

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

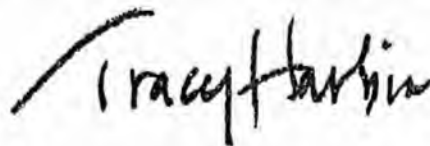
10839 HOUSE JUDICIARY

they can provide, or questions they can clear up for you.

As a victim, the prosecutor represents the state or the municipality not you the victim. We need some one on our side and the Office of Victim's Rights is a necessary part of the legal system, and need to be part of the process from the beginning when the victim feels most vulnerable, at a loss and violated. Please continue to work in the direction of victim's rights starting with passing this bill as soon as possible. Help protect the people of Alaska and take a giant step forward in victim's rights, which seems to get lost within our legal system.

I know I have not gone in to the details of how I became a victim or the crime, but if you wish any further information please feel free to contact me. What I will tell you that it has been a just over a year since it occurred and still effects me everyday of life, I continue to get the medical help I need and hope that someday soon this will not be part of my daily life.

Thank you for you consideration,



Tracy Harbin
8920 B Honeysuckle St.
Anchorage, AK 99502
(907)243-0529

Attention: Vanessa Tordini

From: Gerard Grodrey phone: 835-2329

Regarding: HB 348

3 pages total including cover sheet

Dear Representatives:

I am writing this letter of support for House Bill 348 as an Alaskan citizen whose family utilized the services of The Office of Victims' Rights' (OVR). My family suffered a horrendous crime which was compounded by emergency services failure to deliver aid as they were expected to. The OVR was there to aid my family in a manner that no other government or nonprofit organization could. Incidentally, I sit on the state's Violent Crime Compensation Board (VCCB) and I have observed numerous occasions where other crime victims in Alaska have had the need for the OVR when there is no other office that can serve their needs. Since sitting on the VCCB I have witnessed the aftermath of violent crimes and the toll it takes physically, emotionally, psychologically and financially on the victims of it. There are a certain percentage of crime victims in Alaska in which the OVR is uniquely structured to assist, provided that these victims are aware of the OVR's existence and function.

Typically, when people are victims of crime they are reluctantly introduced into the criminal justice system. The criminal justice system is an adversarial process that pits one side against another. The victim of a crime is automatically expected to operate as an aid to the state in this adversarial scenario. In the process of aiding the state the victim's rights are often forgotten and even sometimes disregarded by the zealous pursuit of justice. Conversely, a crime victim may find that there is a presence of apathy or indifference towards his or her plight by the justice professionals, which in turn leads to a mediocre pursuit of justice or a lackluster attempt at a conviction of the perpetrator(s). Although these are opposite outcomes within the criminal justice system by victims of crime, both of these instances are what The Office of Victims' Rights was created for.

The OVR clearly serves an essential function for victims of crime in this state. I know this personally as my mother (an attempted homicide victim) feels deeply indebted to the creators of the office as well as the office staff. She has stated on many occasions that, "they (the OVR) are a Godsend" and they have been "invaluable" to her in the endeavor thrust upon her in an attempt to right flaws in the emergency response system in Anchorage, which became apparent at her expense. Although my family would have likely learned of the OVR no matter how little publicity the office garnered, most other victims cannot say the same.

Because of the nature of what the OVR does there may be apprehension by some in the law enforcement community to inform victims of the OVR's existence or its function. This may be predictable when one considers that the OVR can and does at times serve as an oversight entity, regarding victims rights, of those very same law enforcement agencies expected to notify victims about the OVR. In essence, when law enforcement and judicial officials encounter victims and notify them about the OVR, they are empowering those victims with guidance towards a resource that can ensure that those same law enforcement and judicial officials, are honoring their rights.

