

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 FRANCIS SCHAEFFER COX,)
)
 Defendant.) Case No. 4FA-11- 796 CR
_____)

ORDER

Francis Schaeffer Cox moves to suppress various recordings made by governmental police officers that Cox maintains are inadmissible under *State v. Glass*, 583 P.2d 872 (Alaska 1978). In *Glass*, the Alaska Supreme Court held, over a generation ago, that an electronic recording of a person's conversations seized by the government violates the Alaska Constitution unless the recording was made pursuant to a warrant or with the person's permission. As the supreme court explained in *Beltz v. State*, 221 P.3d 328 (Alaska 2009), the right of privacy in article I, section 22 of the Alaska Constitution is intertwined with the search and seizure clause in article I, section 14, and section 22 was the basis the supreme court invoked to bar the State from surreptitiously recording certain conversations. *Beltz*, 221 P.3d at 335 (citing *Glass*, 583 P.2d at 878-81).

In this case, there is no dispute that the federal government recorded hours of conversation with Cox within Alaska without the defendant's permission and without a warrant from a court.

The question presented is whether the recordings of conversations within the State of Alaska that were seized by the federal government without a warrant are admissible in this case.

The State argues that the court should not exclude the recordings created by the federal authorities within Alaska. The State relies on *Pooley v. State*, 705 P.2d 1293 (Alaska App. 1985). In *Pooley*, the court of appeals upheld the trial court's decision allowing evidence seized pursuant to a search conducted in California that was apparently lawful under California and federal law. The court of appeals rejected Pooley's request for an extraterritorial application of the Alaska Constitution. *Pooley*, 705 P.2d at 1303. The supreme court cited *Pooley* in *D'Antonio v. State*, 926 P.2d 1158 (Alaska 1996), when it ruled that the legality of an extraterritorial search had to be determined by application of the law of the jurisdiction in which it was performed, absent an "ongoing or concerted effort" between Alaska and the other jurisdiction. *D'Antonio*, 926 P.2d at 1161.

I conclude that it is unnecessary to consider whether the involvement of Alaska state peace officers with the federal authorities, particularly in the later stages of the investigation in this case, established an "ongoing of concerted effort" by state law enforcement. The conversations in question were recorded within the boundaries of the State of Alaska. Although the recordings may be permissible under federal law and admissible in federal court, because the recordings were obtained without a warrant, *State v. Glass* does not allow the recordings to be admitted at trial in state court. Accordingly, any electronic recording of a conversation in which Cox participated, whether the recording is audio or video,¹ is inadmissible at trial.

DATED this 17th day of October, 2011.



DAVID C. STEWART
Superior Court Judge, Pro Tempore

¹ See *State v. Page*, 911 P.2d 513 (Alaska App. 1996), petition for hearing dismissed as improvidently granted, 932 P.2d 1297 (Alaska 1997).

I certify that on 10-17-2011 copies were distributed to:
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