





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 259
August 29, 2002

SURREPTITIOUS EAVESDROPPING OF DRUG TRANSACTION

Reference: State of Alaska

v.

Dusan Boceski

Alaska Court of Appeals Opinion No. 1819

P.2d

August 23, 2002

FACTS:

North Slope Borough police were working with informant L.H. who said that Boceski was selling cocaine. L.H. agreed to make a controlled buy out of her residence; her house has an attached arctic entryway. Boceski agreed to come to L.H.'s residence to deliver the cocaine.

Sgt. Grubbs, North Slope Borough Police Department, developed a plan where he would stay in the living room with lights out while L.H. met Boceski in the arctic entryway to consummate the drug transaction. L.H. was to leave the door slightly ajar so Sgt. Grubbs could hear their conversation. L.H. was to say "that doesn't look like a gram" when the drugs were transferred to her. Sgt. Grubbs also placed a tape recorder in the entryway and one in his pocket. He did not obtain a Glass warrant.

After Boceski arrived at the residence and L.H. met him in the entryway, Sgt. Grubbs was unable to hear the entire conversation. He did, however, hear L.H. say "that doesn't look like a gram." At that time, Sgt. Grubbs confronted Boceski and seized the cocaine he sold to L.H. During the search of Boceski as incident to that arrest, an additional nine bundles of cocaine were removed from his person. Police also obtained a search warrant for Boceski's residence where additional drugs were seized.

Boceski argued that statements he made and all the evidence should be suppressed, because the surreptitious eavesdropping of the drug transaction violated his right to privacy under the Alaska Constitution.

ISSUE:

Were police required to have a <u>Glass</u> warrant for use of the two tape recorders?

HELD: Yes--they cannot be used at trial, but L.H.'s testimony can be used.

ISSUE:

Can the conversation Sgt. Grubbs heard from the living room be used?

HELD: Yes.

REASONING:

- 1. Courts have generally concluded that if officers overhear conversations from places where they have a right to be; use only their unaided, natural senses; and are in a place where the speaker would anticipate someone might be, then the speaker has a diminished expectation of privacy that is not protected by the Fourth Amendment.
- $\underline{2.}$ It is uncontested that Sgt. Grubbs was lawfully present in L.H.'s home.
- $\underline{3.}$ Broceski had no reasonable expectation of privacy against eavesdropping by someone lawfully present in L.H.'s home.

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