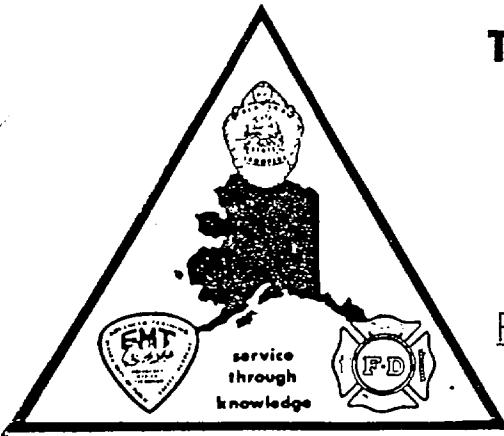


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY



LEGAL BULLETIN NO. 69
June 20, 1983

PROTECTIVE SEARCH OF RESIDENCE

Reference: Jeffrey MURDOCK and
Manuel ROBINSON
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 256
P.2d _____
May 27, 1983

FACTS:

An anonymous call was received by the police that the caller had seen guns at a particular residence and he knew they were stolen guns. Two plain-clothes officers went to the residence to investigate. The name on the mailbox was checked with the records bureau and it reflected that the occupant had been a suspect in a burglary. The officers rang the doorbell about ten times; the door was finally opened by a fifteen-year-old female who lived in the residence with her boyfriend. The officers showed their identification and asked if they could come in. She allowed them to enter.

Upon entering the apartment, officers observed another juvenile female in the living room, a pistol on a stereo speaker and three empty holsters on the floor. One of the officers got between the two girls and the pistol and asked if there was anyone else in the apartment; they were told that nobody else was present. The officer then heard suspicious muffled noises coming from the bedroom. He opened the bedroom door and observed a sleeping juvenile on the bed and ROBINSON attempting to hide in the closet. He could see part of a rifle barrel projecting from underneath the bed. The officer knew ROBINSON had been arrested for armed robbery on a prior occasion. ROBINSON and the juvenile were escorted to the living room. The officer then heard noises coming from the bathroom and ordered the person to come out; it turned out to be HUGHES who was also placed in the living room with the others. The officer returned to the bedroom to search under the bed. He found seven to nine rifles and shotguns under the bed. The officer seized these guns as well as two shotguns he found in the closet. When asked, all of the occupants denied any knowledge of the weapons. Some of the weapons had been stolen from a person the day before and one weapon had been used in an armed robbery where a person had been shot and killed. HUGHES and ROBINSON were involved in both of the prior events and the weapons were used against them.

ISSUE:

Were the guns seized as a result of a "plain view" discovery pursuant to a protective search exception to the warrant requirement?

HELD: Yes.

REASONING:

1. Alaska recognizes the protective search exception to the warrant requirement, but (a) the officer must have reasonable cause to believe that their safety is in danger, and (b) the search must be narrowly limited to areas where they could find dangerous persons.

2. There were specific articulable facts that the police officers had reasonable cause to believe their safety was in danger and that a protective search was necessary to protect themselves. They had a tip that a stolen gun was in the apartment. A burglary suspect lived in the apartment. Upon entering, the police saw one gun and three empty holsters. After being assured nobody was present, the police heard noises which led them to reasonably conclude that someone was present in the back of the apartment.

3. The officer had a right to seize the weapon he saw under the bed and to look in the closet where he found ROBINSON.

4. In seizing the weapon which he saw under the bed, the officer discovered the other weapons in plain view.

5. Once the officer discovered that there were seven to nine rifles and shotguns hidden under the bed and two shotguns in the closet where ROBINS had been hiding, it was reasonable for him to assume the weapons he found were in fact stolen.

NOTES:

There were several other issues addressed in the appeal. Defendants argued the initial entry into the apartment was unlawful; however, the court ruled that the female occupant had the authority to give the officers consent to enter.

As had been mentioned before, it is imperative in cases such as this that you are able to articulate the facts which make you believe your safety is in danger. You should review the following:

1. Klenke v. State (Legal Bulletin No. 15)--items seized under the "plain view" doctrine was inadvertent but immediately apparent (as is the case with the guns in this case).
2. State v. Spietz (Legal Bulletin No. 18)--protective search exception is discussed but evidence is suppressed because officers did not articulate any facts to suggest accomplice presence.