



# DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 189  
April 17, 1995

## CONSENT TO SEARCH AUTHORIZED BY A TEMPORARY OCCUPANT

Reference: Dana Lee Hilbish  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1398  
P.2d  
March 10, 1995

### FACTS:

Charles Dalby and Dana Lee Hilbish lived together in Ketchikan for a number of years. The relationship produced four children. During the summer of 1991, Dalby suspected that Hilbish was involved with another man. Dalby disappeared about June 3, 1991. Over the next several months, Hilbish told various friends that Dalby had left Ketchikan--possibly for Hawaii. She attempted to obtain Dalby's last check from the company he worked for by submitting a release, which she stated had been signed by Dalby. Hilbish told a friend that she had forged Dalby's signature on the release in order to get the check. Dalby's employer refused to give Hilbish the check.

During a ten-week period, various friends and neighbors complained of a foul odor coming from Hilbish's porch and later from a tarp that was in her yard. Hilbish offered several explanations for the odor--dead fish, dead dog/cat or large animal.

Late in August, Dalby's adult daughter, Sonja Powers, and her husband, Adrian, and their children stopped at the Hilbish house on their way to Oregon. The Powers family asked Hilbish if they could camp in the front yard; Hilbish agreed that would be okay. Hilbish helped Sonja set up tents. Sonja noticed that a green tarp she had previously left at the house was on the ground near the basement. The tarp was covering a large item and a strong smell was coming from that area. The odor was much stronger the next day. Some children told Sonja that there was something dead under the tarp. Sonja called police to report something dead in a tarp--possibly fish or a deer; she told them, "It is big." Hilbish informed the officer who responded that the source of the smell from beneath the tarp was dead fish which had been removed from her neighbor's freezer. Hilbish assured the officer she would bury the fish "later in the evening when it was cooler."

Sonja Powers, who previously stayed with Hilbish on numerous occasions, became convinced that the body of her missing father, Charles Dalby, was under the tarp. Her husband did not believe her and they got into an argument as they sat in their car in front of Hilbish's house. Sonja then confronted Hilbish and asked her what was in the tarp. Hilbish responded, "It's nothing--none of your business."

Angered that nobody took her seriously, Sonja went to a local bar. When she returned to the Hilbish house, she was more convinced her father was under the tarp and again confronted Hilbish. Using profanity, Hilbish told Sonja that tarp was "none of your f----- business." When Sonja threatened to call police, a scuffle ensued. Someone called Emergency #911 and the police responded.

Sonja told the police officer her father had been missing for some time and she suspected he might be under the tarp. The officer followed Sonja into the yard. Sonja lifted the tarp and stated, "Oh, my God. It's my Daddy." The officer saw what appeared to be cloth under the tarp. To escape the odor, the officer and Sonja returned to the main yard area.

A police supervisor arrived; both Sonja and Hilbish attempted to explain the situation. Hilbish indicated the problem was a domestic dispute between Sonja and her husband. Sonja then turned to Hilbish and said, "We're going to look in the tarp now, Dana." Hilbish replied, "Go ahead; why don't we?"

When the tarp was lifted, the officer recognized human remains. Police obtained a search warrant authorizing complete examination of the tarp contents. The remains were later identified as Charles Dalby; he had been shot twice in the head. Subsequent searches of the house indicated the homicide occurred within the residence. Hilbish was charged and convicted of first-degree murder. She appealed her conviction, raising a number of interesting issues. This Legal Bulletin will address only the initial search of the tarp which led to the issuance of the search warrant.

**ISSUE:**

Did Sonja Powers have either apparent or actual authority to give her consent for police to lift the tarp?

**HELD:** Yes.

**REASONING:**

1. Actual authority to give consent is not required as long as the person has the apparent authority to give consent. (emphasis added)

2. A person may consent to a search if that person has joint access to or control of the place to be searched.

3. Sonja Powers, as a temporary occupant of Hilbish's residence, had actual authority over the portion of the yard examined by the police. (emphasis added)

4. The Powers family had camped in Hilbish's yard and had the run of the area. The tarp itself belonged to Sonja; she had left it with Hilbish on an earlier visit.

5. There is nothing in the record to suggest that Hilbish had revoked Sonja's authority to consent.

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Add this case to Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 189 numerically under Section R of the manual.