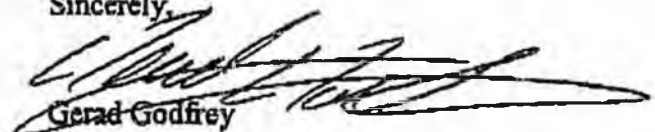
On multiple occasions since I have served on the VCCB we have inquired whether certain claimants were aware of the existence of the OVR. On those occasions it appeared to the board that the OVR may have been able to assist them with certain needs that were unable to. Crime victims are often informed about The Violent Crimes Compensation Board because we are a benign entity regarding a checks and balances function with law enforcement/judicial entities. Unfortunately, the OVR may be

publicized less because it serves a function that is not as innocuous toward the law enforcement/judicial entities. This, of course, is by design and was the OVR creators' intent. If publicizing the OVR came as easy for justice professionals as it does for publicizing the VCCB it would likely mean the OVR is not serving its function or that victims' rights are never being overlooked. I contend that neither statements are true and that, in fact, the OVR is serving its function so well that it is necessary to legislate the "informing of the OVR's existence" to victims. Simply stated, the function of the OVR requires that, occasionally, they will be forced to intercede with justice professionals on the behalf of crime victims and it will likely not sit well with those justice professionals at times. Thus, it can be anticipated that there is a lack of enthusiasm on the part of justice professionals to advise some victims about the OVR. This is why I believe HB 348 is necessary. The only way to consistently ensure that victims of crime are informed of the resources that the state has placed there for them is to statutorily compel the justice professionals to disclose this information.

Being an unintended participant in the justice system can be difficult enough when one is aware of his or her rights, please consider how much more difficult it can be without knowing your rights. The 22nd legislature created the Office of Victims Rights. Undoubtedly, they wanted victims of crime to know it existed, who better to tell them about it than their first contacts with the justice system, that being the law enforcement official followed by the prosecutor's office.

Please support HB 348 for the sake of crime victims in the state of Alaska.

Sincerely,



Gerard Godfrey

2/2/04

February 9, 2004

RE: House Bill 348 Notice Re Office of Victims Rights

In the above bill the additions that you are studying to add to the bill are long needed and have my support and I would urge you to back these additions.

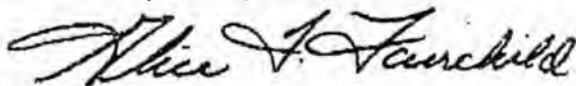
I was one of the original people who helped get this bill passed and went door to door for signatures and helped Jacice Leinhart and Sharon Nahorney get Victims for Justice started. I have worked here on the Kenai Peninsula as a Homicide Advocate for 18 years and always as a volunteer.

I would also like to see that more attention be paid by the Department of Law that the victims are notified promptly and at each time the defendant appears in court. I worked for the District Attorney's office in Kenai for 2 years when they were first told they had the job of letting victims know about upcoming hearings. After working with the DA I saw some things that I did not want to be part of an I told him about them and quit the job and the 50 mile round trip to volunteer.

At present due to the wonderful Cold Case Unit the murderer of my Mother in Law, Mrs. Opal Fairchild is behind bars awaiting a trial 19 years after the murder. However, I had to finally call the Attorney General's office as I was not being let know when the court dates were. As I had only worked in the DA office as a homicide advocate I know until I left that the job was being done. However, when our hearings began I was not given the same treatment I had given to my victims. I must add here that after the phone call I have been getting the dates and times from the DA office in Kenai but I should never have had to make that call.

So I do believe that a lot of work can and should be done with the Department of Law to see that victims are properly notified otherwise there would be no sense in having this bill.

