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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 216  
May 9, 1997

## LIMITED WAIVER OF FOURTH AMENDMENT

Reference: Gregory W. Marino  
v.  
State of Alaska

Alaska Court of Appeals  
Opinion No. 1519  
P.2d  
March 21, 1997

### FACTS:

During the investigation of a murder, suspect Marino voluntarily gave blood and urine specimens to police after he was assured the specimens would be used only in the murder investigation and not to prove he had committed any drug offenses. Despite this assurance, the State used test results from these specimens to prove that Marino had possessed cocaine, both for delivery and his personal use.

Marino was convicted of first-degree murder and attempted first-degree murder, as well as of third- and fourth-degree misconduct involving a controlled substance. He was sentenced to 198 years.

He appealed his convictions on various issues. This Legal Bulletin will only address the issue involving his drug convictions.

### ISSUE:

Did the police trick Marino into consenting to give the body specimens by assuring him that the specimens would not be used as evidence of drug offenses?

HELD: Yes.

### REASONING:

1. During the interview, a police detective told Marino, "Believe me, ...neither this lieutenant nor I give a fuck whether you are high or not at the moment, you know what I mean? That's not why we're here, okay? We're here for serious stuff. ...I want you to understand that we are not interested in any kind of drug offenses here."

2. When the State later used the test results to establish that Marino was guilty of drug offenses, the State exceeded the scope of Marino's consent.

**NOTES:**

In this case, Marino placed a limitation on the consent he gave to the police. That limitation was that the samples they took were to be used only for the murder investigation and nothing else.

In the case of Tagala v. State, Legal Bulletin No. 158, the Court of Appeals ruled that, during the police interview about a murder when Tagala was asked about his drug involvement and said "I think I should talk to a lawyer...", his statement did not negate his Miranda waiver because he had limited his assertion of right to counsel for his drug dealing only.

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