



DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 365

April 2, 2013

**OBSERVATIONS OF ILLEGAL ACTIVITY MADE BY LOOKING
THROUGH A WINDOW WHILE STANDING ON DECK OF PRIVATE
RESIDENCE ACCESSABLE BY PUBLIC ARE LAWFUL**

Reference:

Gene V. Martin, Jr.

Alaska Court of Appeals

Opinion No. A-10592

March 29, 2013

v.

State of Alaska

FACTS:

Trooper Ingram received information that a group of three individuals were at the Wasilla Fred Meyer store and that they appeared to be interested in various items that are commonly used in the manufacture of methamphetamines. Ingram arrived at the store while the individuals were still there. Trooper Ingram followed two of the people as they left the store and saw them join two other people in a pickup truck. Trooper Ingram followed them to a multi-unit residence. Because he drove past the residence, Trooper Ingram was unable to determine which of the five units the suspects entered. Backup officers responded and the apartment complex was put under surveillance hoping one of the suspects would depart so they could determine which apartment they were in. After a two hour wait with no activity, Trooper Ingram approached the structure. By this time it was after midnight; he walked onto the deck or walkway adjacent to the building and looked through the window of the first unit he came to. The window had blinds and the blinds were closed. The lights were on in the apartment and through a crack in the closed blinds (an opening created by a broken piece of blind), Ingram spotted various items (HEET, Pyrex glassware solvent, and tubing) used in making methamphetamine.

After making these observations, Ingram obtained a telephonic search warrant. During the execution of the warrant MARTIN and three companions were arrested and charged with manufacturing methamphetamine.

MARTIN argued that all of the evidence should be suppressed because the Trooper's observations violated the State's constitution. The Court of Appeals analyzed this issue using two components: (1) the Trooper's approach to the apartment to the point where he was standing outside the window; and (2) the Trooper's act of looking through the crack in the blinds.

ISSUE:

Did the trooper act lawfully when he approached the residence and peered through the window?

Held. Yes - he was standing on a walkway or deck that was open to the public, and the methamphetamine supplies were in plain view through an opening in the window blinds. His observation did not violate Article I, Section 14 of the Alaska Constitution (emphasis added).

REASONING:

1. Visitors, including unsolicited visitors can be expected to use normal means to approach a residence (see Pistro v. State, bulletin no. 20 - plain view search by public access.
2. Trooper Ingram acted lawfully when he approached the residential unit and walked up to the window (see Michel v. State, bulletin no. 228 - public access upheld even when property was posted "no trespassing."
3. The law allows a law enforcement officer to approach a residence without a warrant and without an invitation if the officer's path of approach is implicitly open to the public.
4. Because Trooper Ingram was standing in a public vantage point (the deck or hallway directly adjacent to the apartment) when he looked through the window, his observations of the methamphetamine supplies inside the apartment was obtained lawfully.

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File Legal Bulletin No. 365 numerically under Section R of the manual.