



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 136
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CONSENT TO SEARCH RESIDENCE BY NON-PRESENT SPOUSE

Reference: Richard C. Brandon
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 947
P.2d

FACTS:

At 6:00 p.m. one evening, Joyce Brandon arrived at a shelter for abused women. She told the counselor that her husband, Richard, had tied her up and beat her throughout the day. She said she escaped when her husband left the house with their three-year-old son. The counselor convinced Joyce to have an examination by a local physician. They arrived at the hospital around 7:30 p.m. At 8:00 p.m., police interviewed Joyce at the hospital. At 9:55 p.m., police took a tape-recorded statement from her. Joyce signed a "consent to search" form. This signed form authorized police to search the Brandon residence and seize several items connected with the assault.

When police arrived at the residence and knocked, Richard opened the door. He was immediately handcuffed. Officers then proceeded to search the residence. They found a broom handle, a belt, nylons and other items, all of which were ultimately entered in evidence at Brandon's trial.

During the trial, Brandon argued that Joyce's signature on the consent to search form was not effective, because he was the only adult present at the residence and did not agree to allow the police search.

ISSUE:

Could police rely on Joyce Brandon's consent to search even though she was not present?

HELD: Yes.

REASONING:

1. She had recently been severely beaten and authorized police to go to her residence to obtain evidence of that beating.
2. She expressed concern for the welfare of her three-year-old son.

3. She had the authority to allow the police to go to her house, as well as enter the house. (emphasis added)

4. It would have been impractical and unreasonable to require Joyce to accompany police to the residence, since she had just been severely beaten there.

5. Joyce Brandon, having an equal right to possession of the premises, could consent to a search of the residence. (emphasis added)

NOTES:

This case was reversed on hearsay issues, but the court upheld the authority of the non-present spouse to consent to the search.

Review of the consent cases in Section B of the Alaska Legal Brief Manual is recommended--especially those having to do with third-party consent, such as Legal Bulletin No. 43, Phillips v. State, and Legal Bulletin No. 52, Doyle v. State.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

Add this case to Section B, page 2, of your Contents and to Section B, page 3, of the Text. File Legal Bulletin No. 136 numerically under Section R of the manual.