



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 140  
April 24, 1990

## PROTECTIVE SEARCH OF RESIDENCE ABSENT REASONABLE CAUSE

Reference: David Earley  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1025  
P.2d  
April 6, 1990

### FACTS:

At 3:15 a.m. on April 24, 1988, police went to the Earley residence in response to a neighbor's complaint of loud noise. The officers were told that the neighbor asked Earley to quiet down, but he did not do so. Officers could hear two males arguing. The door was answered by Earley, who was "loud and belligerent." Earley was arrested for disorderly conduct and handcuffed on the threshold of his apartment.

Police observed a second man, who walked past the doorway out of sight, and spotted two small children in the apartment. One of the children was asleep on the floor and the other one was on a couch.

Officers searched the apartment thoroughly, ostensibly to ensure that no-one was present who could endanger them while they were doing their duty of assuring that the other adult present was a proper person to care for the children. The officers found a substantial quantity of marijuana in the kitchen, some seedlings in an upstairs bedroom and a marijuana-growing operation in the garage. Earley was also charged with misconduct involving a controlled substance in the fourth degree, a Class C felony.

Earley challenged the disorderly conduct Statute AS 11.61.110(a)(1) as unconstitutional due to its vagueness and the subsequent search of his residence. The court upheld his arrest for disorderly conduct.

### ISSUE:

Was the officers' search of the kitchen, garage and apartment, ostensibly to protect themselves and the children, reasonable under Alaska's (Article I, Section 14) constitution?

HELD: No.

### REASONING:

1. To satisfy the protective search doctrine, the State must prove that: (a) the officers had reasonable cause to believe

their safety was in danger before they engaged in such a search, and (b) the search was narrowly limited to areas where dangerous persons could be found.

2. The officers needed only to arrest and handcuff Earley and interrogate Alvarez, the second man in the apartment, to determine that he was a proper person to care for the children.

3. The protective-search exception to the warrant requirement must be strictly limited to situations where a search is necessary for the protection of the police. (emphasis added)

4. In this case, police were not investigating a serious crime. There was nothing to indicate that Earley was guilty of anything but disorderly conduct, a Class B misdemeanor.

5. There were no specific and articulable facts which warranted a reasonable belief that an armed and dangerous person was concealed in the kitchen, upstairs bedroom or garage.

NOTES:

This arrest was made on the threshold of the apartment. There was no suggestion of any weapons being present. Officers should have interviewed the other adult at the scene to determine if he was capable of caring for the children.

Review of the following cases is suggested:

Murdock & Robinson v. State, Legal Bulletin No. 69--court upheld seizure of weapons from private residence during protective search.

Gallmeyer v. State, Legal Bulletin No. 54--court upheld warrantless entry into private residence, arrest and seizure of weapons, where police had reasonable cause to believe suspect was armed.

Johnson v. State, Legal Bulletin No. 65--court upheld warrantless entry into private residence and subsequent seizure, where defendant had threatened to "blow away" sexual assault victim.

Maryland v. Buie, Legal Bulletin No. 139--the court upheld evidence found in "plain view" during protective search of armed robbery defendant.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section G, page 5, of your Contents and to Section G, page 3, of Text. File Legal Bulletin No. 140 numerically under Section R of the manual.