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## **DPS TRAINING BULLETIN**

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LEGAL BULLETIN NO. 235

February 7, 2000

**TEMPORARY SEIZURE OF PERSON BY**  
**POLICE INVESTIGATING DOMESTIC VIOLENCE CASE**  
**DOES NOT REQUIRE MIRANDA WARNING**

**Reference:** Steven A. McNeill  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1643  
P.2d  
July 30, 1999

**FACTS:**

Two troopers responded to the McNeill residence in answer to an emergency-911 call made by Mrs. McNeill who told dispatch that her husband had assaulted her. Upon arrival, they interviewed Mrs. McNeill when she met them outside the house. She told troopers that Steven had thrown his coat at her and something hard in the coat pocket struck her in the head. The troopers observed swelling and bruising on her head.

Troopers decided to speak with Steven; he was still inside the house. McNeill initially invited the troopers into the house, but soon thereafter reconsidered his decision. He told the troopers to "get the hell out of his house and leave him alone." Given the circumstances of domestic violence, the troopers refused to leave and told McNeill, "We will leave as soon as you tell us what is going on."

McNeill told the troopers that he had tossed his coat at his wife and a couple of CD-Roms in the pocket struck her in the head. Troopers gave McNeill the option of leaving the house rather than being arrested. He refused to leave and demanded that both he and his wife be arrested. McNeill was arrested for

assault. At his trial, the statement he made to troopers was used against him.

**ISSUE:**

Under these circumstances, were the troopers entitled to remain in the house temporarily and question McNeill without giving him Miranda warnings?

**HELD:** Yes.

**REASONING:**

1. The fact that McNeill may have been the focus of police suspicion does not mean that he was in custody for Miranda purposes.
2. The troopers had plenty of reason to intervene at the McNeill household and investigate what was going on. They had responded to a 911 domestic disturbance.
3. The troopers approach to McNeill was peaceable. They made no show of force and gave no other indication that they wished to arrest or detain him for a lengthy period.
4. Under the "on-the-scene questioning" exception, the troopers' initial request for McNeill to "tell them what was going on" did not qualify as "interrogation" for purposes of the Miranda rule.

**NOTES:**

The Court points out that the facts in this case are different from those presented in Moss v. State, Legal Bulletin No. 166, and Higgins v. State, Legal Bulletin No. 188, where officers with guns drawn forcibly entered a residence and subjected the defendants to lengthy questioning. In those cases, the Court ruled that the defendants had been in Miranda custody during questioning.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:**

Add this case to Section C, "Emergency," and Section P, "Right to Counsel and Waivers during Custodial Interviews," of your Contents and Text. File Legal Bulletin No. 235 numerically under Section R of the manual.