





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 248 May 7, 2001

CONSENT TO ENTER RESIDENCE IS NOT CONSENT TO SEARCH ENTIRE HOUSE

Reference: Michael W. Haskins

Municipality of Anchorage

Alaska Court of Appeals Opinion No. 1738

P.2d

May 4, 2001

FACTS:

Police investigating a hit-and-run accident were told that the suspect vehicle had just pulled into a particular driveway. Two officers went to the residence and their knock was answered by Mrs. Haskins who, coincidentally, had attended high school with one of the officers. When informed about the hit-and-run, she said she had not been driving the vehicle but her husband had just arrived home.

The officers then asked if they could talk to Mr. Haskins, at which time she invited the officers into the entryway of the split-level home. She told the officers that her husband was downstairs and she started to go down. The officers followed Mrs. Haskins downstairs and found Mr. Haskins in a bedroom. Based on observations of the officers and statements made by Mr. Haskins, the officers arrested him for driving while intoxicated.

Haskins moved to suppress all the evidence associated with his arrest alleging that his wife, who testified that she expressly told officers to wait in the entryway while she went to get her husband, did not give police consent to search the entire house.

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ISSUE:

Did the police exceed the scope of consent by going downstairs?

HELD: Yes--consent can be limited to time and place.

REASONING:

- <u>1.</u> Police frequently are called upon to go to residences which may harbor people who are suspected of serious crimes. The <u>Fourth Amendment</u> allows warrantless entry into a residence on the basis of a protective search <u>only under compelling</u> circumstances. (emphasis added)
- $\underline{2.}$ Although a warrantless protective search may sometimes be justified, such a search will be upheld "only in the most serious situations." Haskins' case does not present one of these situations.
- <u>3.</u> Because the officers did not have consent to enter the downstairs area of the Haskins residence, and because their entry cannot be justified as a protective search, the officers violated Haskins' rights under the search and seizure clauses of the federal and state constitutions.

NOTES:

Remember that a person who has authority to give you consent to search can also restrict the area to be searched and, if so inclined, place a time limit on you to accomplish the search. Should a situation similar to this Haskins case arise, you should ask permission (absent exigent circumstances) to accompany the person to a different part of the home. Keep in mind that consent to enter a home is not consent to search the entire house.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 248 numerically under Section R of the manual.