



DPS TRAINING BULLETIN

Legal Bulletin No. 249

June 1, 2001

MOTHER HAD AUTHORITY TO CONSENT TO
SEARCH BEDROOM WHERE GUEST
RESIDED WITH HER SON

Reference: James Lorenzo Fitts, II
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1744
_____ P.2d _____
May 25, 2001

FACTS:

Police investigated an armed robbery of a taxi driver committed by two young males. A wallet with Fitts' identification was found in the back seat of the cab. Police learned that Fitts was staying in an apartment. Upon arrival at the apartment, their knock was answered by Sarah LeBaron, who said that Fitts was in an upstairs bedroom with her son, Mario Gonzalez-LeBaron. The victim cab driver was brought to the apartment and he proceeded to identify Fitts and Gonzalez-LeBaron as the robbers. Both subjects were arrested.

Sarah LeBaron told police that Fitts was staying in her son's bedroom for free, but she retained complete access to every room in the house including the bedroom. LeBaron further stated that she had enough of Fitts' and Gonzalez's activities and she was about to kick them out.

LeBaron signed a written consent-to-search form. During the search of the bedroom, police opened a saxophone case belonging to Fitts and found a loaded handgun. They also found Gonzalez's wallet which contained cash in denominations stolen during the robbery.

Fitts argued at his trial that he was paying room rent to Mrs. LeBaron and that she did not have authority to give police consent to search the bedroom.

ISSUE:

Did Sarah LeBaron have authority to consent to a search of the bedroom which Fitts shared with her son, Mario Gonzalez-LeBaron?

HELD: Yes--circumstances tend to support her assertion of authority.

REASONING:

1. The test is whether the information available to the officers, viewed with reasonable caution, would have warranted the conclusion that LeBaron had authority over the premises to be searched.

2. A person may consent to a search of property if that person "generally has joint access or control for most purposes". (emphasis added)

NOTES:

Police did it right in this case! They asked about such things as rent prior to obtaining the consent. This proved to be helpful at trial when Fitts claimed he was paying rent. Police further learned that there was no landlord-tenant relationship between LeBaron and her son.

This is a reminder of the value of using the tape recorder for obtaining consent and taking statements, as well as for Miranda warnings. The value of a recording is really demonstrated when these issues are in dispute during courtroom testimony.

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Add this case to Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 249 numerically under Section R of the manual.