

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 7 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARKANTHONY DELEON
SAPALASAN,

Defendant-Appellant.

No. 21-30251

D.C. No.

3:18-cr-00130-TMB-MMS-1

District of Alaska,
Anchorage

ORDER

Before: HAWKINS, R. NELSON, and COLLINS, Circuit Judges.

The parties shall be prepared to address the significance, if any, of the following cases at oral argument, as they pertain to Appellant’s argument that under Alaskan law stationhouse inventory searches are only permissible if the suspect is in the process of being incarcerated:

Zehrun v. State of Alaska, 569 P.2d 189 (Alaska 1977) (invalidating warrantless inventory search of arrestee who could avoid incarceration by posting bail);

Gray v. State of Alaska, 798 P.2d 346 (Alaska 1990) (same); and

Reeves v. State, 599 P.2d 727, 737–38 (Alaska 1979) (“a pre-incarceration [inventory] search thus limited both adequately protects the reasonable interests of the state and appropriately respects an arrestee’s reasonable expectation of privacy.”).

United States v. Wanless, 882 F.2d 1459, 1463–64 (9th Cir. 1989) (court must consider state law when determining legality of inventory search, including limitations placed on procedures by state courts).

COLLINS dissenting from the issuance of the order:

I dissent on the ground that, in my view, pre-argument orders raising authorities not cited by the parties should only be issued when those overlooked authorities are recent, obviously controlling, or involve a jurisdictional issue.

HAWKINS, concurring in the issuance of the order:

Panels of our Circuit have, over the years, issued orders alerting counsel to authority they might have overlooked. This is done as a courtesy to counsel, to avoid disruption in the flow of argument and to reduce the need for post-argument supplemental briefing.