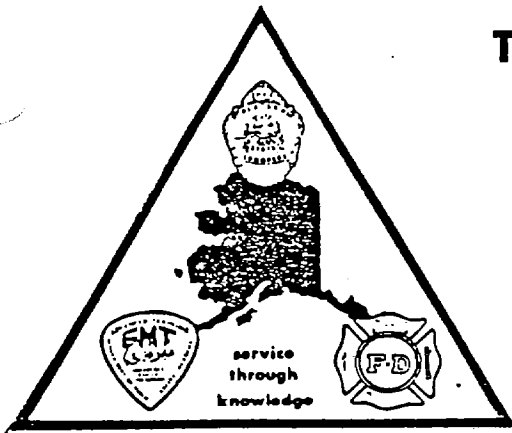


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 72
June 21, 1983

PARTICIPANT MONITORING



Reference: Marcelo QUINTO, Jr.
v.
City & Borough of Juneau

Alaska Court of Appeals
Opinion No. 265
664 P.2d 630
June 17, 1983

REV 684 P.2d 127

FACTS:

A police officer observed a vehicle being driven in an erratic manner. He called in the description of the vehicle and its license number. Another police officer saw the vehicle stopped on the parking ramp of a motel. The officer saw that the vehicle was occupied by a man later identified as QUINTO. When the uniformed officer got out of his patrol car, he activated a small tape recorder which was attached to his belt. When he got to the vehicle, he noticed that QUINTO had bloodshot eyes and smelled of alcohol. After performing poorly on the field-sobriety tests, QUINTO was arrested.

The recording of the pre-arrest communications, taken without the knowledge or consent of QUINTO, was used at his trial against him. QUINTO appealed his conviction on several issues, including the surreptitious pre-arrest recording.

ISSUE:

Can the pre-arrest recording of QUINTO's conversation, taken without his knowledge by a uniformed officer, be used at his trial?

HELD: No.

REASONING:

1. Article I, Section 22, of the Alaska Constitution prohibits the surreptitious electronic monitoring of conversations upon the consent of only one participant. (emphasis added)

2. Warrantless monitoring of conversations has a definite chilling effect upon freedom of expression when only one of the participants has consented.

NOTES:

The State did not argue that this case involved an "exigent circumstance" which would justify warrantless seizure of the conversation. The main argument advanced by the State was that QUINTO had no "expectation of privacy"

that his conversation would not be captured for later broadcast because the officer was in uniform.

You should review Glass v. State (Legal Bulletin No. 16) where the Alaska Supreme Court addressed participant monitoring. One of the reasons for suppressing the recording in that case was "no-one talks to a recorder as he talks to another person".

If you have a situation where time does not permit getting a "Glass warrant", such as was the situation in this OMVI arrest, why not merely tell the defendant you are recording the conversation? By warning the defendant that you are recording his conversation, you may be satisfying the "knowledge requirement". You must establish that you either (1) had the consent of the defendant, or (2) the recording was made with his knowledge.