

was found in Jones' right front pocket. During the search, Jones attempted to twist away from the officers by kicking and struggling with them. Jones was charged and convicted of possession of the cocaine and resisting arrest. He appealed.

ISSUE NO. 1:

Could police lawfully restrain Jones at the scene of the dispute?

HELD: No.

ISSUE NO. 2:

Did police seize the cocaine as result of the illegal restraint and should the cocaine be suppressed?

HELD: Yes.

ISSUE NO. 3:

In light of the above two issues, can Jones' conviction for resisting arrest stand?

HELD:

It is not known at this time--this issue has been sent back to the Superior Court for further findings.

REASONING:

1. Although the police knew that Jones was involved in a dispute with his landlord, they had no indication that Jones had assaulted the landlord or had committed any illegal act. (emphasis added)

2. There was no basis for police to require Jones to stay at the scene and talk to him; therefore, the cocaine police later found was seized as the result of an illegal investigative stop. (emphasis added)

3. Because it is not clear if Jones was explicitly told he was under arrest, that issue has been remanded to the Superior Court for additional findings. In order to convict Jones of resisting arrest, the State had to prove that police were

arresting Jones, that Jones knew the officers were arresting him, and that Jones used force with the intent to prevent officers from making the arrest.

NOTES:

This case is different from McNeil v. State (see Legal Bulletin No. 235) where police responded to a 911 domestic violence report. In the McNeil case, the officers were told by the victim that she had been assaulted and the officers observed that she had been assaulted and observed the injury. They were justified in "ordering" the suspect to remain at the scene and not required to give him (McNeil) Miranda warnings during the interview. This Jones case is more akin to Castle v. State (see Legal Bulletin No. 241) where Castle, a passenger in a vehicle which had been stopped for a traffic violation, was seized and subsequently searched by the police without "probable cause."

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section I, "Investigatory Seizures of Persons and Things," of your Contents and Text. File Legal Bulletin No. 243 numerically under Section R of the manual.