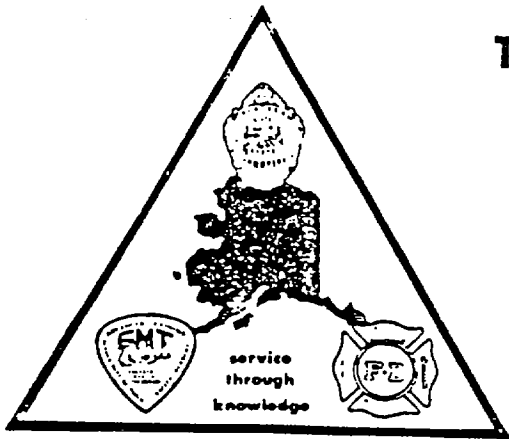


DEPARTMENT OF PUBLIC SAFETY

TRAINING ACADEMY

LEGAL BULLETIN NO. 83 (72)
July 7, 1984



PARTICIPANT MONITORING

Reference: City of Juneau
v.
Marcelo QUINTO, Jr.

Alaska Supreme Court
Opinion No. 2841
684 P.2d 127
June 29, 1984

FACTS:

During the course of apprehension and arrest for drunk driving, a police officer tape recorded the entire conversation with defendant QUINTO. QUINTO was not aware that his conversation was being recorded. At his trial, the tape recording was used against him. QUINTO was convicted and appealed. His conviction was reversed by the Court of Appeals (see Legal Bulletin No. 72).

The city of Juneau appealed to the state Supreme Court.

ISSUE:

Was the tape recording of QUINTO's conversation with the police officer properly admitted into evidence at his trial, when he knew or reasonably should have known that he was speaking to a police officer, but was not aware that the officer was recording their conversation?

HELD: Yes.

REASONING:

1. The recording was made during the course of apprehension and arrest of a suspected drunk driver. (emphasis added)
2. QUINTO knew, or reasonably should have known, that he was speaking to a police officer. The officer was in full uniform wearing the patrolman hat, sidearm, nightstick, police radio and badge.
3. It should have been clear to QUINTO that the officer was performing his official duties throughout the period covered by the recording.
4. QUINTO's expectation of privacy (his assumed expectation that his conversation would not be recorded) is not an expectation which society is willing to accept as reasonable.

NOTES:

If you are saving this series of Legal Bulletins, you should mark "REVERSED across Legal Bulletin No. 72, QUINTO v. City of Juneau, and make reference to this Legal Bulletin No. 83. It is recommended that you read No. 72 through and compare it with this reversal No. 83. You should also review O'Neill v. State, Legal Bulletin No. 79, where our Court of Appeals recently upheld the surreptitious recording of a defendant without his knowledge or consent as an "incident to arrest."

Remember--the key element here is the defendant was aware he was in the presence of the police. You must be able to establish that the person knew he was talking to a police officer.

This case is completely different from Glass v. State, Legal Bulletin No. 16 where the court held that a recording made surreptitiously (without a warrant or other court order) by an undercover police informant, was in violation of the defendant's right to privacy. In other words, the defendant (Glass) did not know he was talking to a police officer, so his expectation of privacy is one that society is willing to accept as reasonable.