

Introduced: 4/20/83
Referred: Judiciary

1 IN THE SENATE

BY RODEY

2

SENATE BILL NO. 271

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the exclusionary rule; and chang-
7 ing Rule 412, Alaska Rules of Evidence."

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

9 * Section 1. AS 12.45 is amended by adding a new section to read:

10 Sec. 12.45.015. LIMITATION ON APPLICATION OF THE EXCLUSIONARY
11 RULE. (a) Illegally obtained evidence may not be excluded in a
12 criminal prosecution if the prosecution establishes by a preponderance
13 of the evidence that the evidence was obtained

14 (1) under and within the scope of a search warrant issued
15 by a judge or magistrate who acted with the reasonable, good faith
16 belief that probable cause for the warrant existed and the peace
17 officer who executed the warrant acted with the reasonable, good faith
18 belief that the warrant was valid;

19 (2) during a lawful search incident to an arrest under an
20 arrest warrant, and the judge or magistrate who issued the warrant
21 acted with the reasonable, good faith belief that probable cause for
22 the warrant existed and the peace officer who executed the warrant
23 acted with the reasonable, good faith belief that the warrant was
24 valid; or

25 (3) during a lawful search incident to an arrest for a
26 crime that is subsequently declared unconstitutional or invalid.

27 (b) For purposes of this section, a peace officer shall not be
28 considered to have acted with a "reasonable, good faith belief" unless
29 the peace officer has successfully completed training in constitu-

1 tional law and criminal procedure as required by the Alaska
2 Police Standards Council under AS 18.65.230.

3 * Sec. 2. Rule 412 of the Alaska Rules of Evidence is amended to read:

4 RULE 412. EVIDENCE ILLEGALLY OBTAINED. Except for evidence
5 admitted under the provisions of AS 12.45.015, [EVIDENCE] illegally
6 obtained evidence shall not be used over proper objection by the
7 defendant in a criminal prosecution for any purpose except:

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

13 (2) other evidence illegally obtained may be admitted in a
14 prosecution for perjury if it is relevant to issue of guilt or inno-
15 cence and if the prosecution shows that the evidence was not obtained
16 in substantial violation of rights.