

1 IN THE SENATE

BY DANKWORTH

2 SENATE BILL NO. 713

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to violations of individual constitu-
7 tional rights by government; and amending Rule 412 of
8 the Rules of Evidence."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 12.35 is amended by adding a new section to read:

11 Sec. 12.35.130. LIMITATION OF EXCLUSIONARY RULE. (a) Illegally
12 obtained evidence may not be excluded from a criminal proceeding unless
13 the court finds, as a matter of law, that the violation was substantial.

14 (b) In determining whether a violation is substantial for the
15 purposes of (a) of this section, the court shall consider all of the
16 circumstances including

17 (1) the extent to which exclusion will tend to prevent future
18 deviations from lawful conduct;

19 (2) the extent to which privacy was invaded;

20 (3) the extent of deviation from lawful conduct; and

21 (4) whether the peace officer acted in good faith and in the
22 reasonable belief that his actions were legally authorized.

23 * Sec. 2. AS 09.50.250 is amended by adding a new subsection to read:

24 (b) Nothing in (a) of this section prevents an individual from
25 bringing an action based on a violation of art. I, sec. 14, or art. I,
26 sec. 22 of the Constitution of the State of Alaska.

27 * Sec. 3. Rule 412 of the Rules of Evidence is amended to read:

28 RULE 412. EVIDENCE ILLEGALLY OBTAINED. Except for evidence
29 admitted under the provisions of AS 12.35.130, [EVIDENCE] illegally

1 obtained evidence shall not be used over proper objection by the defen-
2 dant in a criminal prosecution for any purpose except:

3 (1) a statement illegally obtained in violation of the right
4 to warnings under Miranda v. Arizona, 384 U.S. 436 (1966), may be used
5 in a prosecution for perjury if the statement is relevant to the issue
6 of guilt or innocence and if the prosecution shows that the statement
7 was otherwise voluntary and not coerced; and

8 (2) other evidence illegally obtained may be admitted in a
9 prosecution for perjury if it is relevant to issue of guilt or innocence
10 and if the prosecution shows that the evidence was not obtained in
11 substantial violation of rights.
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