Thank you for your attention,



Alice I. Fairchild
P.O. Box 302
Kasilof, Alaska 99610

262-3738

HB

349

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB349-LAW-CDCO-1-23
 Bill Version: HB 349
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating Rule 412, Alaska Rules of Evidence." RDU Criminal
 Evidence." Component CDCO
 Sponsor Representatives Samuels, McGuire, Stolze, Dahstrom, Wilson
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Rule 412, Alaska Rules of Evidence is amended in this bill to allow illegally obtained evidence to be used if a statement illegally obtained in violation of the Miranda Warning would be used to accuse or charge the person who made the statement if the prosecution shows that the statement was otherwise voluntary and not coerced. The bill also makes admissible illegally obtained evidence in a prosecution to impeach a witness if the prosecution shows that the evidence did not substantially violate the rights of the witness.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director
 Division Administrative Services
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 1/23/04 4:28 PM
 Date 1/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 349(JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act amending Evidence Rule 412 BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representatives Samuels, McGuire..
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Othc (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill, as amended in the CS, could have a fiscal impact on the operations of the Agency, but hopefully not a significant one. If enacted however, there will be additional hearings required to determine admissibility of illegally obtained evidence, and likely constitutional challenges, both of which will affect the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 2/13/04 12:00 AM
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration



**Representative Nancy Dahlstrom
Representative Lesil McGuire**

**Representative Ralph Samuels
Representative Bill Stoltze**

HB 349

Sponsor Statement

“An Act Amending Rule 412, Alaska Rules of Evidence”

HB 349 is a bill that promotes truth telling by criminal defendants who choose to testify at trial.

Every criminal defendant has a constitutional right to testify in his defense. But that right must never be construed to include the right to commit perjury. Alaska's current law prevents courts from using suppressed prior inconsistent statements to challenge the credibility of defendants. This perverts the truth-finding process. It gives those who would lie under oath in a bid to escape justice a license to deceive jurors and judges as happened in a recent murder trial in Anchorage.

Under the supervision of a judge, a new law will permit prosecutors to cross-examine defendants using prior suppressed statements and evidence. Passage of HB 349 will bring Alaska into the mainstream of American and federal jurisprudence where such rules have been the law for years.

(iii) Judgment on a plea of guilty or *nolo contendere* is reversed on direct or collateral review.

(b) This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas when offered in subsequent proceedings as prior inconsistent statements, and (2) proceedings by a defendant to attack or enforce a plea agreement.

(Added by SCO 364 effective August 1, 1979)

Rule 411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Annotations

Cases

When examining a defendant's conduct to determine whether punitive damages are appropriate, it should make no difference that the defendant is insured or uninsured; accordingly, where jury responded "no" to question on special verdict form on whether plaintiff was entitled to punitive damages, exclusion of evidence of liability insurance was, if error, merely harmless error, even though defendant was allowed to present evidence to demonstrate his inability to absorb a punitive damage award. *Shane v. Rhines*, Op. No. 2750, 672 P2d 895 (Alaska 1983).

Where liability was not an issue in victim's suit against driver, evidence of driver's insurance coverage focused on the relevance of insurance to the driver's financial condition, a purpose not excluded by Alaska R. Evid. 411. *Fleegel v. Estate of Boyles*, Op. No. 41, 61 P.3d 1267 (Alaska 2002).

Rule 412. Evidence Illegally Obtained.

Evidence illegally obtained shall not be used over proper objection by the defendant in a criminal prosecution for any purpose except:

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

(2) other evidence illegally obtained may be admitted in a prosecution for perjury if it is relevant to issue of guilt or innocence and if the prosecution

shows that the evidence was not obtained in substantial violation of rights.

(Added by SCO 364 effective August 1, 1979)

Annotations

Cases

Where the arrest is lawful, fact that arresting officer uses excessive force does not make the evidence obtained as a result of the arrest the product of illegality. *Martin v. State*, Op. No. 2298, 623 P2d 1225 (Alaska 1981).

Illegally seized evidence may be considered in fashioning a sentence when the illegally seized evidence is reliable, when the police conduct involved in obtaining the evidence does not shock the conscience of the court, and when it is clear that the evidence was not obtained for purposes of influencing the sentencing judge. *Elson v. State*, Op. No. 40, 633 P2d 292 (Alaska App. 1982).

