





DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 256
February 25, 2002

COVERT GOVERNMENT VIDEO MONITORING OF AREAS OPEN TO PUBLIC

Reference: Lindalee Cowles

V.

State of Alaska

Alaska Supreme Court Opinion No. 5418

P.2d

June 8, 2001

FACTS:

University of Alaska police suspected that Cowles was stealing cash from the ticket-sales box office. The box office was about 20' x 12' and was occupied by Cowles and a co-worker. Police, without benefit of a warrant, covertly installed a video camera in a ceiling vent above Cowles' desk. The desk was visible to members of the public through the ticket window and through the open office door and to co-workers and visitors to the office.

The camera recorded Cowles stealing money from the University and putting it in her purse. She was subsequently arrested. She argued that the video should be suppressed because police had not obtained a warrant.

ISSUE:

Did the warrantless videotaping violate Article I, Section 14 (unreasonable search) or Article I, Section 22 (right to privacy) under the Alaska Constitution or the Fourth Amendment of the United States Constitution (search and seizure)?

HELD: No.

REASONING:

- 1. The test is: (a) Did Cowles harbor an actual (subjective) expectation of privacy; and, if so, (b) is that expectation one that society is prepared to recognize as reasonable?
- $\underline{2.}$ Cowles' desk could be seen by members of the public and co-workers. Activities that are open to public observation are not generally protected by the Fourth Amendment.
- $\underline{3.}$ Because Cowles' theft could have been seen from a vantage point generally used by the public, Cowles had no reasonable expectation of privacy from surveillance directed at detecting her malfeasance.
- $\underline{4.}$ Video surveillance is commonly conducted in stores and commercial offices where money is exchanged, such as areas in banks where the tellers work.

NOTES:

Cowles appealed this case to the United States Supreme Court. The Court declined to hear the case.

Police may generally record "what they normally may view with a naked eye." However, there are some areas, such as public restrooms, where a person has an expectation of privacy.

NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEFS MANUAL:

Add this case to Section L, "Participant Monitoring," of your Contents and Text. File Legal Bulletin No. 256 numerically under Section R of the manual.