



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 337

April 20, 2009

EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT REQUIRES IMMEDIATE NEED TO TAKE ACTION

<u>Reference:</u>	Robert Duane Gibson III	Alaska Court of Appeals
	v.	Opinion No. 2212
	State of Alaska	<u> P.3d </u>
		April 10, 2009

FACTS:

Anchorage Police received a 911 call from a female who said a man was threatening to stab her in the head. When responding officers arrived at the scene, they heard a woman screaming. Moments later, Lisa BEVIN tumbled out the door wearing only a tank top; she had a cut on the back of her head and that was bleeding and her eye was swollen. BEVIN saw the officers and said "help me, help me." The officers tried to talk to BEVIN and GIBSON appeared at the door. When GIBSON saw the officers he started to go back inside. The officers drew their weapons and ordered GIBSON to come outside; he complied. GIBSON offered no resistance and was cooperative. GIBSON was handcuffed and placed in the back of a patrol car.

While the police were dealing with GIBSON, BEVIN returned to the residence to put on a pair of pants. Police asked her to come back outside and she asked if she could put some shoes on first; police agreed. BEVIN told the police that there was no one else in the residence. The officers had nothing to indicate that there was another person in the residence.

The officer decided to enter the residence to search for anyone who might be injured. The officer justified this warrantless entry by stating that people had lied to him in the past, and he needed to make sure there was no one still in the residence who had been injured.

When they entered the residence, they discovered that no one else was there. The officers did discover a methamphetamine laboratory. GIBSON was charged with several drug offenses.

He argues that the evidence should be suppressed because the police illegally entered his residence without a warrant.

ISSUE: Was the warrantless entry into GIBSON's residence justified by the emergency aid exception?

HELD: No - in order to enter a home based upon the emergency aid exception, the State must show "true necessity" - an imminent threat to life, health, or property.

REASONING:

1. The circumstances surrounding the search, as established at the evidentiary hearing, would not have led a prudent and reasonable officer to perceive an immediate need to take action in order to prevent death or to protect against serious injury to persons or property.

2. At the time police entered the residence, there was no sign that there was anyone inside, and the police had both GIBSON and BEVIN in custody.

3. The facts known to the officers at the time they entered the residence strongly support the conclusion that BEVIN was the person who made the 911 call. Bevin's injuries were consistent with the threat that the caller reported, but the police never asked BEVIN whether she was the person who made the call.

4. Our concern is that, if we were to authorize the police to enter someone's home based on these facts, the police would routinely be able to search a residence in most cases where there was a report of a serious domestic dispute. Under the facts of this case, the emergency aid exception did not justify the police entry into GIBSON's home.

NOTES:

Review Gallmeyer v. State, Legal Bulletin No. 54 - where warrantless exigent entry was justified because of a weapon. This (GIBSON) case is very similar to Brand v. State, Legal Bulletin No. 336, where police made a "protective search" of a residence without justification. In BRAND, like here, the officers testified they did not have any reason to believe that there was anyone in the home. Also a review of Section "C" - Emergency, of the Manual is recommended. Section C includes the elements of the emergency aid doctrine.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:

File Legal Bulletin No. 337 numerically under Section R of the manual.