



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 228
August 10, 1998

PUBLIC ACCESS WITH "NO TRESSPASSING" SIGNS

Reference: Joseph M. Michel and
Stephanie A. Michel
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1598
P.2d
July 24, 1998

FACTS:

Alaska State Troopers received a tip that Joseph and Stephanie Michel were growing marijuana at their residence in Willow, Alaska. Upon arrival at the residence, the investigating troopers observed four "No Trespassing" signs posted along the Michels' driveway. The house is not visible from the road and the length of the driveway is about 300 yards.

Driving past the signs, the troopers went up to the house and knocked on the door. When Joseph Michel opened the door, the troopers perceived a strong odor of growing marijuana. This discovery prompted the troopers to seek a search warrant. The ensuing search confirmed there was marijuana growing in the residence. Joseph and Stephanie Michel argued that, by posting the "No Trespassing" signs, they had reasonable expectation that law-enforcement personnel would not enter their property without a warrant.

ISSUE:

Would a reasonable person, seeing "No Trespassing" signs posted along a driveway, conclude that the homeowner desired to exclude members of the public who wished to visit the residence for a legitimate social or commercial purpose?

HELD: No.

REASONING:

1. "No Trespassing" cannot reasonably be interpreted to exclude normal, legitimate inquiries or visits by mail carriers, newspaper delivery persons, census takers, neighbors, friends, utility

workers and others who restrict their movements to the areas of one's property normally used to approach the home.

2. A criminal investigation is as legitimate a societal purpose as any other undertaking that would normally take a person to another's front door.

3. The Michel residence is in a rural area and lies some distance off the main highway. A visitor to the residence would reasonably conclude that the "No Trespassing" signs posted along the driveway were intended to deter people who might be tempted to leave the highway and use the driveway as an access route for their own purpose such as hunting, camping or hiking.

4. Persons visiting the residence for social or commercial purposes would not construe those signs as meant to prohibit their entry. Thus, the troopers did not need a warrant to proceed along the driveway to the Michel residence.

NOTES:

Review of the following is recommended:

Pistro v. State, Legal Bulletin No. 20, which involves a plain view observation by troopers who accessed a residence via private driveway.

Oliver v. United States, Legal Bulletin No. 82, where officers conducted a search of a "No Trespassing" posted field. In Oliver, the U.S. Supreme Court declared the warrantless search appropriate under the "open field" doctrine.

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Add this case to Section K, "Plain View," of your Contents and Text. File Legal Bulletin No. 228 numerically under Section R of the manual.