



## DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 325

February 22, 2008

### EVIDENCE OBTAINED FROM ILLEGAL ARREST MUST BE SUPPRESSED

**Reference:** Desmond A. Tuttle Alaska Court of Appeals  
v. Opinion No. 2144  
State of Alaska \_\_\_\_\_ P.3d \_\_\_\_\_  
January 18, 2008

### **FACTS:**

Police were dispatched to a hotel to investigate a complaint by the on-duty hotel desk clerk that a person was urinating in the hallway and fidgeting with some doors. Upon the police officer's arrival, the hotel desk clerk pointed down the hallway towards a person who matched the description provided by dispatch. The police officer started her audio recorder and contacted the subject who was attempting to open the door to a room. The officer noticed that the subject, identified as Tuttle, appeared to be intoxicated and his pants were damp. Tuttle informed the officer that he was entering his own room. Tuttle had paid in advance for the room. According to the police officer, during the contact Tuttle "was getting loud enough to where at some point other hotel guests were disturbed." There is nothing in the record to identify who the hotel guests might be.

Based on Tuttle's demeanor and raised voice, the officer arrested him for disorderly conduct. Tuttle later testified that the officer had denied him access to his room and that at times it was the officer who was "loud and combative." After transporting Tuttle to the correction center for booking, the officer discovered a clear plastic bag containing approximately thirteen grams of white powder on the rear floorboard of the patrol car. The officer had checked the patrol car before going on duty and no one other than Tuttle had been in the rear seat. The white powder turned out to be cocaine. Based on the seizure of the cocaine, police obtained a warrant to search Tuttle's room. That search resulted in the seizure of two plastic bags containing cocaine with a combined weight of sixteen and one-half grams, a small electronic scale, aluminum foil in pieces for packaging and a loaded handgun. Tuttle was charged with: (1) attempted misconduct involving a controlled substance in the third degree; (2)

two counts involving a controlled substance in the fourth degree; and (3) one count of disorderly conduct.

Tuttle filed a motion seeking to suppress the evidence against him on the ground that the officer lacked probable cause to arrest him for disorderly conduct.

**ISSUE:**

Did the officer have probable cause to arrest Tuttle for disorderly conduct?

**HELD:** No -- the statute requires the police to warn a person that his conduct is having the effect of disturbing the peace and privacy of another. (emphasis added)

**REASONING:**

1. Under the statute, if someone is recklessly making unreasonably loud noises and then is specifically informed that the noise is disturbing the peace and privacy of other people, the person commits the crime of disorderly conduct if he then persists in making unreasonably loud noise. The statute requires a warning.

2. There is no indication that Tuttle was making "unreasonably loud noise" before the officer approached him.

3. Shortly after the police arrived, Tuttle asked the officer why they (the police) were bothering him. He was told: "because you are creating a disturbance." He was not informed that he was making unreasonably loud noise that was disturbing others.

4. From the record, including the (officer's) recording, there was no evidence to support the conclusion that Tuttle made unreasonably loud noise after being informed that he was making such noise and that it was disturbing the peace and privacy of others. The evidence must be suppressed.

**NOTES:**

In a concurring opinion, Judge Mannheimer writes that three elements to the disorderly conduct charge must be met: (1) to make "unreasonably loud noise"; (2) with reckless disregard for the fact that this unreasonably loud noise is "disturbing the peace and privacy" of at least one other person and (3) after being informed that the noise is disturbing someone else's peace and privacy. The statute requires proof that the person persisted in making unreasonably loud noise after being explicitly warned that the noise was disturbing other people's peace and privacy. (emphasis added)

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 325 numerically under Section R of the manual.