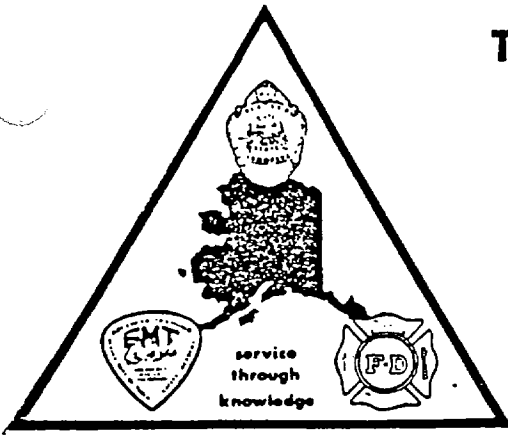


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY



LEGAL BULLETIN NO. 57
June 9, 1982

PARTICIPANT MONITORING SEIZURE OF CONVERSATION BY WARRANT

Reference: Edward A. JONES
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 93
646 P.2d 243
June 4, 1982

FACTS:

JONES was the subject of a narcotics investigation. Police had an informant who was buying drugs from various dealers in the Kenai/Soldotna area. Drug buys made by the informant were electronically monitored and recorded by police after the police had first applied for a warrant to seize the conversation of JONES. In Alaska, this type of warrant is referred to as a "Glass warrant"---see Legal Bulletin No. 16, State v. Glass. The warrant omitted a particular description of the premises (in this case, the residence of JONES) where the drug transaction was to be monitored. It was stated that the conversation between JONES and the informant concerning the sale of cocaine was to take place "in or near the City of Soldotna, Alaska." The warrant also specifically provided that service upon JONES of an inventory, as required by Alaska Criminal Rule 37(b), would be repealed pursuant to Alaska Criminal Rule 53, which authorizes relaxation of criminal rules.

JONES was convicted by the Superior Court; he appealed to the Court of Appeals on several issues.

ISSUE:

Was it necessary to set out with particularity the place where the monitored conversation was to occur?

HELD: No.

ISSUE:

Is JONES entitled to suppression of the recorded conversation which was seized pursuant to the warrant because he was not served with a copy of an inventory of the property seized at the time the warrant was executed?

HELD: No.

REASONING:

1. Participant monitoring of the type involved in this case and in Glass requires a warrant for the limited purpose of seizing the conversation of the defendant (emphasis added).
2. The issuance of a Glass warrant presupposes that the informant who is the monitoring participant in the defendant's conversation will already have access, by virtue of the defendant's own consent and entirely independent of the warrant, both to the location where the illegal transaction is to occur and to the defendant's spoken words.
3. Given the fact that warrants for participant monitoring issued pursuant to the requirements of Glass are limited in scope to authorizing the seizure of conversation from a person or persons, and because search warrants do not purport to authorize the entry or search of any premises or even the access by an informant to a person's conversation, it is difficult to see how any substantial increment in the protection of a person's privacy would be accomplished by requiring location of premises to be spelled out with particularity. In the Glass context, the key to accomplishing the goal of preventing generalized or overbroad searches would appear to lie in requiring that the warrant state with reasonable specificity the time and subject matter of the anticipated conversation, as well as the person or persons with whom the conversation will occur. (emphasis added)
4. Under the provisions of Alaska Criminal Rule 53, which allow for relaxation of criminal rules, service of an inventory upon an individual who has been the subject of a warrant for electronic surveillance issued pursuant to State v. Glass may be postponed for a reasonable period of time. (emphasis added)

NOTES:

For determining what constitutes a "reasonable period of time" as in #4, above, the court suggested that judges and magistrates look to 18 U.S.C.A. 2518(8) (d) which governs nonconsensual electronic eavesdropping and allows a reasonable period of delay, not to exceed 90 days, to be granted. This initial 90-day period is subject to extension upon an ex parte showing of good cause.

Review of Legal Bulletin No. 16, State v. Glass, is suggested.