





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 243
November 14, 2000

ILLEGAL INVESTIGATORY SEIZURE OF PERSON INVOLVED IN LANDLORD/TENANT DISPUTE

Reference: Everett Leon Jones

v.

State of Alaska

Alaska Court of Appeals

Opinion No. 1699

_____P.2d__ November 3, 2000

FACTS:

Anchorage police responded to a 911 call to investigate a dispute between a landlord and a tenant. Upon arrival, the tenant, Jones, and his landlord, Lola Strzelewicz, were involved in a yelling argument. As soon as the officers arrived, Jones stepped away from Lola and attempted to pass the police officer who had stopped him and asked him to step outside so he (the officer) could talk to Jones about the disturbance. Jones stated he had to go to his room, at which time the officer then ordered Jones to step outside. When they got outside, Jones was wearing a fanny pack and began to the tell the officer what happened. As Jones was talking, he put his hand into the fanny pack. The officer ordered Jones not to do that and Jones complied.

At one point, Jones told the officer that he needed to go and lean some bicycles up against the other side of the house and began to briskly walk away. The officer stood in front of Jones, who had once again put his hand in his fanny pack. Jones was then ordered to put his hands behind his back so the officer could handcuff him. Jones refused.

With the assistance of a second officer, Jones was handcuffed. The officers searched the fanny pack and his person. Cocaine

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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:

- $\underline{1.}$ 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)
- <u>2.</u> 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)
- <u>3.</u> 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

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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.