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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 218  
June 6, 1997

SEARCH OF PERSONS WHO ARRIVE AFTER  
EXECUTION OF WARRANT

Reference: Flora M. Davis  
Rebecca L. Fox  
Earl J. Thronsen, Jr.  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1528  
P.2d  
May 9, 1997

FACTS:

Fairbanks police obtained a search warrant for a residence that was the site of an on-going "crack" cocaine selling operation. Besides authorizing the police to search for drugs, drug paraphernalia and money, the warrant also authorized police to search "any persons on the premises at the time of service of the search warrant" for evidence of possession and/or distribution of controlled substances.

As police arrived at the residence to serve the warrant, Thronsen approached the house, opened a screen door and walked into the arctic entryway--an enclosed vestibule leading to the interior front door of the residence. Thronsen knocked on the door. As soon as someone inside the house opened the door, the police ran up and announced they were there to serve a search warrant. The officers took Thronsen inside the residence, searched him and discovered two bundles of cocaine.

Sometime later, Davis and Fox arrived at the residence while police were still searching the house. Davis was either invited into the house or allowed to enter. The police did not identify themselves to her. Fox arrived later, knocked on the door and was allowed to enter. Both Davis and Fox were searched. Drugs were found on both subjects.

ISSUE:

Did the warrant empower police to search visitors who arrived during the execution of the warrant?

HELD: Yes.

REASONING:

1. Warrants authorizing the police to search "any and all persons present" are not per se unconstitutional.
2. Such a warrant is supportable if the warrant application provides probable cause to believe "that all persons present [on the premises] upon execution of the ... warrant would ... have drugs or drug paraphernalia on their persons."
3. In this case, the arctic entryway was part of the premises of the residence.

NOTES:

Review of the following cases in Section M of the manual is recommended:

Michigan v. Summers, Legal Bulletin No. 49--prearrest seizure of person while executing a search warrant.

Ybarra v. Illinois (no Legal Bulletin)--search of patron in public bar during execution of search warrant.

Moore v. State, Legal Bulletin No. 163--warrantless search of a person present in a private residence (crack house) during execution of warrant.

Betts v. State, Legal Bulletin No. 203--search warrant allows for search of "any persons present" while executing search warrant for drugs at private residence.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section M, "Warrants, Affidavits and Informants," of your Contents and Text. File Legal Bulletin No. 218 numerically under Section R of the manual.