



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 373

August 12, 2014

SEARCH OF "THIRD PARTY" RESIDENCE REQUIRES SEARCH WARRANT

Reference:

Isaac D. Siedentop

Alaska Court of Appeals

Opinion No. A-2424

v.

August 8, 2014

State of Alaska

FACTS:

Police had a warrant to arrest Antonio Mendez who absconded from electronic monitoring. Police received information from Mendez's wife that he was staying with a woman at 209 Dunbar Street in Fairbanks. Five police and probation officers went to the Dunbar Street address. The police were aware the address was a reputed drug house; they were concerned their arrival might precipitate trouble, so two officers went to the back of the house while the other three officers walked up to the front door and knocked. Siedentop was in the house and responded to the knock. When Siedentop opened the door, one of the officers stuck his foot across the threshold to prevent him from closing the door.

Initially, the officers only questioned him about whether he lived in the house, and whether the owner of the house was present. The officer felt Siedentop was "fidgety and pretty nervous". After less than a minute of conversation, one of the officers asked Siedentop if he had any weapons on him. Siedentop responded by pointing to his waist and declaring he was carrying two weapons. At that time one of the officers patted him down and discovered a hunting knife, a handgun, an extra magazine for the gun, and about \$2,000 in cash. The officers removed Siedentop from the residence and took him to a patrol car where a second search was performed. This second search revealed bindles of powder cocaine, rock cocaine, and a digital scale. During the time he was in the patrol vehicle, Siedentop told the officers that Mendez had been in the house earlier, but Mendez hadn't been at the house in a while. These various discoveries led charges against Siedentop.

Siedentop argues that the evidence against him was obtained illegally.

ISSUE:

Did the officer act unlawfully when he stuck his foot across the threshold to prevent Siedentop from closing the front door to the residence?

Held. Yes. Absent exigent circumstances, police may not cross the threshold of a home without a warrant.

REASONING:

1. Even when police have an arrest warrant for a suspect (in this case Mendez), the police need a separate search warrant if the wish to enter the house of a third party to execute the arrest warrant. (see STEAGALD v U.S., bulletin no 47) (emp added)
2. Because the officers physically obstructed the doorway to prevent Siedentop from closing the door and ending his encounter with the officers, the officers' action constituted an unlawful seizure of Siedentop's person.
3. A seizure occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. (See MAJAEV v State, bulletin no. 347) (emp added.)
4. All of the evidence seized from Siedentop was the fruit of his unlawful seizure and must be suppressed. (see WARING v State, bulletin no 76)

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File Legal Bulletin No. 373 numerically under Section R of the manual.