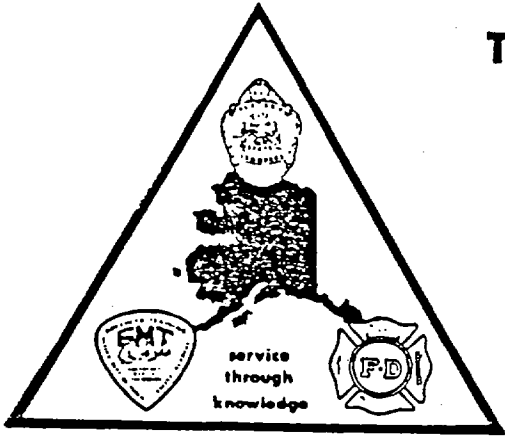


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 54
March 10, 1982

EMERGENCY ENTRY INTO PRIVATE RESIDENCE



Reference: David GALLMEYER
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 68
C.40 P.2d 837
February 18, 1982

FACTS:

David GALLMEYER and his wife, Linda, got into an argument that became physical. David was intoxicated at the time and pointed a gun at his wife and ultimately pushed her out the front door of their house. Linda used a neighbor's phone and called police for assistance advising them that her fifteen-month-old daughter was still in the house. When the police did not arrive immediately, she made a second call and was adamant in her request for immediate police assistance.

After making the second call, Linda spoke with her husband through the door of their house from across the street. She told him that the police were enroute, but if he would place the baby on the porch, she would not ask the police to enter the house when they arrived. David put the child on the porch.

Two police officers arrived and contacted Linda who was "excited and obviously upset." Linda told the officers that David was drunk, and he had beat her up. She further advised them that David had numerous guns inside the house. At this time, the officers observed the child near the front porch. One of the officers decided to try talking to David and perhaps calm him down. The second officer, who had a rifle, "covered" the first officer from across the street.

When the officer approached the front door, he called out to David and asked if he could speak with him. David came to the door and mumbled something unintelligible. The officer made entry into the house and saw a gun in the waistband of David's pants. The officer reached for and removed that gun; at the same time, David grabbed for another gun from atop the refrigerator. A scuffle ensued and the gun went off; no one was injured. David was subdued and arrested for possession of a firearm while intoxicated. It was later learned (the officer did not know at the time) that David was a convicted felon, and he was later charged with a felony.

ISSUE:

Was the warrantless entry into the defendant's residence and subsequent seizure of his person and evidence permissible under the emergency-aid doctrine?

HELD: Yes.

REASONING:

1. The right of the police to enter and investigate in an emergency without the accompanying intent to either search or arrest is inherent in the very nature of their duties as police officers and derives from the common law. (Emphasis added.)
2. Both officers had ample cause to fear that David GALLMEYER posed an immediate threat of inflicting serious and potentially fatal injury upon his daughter or third persons attempting to intervene by rescuing his daughter.

3. Linda GALLMEYER had made no attempt to rescue her own child after the child had been put on the porch. Her apparent fear of rescuing her own daughter is a forceful indicator of the extent of danger perceived as existing.

4. The officer's sole purpose in seeking to contact David was the desire to investigate the potential for danger and to ensure that no injury would be suffered, either by himself or by the child, by trying to calm David down.

5. If the officer had simply picked up the child and attempted to carry her back to Linda, he would have done so at tremendous risk to his own safety and the safety of the child.

NOTES:

The court, in this opinion, cites three separate requirements in order to justify a warrantless search under the emergency-aid doctrine: (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the search must not be primarily motivated by intent to arrest and seize evidence (emphasis added); and (3) there must be some reasonable basis approximating probable cause, to associate the emergency with the area or place to be searched.

Review of the following bulletins is recommended:

- Legal Bulletin No. 12, Clark v. State; search of a vehicle with exigent circumstances.
- Legal Bulletin No. 22, Finch v. State; warrantless entry into a hotel room was not emergency.
- Legal Bulletin No. 23, Schultz v. State; emergency exception is upheld from a burning building.
- Legal Bulletin No. 26, City v. Cook; emergency seizure of a person from a vehicle.
- Legal Bulletin No. 28, State v. Meyers; search conducted incident to legitimate entry.
- Legal Bulletin No. 31, Mincy v. Arizona; emergency search of murder scene.