



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 167
February 24, 1992

SEIZURE OF CONVERSATION BY EXIGENT CIRCUMSTANCES

Reference: Alex Fox
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1206
P.2d
February 21, 1992

FACTS:

Police, working undercover, obtained a Glass warrant (reference Legal Bulletin No. 16) to seize the conversation of John Fox from whom they had recently purchased cocaine. When the undercover officer arrived at the residence of John Fox, he had his tape recorder turned on. John's brother, Alex Fox, whom the officer had never met before, answered the door. He told the officer that John was not at home and asked what he wanted. The officer stated that he came to buy cocaine. Alex said he would take care of him and proceeded to sell the officer a gram of cocaine.

Police arranged another buy with Alex and a second Glass warrant authorized the recording of that transaction.

Alex Fox moved to suppress the evidence, arguing that the initial warrant was invalid because it did not authorize police to record a conversation with him, but, instead, only allowed the recording of a transaction involving John Fox. He further argued that the second warrant was the fruit of the initial invalid warrant.

ISSUE:

Should the tape recording surrounding the two transactions be suppressed?

HELD: No.

REASONING:

1. Even though the initial warrant did not permit police to record the transaction with Alex Fox, recording the transaction was justified by exigent circumstances given the unanticipated absence of John Fox and the unexpected intervention of Alex Fox. (emphasis added)

NOTES:

In this case, the officer would still have been permitted to testify as to what transpired; however, the tape-recorded statements

of a defendant have more impact for the jury. Review of Section L of your Alaska Legal Briefs Manual, especially Glass v. State in Legal Bulletin No. 16, is recommended.

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. 167 numerically under Section R of the manual.