

ISSUE:

Did the police exceed the scope of consent by going downstairs?

HELD: Yes--consent can be limited to time and place.

REASONING:

1. Police frequently are called upon to go to residences which may harbor people who are suspected of serious crimes. The Fourth Amendment allows warrantless entry into a residence on the basis of a protective search only under compelling circumstances. (emphasis added)

2. Although a warrantless protective search may sometimes be justified, such a search will be upheld "only in the most serious situations." Haskins' case does not present one of these situations.

3. Because the officers did not have consent to enter the downstairs area of the Haskins residence, and because their entry cannot be justified as a protective search, the officers violated Haskins' rights under the search and seizure clauses of the federal and state constitutions.

NOTES:

Remember that a person who has authority to give you consent to search can also restrict the area to be searched and, if so inclined, place a time limit on you to accomplish the search. Should a situation similar to this Haskins case arise, you should ask permission (absent exigent circumstances) to accompany the person to a different part of the home. Keep in mind that consent to enter a home is not consent to search the entire house.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section B, "Consent," of your Contents and Text. File Legal Bulletin No. 248 numerically under Section R of the manual.

