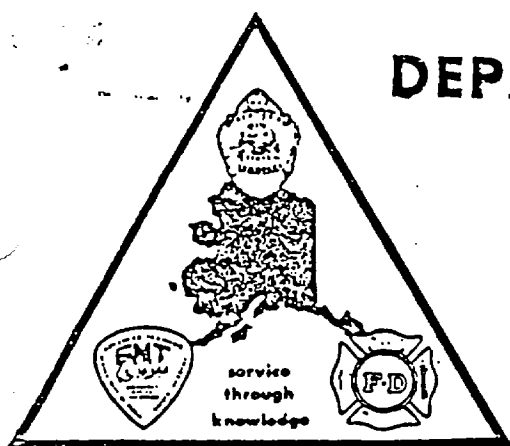


DEPARTMENT OF PUBLIC SAFETY  
TRAINING ACADEMY

LEGAL BULLETIN NO. 52  
September 21, 1981

THIRD-PARTY (OFFSPRING) CONSENT TO ENTER



Reference: Patrick Joseph DOYLE  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 43  
633 P.2d 306  
September 10, 1981

FACTS:

A traffic accident occurred wherein one of the drivers left the scene without providing the other driver with required information. Troopers were able to trace the owner of the vehicle to DOYLE. Troopers went to the DOYLE residence and knocked on the door. The door was opened by DOYLE's son who was estimated to be between eleven and fourteen years of age. The boy invited the troopers in to talk with his father who was in the living room. The boy repeated the invitation on two occasions. When the troopers got into the living room, they saw DOYLE sitting in a chair. DOYLE then told the troopers they were in his house illegally. His wife contradicted him and said that DOYLE's son had invited the troopers to enter.

The troopers then asked DOYLE if the automobile in the driveway was his; when he said it was, they asked if he had been operating it and he said he had. At that time, the trooper gave DOYLE his Miranda warnings. DOYLE was given sobriety tests and was arrested when he failed.

ISSUE NO. 1:

Did the son of the defendant have the authority to give valid consent to enter the residence?

HELD: Yes.

ISSUE NO. 2:

Can statements about the vehicle made prior to issuing the Miranda warning be used?

HELD: Yes.

REASONING:

1. The boy was old enough to be expected to exercise at least minimal discretion.
2. The nature of the invitation was limited in scope; it was not for a general search of the house but only so troopers could talk to the father who was in the living room, an area of the house to which the child would

ordinarily have free and open access.

3. The consent given by DOYLE's son was voluntary and within the scope of his authority as an occupant of the dwelling.

4. DOYLE was not in custody at the time the two questions were asked.

NOTES:

The court cites Phillips v. State (Legal Bulletin No. 43) when addressing the third-party consent issue in this case.

In citing Hunter v. State, 590 P.2d 888, the court stated that a finding of custodial interrogation "requires some actual indication of custody, such that a reasonable person would feel he was not free to leave and break off police questioning."