from vehicle.

Legal Bulletin No. 12, Clark v. State--upheld warrantless search of vehicle to prevent destruction of evidence.

Legal Bulletin No. 19, State v. Daniel--evidence from vehicle as a result of inventory is suppressed.

Legal Bulletin No. 25, Gray v. State--evidence found in a car is admissible because of "hot pursuit" exception.

Legal Bulletin No. 26, Municipality v. Cook--seizure of person (OMVI) was upheld in emergency search of vehicle.

Legal Bulletin No. 29, Lupro v. State--evidence collected from abandoned vehicle upheld.

Legal Bulletin No. 41, Hinkel v. Municipality--search of purse in vehicle upheld as incident to arrest.

Legal Bulletin No. 44, Uptegraft v. State--warrantless search of car upheld on investigatory stop, plain view and incident to arrest theory.

Legal Bulletin No. 50, N.Y. v. Belton--search of passenger compartment of vehicle upheld by U.S. Supreme Court as incident to arrest.

Mattern v. State, 500 P.2d 228 (Alaska 1972)--warrantless search of a van, where evidence from a burglary was seized, was upheld as "protective search".