



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 300

September 18, 2005

CONSENT IS TAINTED BY
PRIOR ILLEGAL SEARCH

Reference: John E. Moore
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 2006
_____P.3d_____
September 2, 2005

FACTS:

Law-enforcement officers went to the residence of Moore to provide security for a State social worker who was doing a child welfare check on Moore's daughter. The officers responding suspected Moore had a methamphetamine laboratory at his residence. Upon arrival, one of the officers went to the rear of the residence and saw an electrical extension cord leading into an outbuilding. The officer looked inside the outbuilding "to see if anyone was there" and discovered a methamphetamine laboratory.

During this same time, the second officer was with the social worker at the front door of the residence. Moore answered the door and the social worker told him they were there to investigate a complaint regarding the care of his daughter. When Moore closed the door to go get his daughter, the officer noticed that Moore's hands were stained with what he thought was iodine. The officer could also smell something in the house, but it was difficult to identify because of other odors.

While the door was closed, the officer who found the methamphetamine laboratory in the shed came to the front and told the other officer about what he had found. At this time, January Moore opened the door and had her child with her. One of the officers asked her if any drug activity was taking place in the residence. She said, "Not

that I'm aware of." She then attempted to close the door, but the officer blocked it with his foot. January then departed with her daughter.

The officer then informed John Moore that he had noticed iodine stains on his fingers and had detected the odor of a possible methamphetamine laboratory. Moore protested that he was a heavy smoker and the stains were from nicotine. The officer then informed Moore about what the other officer found in the back shed and asked Moore if it was true; Moore responded, "That's true."

The officer then asked Moore for consent to search his residence. He also informed Moore that he would secure the residence and apply for a search warrant, if Moore did not consent to a search. Moore agreed to allow the officers to search his residence. They found a methamphetamine laboratory. Moore was subsequently indicted for misconduct involving a controlled substance.

While Moore was released on bail, the trial court issued a warrant for his arrest. When officers responded to his residence, they smelled an odor associated with methamphetamine. Moore consented to a search once again and officers found chemicals used in manufacturing methamphetamine and methadone.

Moore argued that the evidence should be suppressed because the arrest warrant was an illegal fruit of the earlier search which led to the first set of charges.

ISSUE:

Did police conduct an illegal search when they discovered the methamphetamine laboratory in the shed?

HELD: Yes--this unlawful police action taints the defendant's related consent to search.

REASONING:

1. When the government has conducted an illegal search, the government must demonstrate a break in the "casual connection" between the prior illegality and the defendant's consent.

2. Unless the government can show that the consent is sufficiently insulated from the prior misconduct, the defendant's consent is considered to be tainted.

3. The State has not argued any theory to justify the search of Moore's residence other than consent.

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