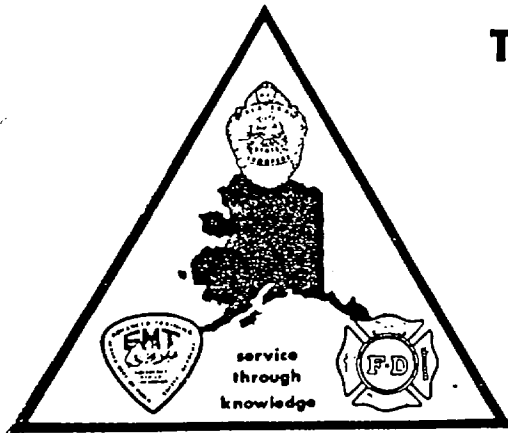


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 66
May 24, 1983



WARRANTLESS SEIZURE OF A PERSON FROM A PRIVATE RESIDENCE

Reference: Henry JOHNSON
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 242
P.2d
April 29, 1983

FACTS:

A female was kidnapped from the parking lot of a bar and taken to a residence where she was kept for about six hours; during this period of time, she was repeatedly sexually assaulted. The assailant finally went to sleep and the victim, M.H., escaped from the residence and fled to a church directly across the street. The police were contacted and M.H. called a friend who was an airport security police officer. M.H. told responding officers what happened and pointed out the residence where the assault occurred. M.H. also told the officers that her assailant, whom she described as a large black man whose name might be JOHNSON, told her if she did not cooperate he would "blow her away".

The officers went to the residence, knocked on the door and rang the bell. Using a nightstick to knock, the front door was jarred slightly open. JOHNSON stuck his head out of an upstairs bedroom window and asked the officer what she wanted. The officer told JOHNSON that she would like him to come down for questioning; he said he would be down as soon as he got dressed. At this time, the officer nudged the already open door and walked twelve feet into the downstairs of the apartment. The officer said she did this because she was afraid JOHNSON might have a gun. In a few moments, JOHNSON came downstairs dressed only in a pair of jeans. He asked the officer what she was doing in his house and told her he wanted her out. The officer told JOHNSON about the rape complaint and began to back out of the house.

M.H., who was sitting in a police car in front of the residence, positively identified JOHNSON as the person who kidnapped and sexually assaulted her. JOHNSON was arrested and allowed to re-enter his residence to get dressed while being accompanied at all times by a police officer.

JOHNSON was convicted of the offenses and appealed to the Appellate Court on several issues, but only one will be addressed in this bulletin.

ISSUE:

Did the police have the authority to make a warrantless, non-consensual entry into JOHNSON's home to make this felony arrest?

HELD: Yes.

REASONING:

1. The entry of JOHNSON's home is justified by "exigent circumstances".
2. M.H.'s statements provided probable cause to believe her assailant was in JOHNSON's residence.
3. The police entered JOHNSON's residence peaceably through an unlocked door.
4. It is not clear that two peace officers could have secured the premises while a third went for a warrant.
5. JOHNSON's statement to M.H. that he would "blow her away" provided probable cause to believe he was armed. Therefore, there was reason to believe that, in the event of delay, JOHNSON might barricade himself in his residence or attempt to flee forcibly which would substantially increase the risk to law-enforcement officers and the general public.
6. There is at least some risk that JOHNSON might attempt to destroy any evidence on his body (i.e., by taking a shower) and on the sheets and the blankets which might indicate he had intercourse with M.H.
7. Once JOHNSON was seized, it would have been a useless exercise to have one officer keep him under surveillance in his bedroom while another sought out a magistrate for an arrest warrant.

NOTES:

After JOHNSON was taken into custody, the police obtained search warrants for his residence and vehicle and seized evidence from them both. The court allowed the warrantless entry and subsequent seizure of JOHNSON as an exigent circumstance. In reaching this decision, the court cited, among others, the following cases which you might want to review:

1. Payton v. New York, Legal Bulletin No. 34 - Warrantless entry into residence by statutory authority.
2. Schultz v. State, Legal Bulletin No. 23 - Emergency entry to ascertain cause of fire.
3. Gallmeyer v. State, Legal Bulletin No. 54 - Emergency entry to neutralize armed suspect.
4. Finch v. State, Legal Bulletin No. 22 - Entry to preserve evidence.
5. State v. Spietz, Legal Bulletin No. 18 - Search that did not qualify as a protective search.

6. Gray v. State, Legal Bulletin No. 25 - Hot pursuit of a fleeing felon.
7. Clark v. State, Legal Bulletin No. 12 - Warrantless search of a vehicle and insufficient time to obtain a warrant.
8. Coleman v. State, Legal Bulletin No. 3 - Investigative detention prior to arrest.