



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 357

February 13, 2012

**EMERGENCY AID EXCEPTION TO THE WARRANT PERMISSIBLE SO LONG AS POLICE HAVE
"GOOD REASON" TO BELIEVE THERE MIGHT BE, AS OPPOSED TO THERE IS, SOMEONE
INJURED ON THE PREMISES**

Reference:

State of Alaska
v.
Robert Duane Gibson III

Alaska Supreme Court
Opinion No. 6635
P.3d
February 13, 2012

BACKGROUND:

IN THIS CASE THE ALASKA SUPREME COURT REVERSES THE DECISION MADE BY THE ALASKA COURT OF APPEALS Gibson v. State (SEE BULLETIN NO. 337)

THE COURT OF APPEALS HAD RULED THAT TO JUSTIFY A WARRANTLESS ENTRY POLICE REQUIRED AN "IMMEDIATE NEED" TO TAKE ACTION. THE STATE SUPREME COURT REVERSED RULING THAT OFFICERS ONLY NEEDED A "REASONABLE BELIEF" OF AN EMERGENCY TO JUSTIFY WARRANTLESS ENTRY.

FACTS:

See Bulletin No. 357 for additional details.

Police responded to a 911 call where the dispatcher said "Female stated male was threatening to stab her in the head." Upon arrival, officers heard "female voice crying, upset, screaming, yelling" from inside the trailer. As the officers approached the trailer, Lisa Bevin tumbled out the door wearing only a tank top and crying "help me." The officers then called for backup. Against their advice Bevin returned to the trailer to obtain more clothing. The officers observed Gibson in the doorway and ordered him to come outside at which time he was handcuffed and put in a police car. Bevin emerged from the trailer fully clothed, but she became argumentative and uncooperative with the officers.

When asked, both Bevin and Gibson said there was no one else in the trailer. Backup officers arrived about 25 minutes later. The officers then entered the trailer. The officers later testified that the reason they entered was because: The dispatch indicated a disturbance possibly involving a knife and they (the officers) wanted to make sure that nobody was lying wounded inside the trailer"; and "domestic violence may include weapons and make the risk higher than standard operating procedures, even when an officer has no reason to believe somebody is inside. Police "have a duty to provide aid to anybody inside." Insofar as both Bevin and Gibson telling the officers that no one else was in the trailer, one of the officers testified: "that statement was taken at face value" and that people regularly lie in domestic violence situations, and that people had lied to him (the officer) in the past."

The officers made a warrantless entry into the trailer to see if anyone was lying wounded inside; no one was found on the premises. But, during their

search for persons, they discovered evidence of methamphetamine manufacturing. Based on their observations, the officers applied for and were issued a search warrant. Both Gibson and Bevin were arrested on drug charges and convicted. The Court of Appeals reversed the conviction ruling that the warrantless entry could not fall under the "emergency exception" because the State must show "true necessity" - an imminent threat to life, health, or property, which was not demonstrated here.

The Alaska Supreme Court accepted this appeal by the State.

ISSUE:

Was the warrantless entry into Gibson's residence justified by the emergency aid exception?

Held. Yes. The criterion is the reasonableness of the belief . . . as to the existence of an emergency, not the emergency in fact.

REASONING:

1. The emergency aid doctrine elements are: (1) the police must have reasonable ground to believe there is an emergency at hand and an immediate need for assistance in the protection of life or property; (2) the search must not be primarily motivated by the intent to arrest a person or to seize evidence; and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.
2. The emergency aid doctrine is predicated on the notion that during emergencies police have duties to take action that might otherwise violate legally protected rights.
3. The officers were presented with a domestic violence emergency shrouded in ambiguity concerning the number of people involved and possibly involving serious harm to other unknown individuals.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 357 numerically under Section R of the manual.