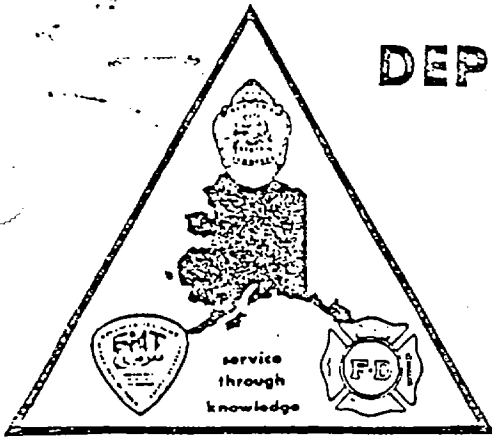


# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY

LEGAL BULLETIN NO. 43  
December 8, 1980

### CONSENT SEARCH OF A MURDER SCENE



Reference: Charles C. PHILLIPS  
v.  
State of Alaska

Alaska Supreme Court  
Opinion No. 2229  
625 P.2d 816  
November 25, 1980

#### FACTS:

During the early morning hours, a trooper was dispatched to the village of Eklutna to investigate a dead body. The trooper was met on the highway by Mike Yakasoff who took the trooper to the cabin where Yakasoff's brother, Andy, and Charles PHILLIPS were. A body was observed on the floor in the cabin and there was blood around the body. PHILLIPS and the Yakasoff brothers had been drinking but were responsive to the trooper's questions. The trooper advised the three to wait outside the cabin and he requested assistance from his supervisor. When the supervisor arrived, entry was again made into the cabin. The officers felt the person had died as a result of natural causes, possibly bleeding ulcers. The trooper joined PHILLIPS and the Yakasoff brother outside the cabin to wait for the mortuary to arrive and pick up the remains.

While outside, Andy Yakasoff told the officers that he thought he had seen a knife. The officers then re-entered the cabin and discovered that the victim had a puncture wound to the chest. Investigators were summoned; they conducted an investigation which lasted about five hours. Numerous pieces of evidence were seized. Evidence gathered suggested that PHILLIPS was responsible for the death; after he was properly advised of his rights, he confessed. All of the entries to the cabin were made without benefit of a warrant.

#### ISSUE:

Did the officers have consent to enter the cabin and, if so, was the consent ongoing and applicable to subsequent entries as well?

HELD: Yes.

#### REASONING:

1. Mike Yakasoff voluntarily consented to the entry. He met the officer when he arrived and directed him to the cabin and there is no evidence suggesting his actions were not voluntary.

2. Mike Yakasoff's initial consent extended to the subsequent entries. The continuing nature of his consent was shown by his failure to object to the re-entry of the police after his brother mentioned the knife and the ensuing stepped-up investigation.

3. While it might have been prudent for the police to have obtained a specific consent for each intrusion, we cannot say that their failure to do so vitiated Mike Yakasoff's implied continuing consent. (emphasis added)

NOTES:

In this case, Mike Yakasoff gave consent to enter the cabin and at no time did he revoke his consent. Had he at any time exercised this option, the officers would then have been required to cease the search, secure the scene and apply for a warrant.

Compare this case with MINCEY v. Arizona (see Legal Bulletin No. 31) where police conducted a three-day search of a murder scene without a search warrant and absent consent or any other exception to the warrant requirement. Remember, there is no such thing as a "murder exception" to the warrant requirement.

It would be better practice to obtain the consent in writing.