



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 222
April 24, 1998

ANONYMOUS TIP LEADS TO CONSENT TO SEARCH

Reference: William J. Mackelwich, Jr.
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1564
P.2d
December 19, 1997

FACTS:

Kenai State Troopers received an anonymous tip that "Will Mackel--something" had poached a moose and was "possibly involved with some type of drugs." The caller gave a general description of the property where the alleged moose-poacher lived.

The following day, troopers went to Mackelwich's residence and explained to him they received a report of an illegal moose kill; they asked permission to search his property. Both Mackelwich and the other occupant of the property, Glenda Healy, consented to the search. During the search, one of the troopers found an out-building of unusual appearance. The building had no windows and was covered in tar paper; it had two padlocks on a heavy door. A generator was running next to the building. Standing outside the building, the trooper could smell the odor of growing marijuana.

The trooper later applied for a search warrant. The search revealed that Mackelwich was indeed growing marijuana. Alaska Statute 16.05.180 empowers peace officers to engage in warrantless searches when investigating violations of the fish and game laws. The statute specifies that, before an officer exercises this statutory authority, the officer must prepare a "signed written statement...(of) the reason the search is being conducted and must submit the statement to the person in control of the property or object to be searched." In this case, the trooper did not prepare such a written statement describing his intent to search.

ISSUE:

Does this statute apply to situations in which peace officers search property after having obtained the property-owner consent?

HELD: No.

REASONING:

1. The government (troopers) already had the authority to conduct warrantless searches by consent.

2. The purpose of the statute was to expand the government's authority to conduct warrantless searches for evidence of fish and game violations.

3. Consent searches are a recognized exception to the warrant requirement; thus, Alaska Statute 16.05.180 did not apply to the search of Mackelwich's property.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section B, "Consent," and Section M, "Warrants, Affidavits and Informants," of your Contents and Text. File Legal Bulletin No. 222 numerically under Section R of the manual.