The traditional requirement of standing has not been abrogated in search and seizure cases by adoption of this rule. *G.R. v. State*, Op. No. 61, 638 P2d 191 (Alaska App. 1982).

Defendant did not have standing to argue that his confession should be suppressed on the ground that it was the product of an illegal arrest and detention of his companion. *G.R. v. State*, Op. No. 61, 638 P2d 191 (Alaska App. 1981).

Defendant had no standing to object to police officers' contact with his building manager and no right to seek suppression of the evidence derived from her even if the contact was the result of a trespassory entrance into the apartment building. *Hubert v. State*, Op. No. 62, 638 P2d 677 (Alaska App. 1981).

Defendant had standing to contest the illegal arrest of codefendant which led to defendant's confession. *Unger v. State*, Op. No. 65, 640 P2d 151 (Alaska App. 1982).

This rule, which permits evidence illegally obtained to be used under certain circumstances in perjury prosecutions, applies to such evidence regardless of the basis for determining that it was illegally obtained. *Wortham v. State*, Op. No. 69, 641 P2d 223 (Alaska Op. No. 1982).

Suppression of illegally obtained evidence in defendant's cocaine prosecution was not *res judicata* nor did it collaterally estop the state from using the evidence in defendant's subsequent perjury prosecution where there was no suggestion that this rule was considered at the first suppression hearing. *Wortham v. State*, Op. No. 69, 641 P2d 223 (Alaska App. 1982).

Illegally obtained tape recording of conversation between defendant and undercover police agent which was properly suppressed at defendant's drug trial was admissible at defendant's subsequent perjury trial where the recording was made in good faith and was not an intentional violation of the law. *Wortham v. State*, Op. No. 214, 657 P2d 856 (Alaska App. 1983).

Although this rule is not necessarily limited to violations of constitutional rights, it does not automatically apply to violations of all statutes. *Harker v. State*, Op. No. 2665, 663 P2d 932 (Alaska 1983).

Illegally obtained tape recording of conversation between defendant and undercover police agent was admissible at defendant's perjury trial. *Wortham v. State*, Op. No. 2697, 666 P2d 1042 (Alaska 1983).

This rule contains a standing requirement for search and seizure violations, but under the Alaska Constitution there are

exceptions to the requirement. *Waring v. State*, Op. No. 2719, 670 P2d 357 (Alaska 1982).

A defendant has standing to assert the violation of a co-defendant's fourth amendment rights if he or she can show (1) that a police officer obtained the evidence as a result of gross or shocking misconduct, or (2) that the officer deliberately violated the co-defendant's rights. *Waring v. State*, Op. No. 2719, 670 P2d 357 (Alaska 1983).

Assuming, without deciding, that the warnings received by defendant regarding his testimony at a coroner's inquest were less than adequate to safeguard his right to remain silent, his testimony was nevertheless not involuntary or the product of coercion; therefore, his testimony at the coroner's inquest could be used against him in subsequent trial for perjury. *Esmailka v. State*, Op. No. 721, 740 P2d 466 (Alaska App. 1987).

Exclusionary rule did not apply to error by trial court in using telephonic testimony in support of search warrant without following statutory procedure since violation of statute was not in bad faith and since there was no claim that absent telephonic testimony warrant would have been invalid. *Burrece v. State*, Op. No. 1618, 976 P2d 241 (Alaska App. 1999).

ARTICLE V. PRIVILEGES

Rule 501. Privileges Recognized Only as Provided.

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

(Added by SCO 364 effective August 1, 1979)

Rule 502. Required Reports Privileged by Statute.

A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer of an agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury,

false statements, fraud in the return or report, or of failure to comply with the law in question.

(Added by SCO 364 effective August 1, 1979)

Rule 503. Lawyer-Client Privilege.

(a) Definitions. As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal service

(2) A representative of the client is one having authority to obtain professional legal services and act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client's representative and the client's lawyer or the lawyer's representative or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between a representative of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of communication may claim the privilege but only on behalf of the client. The authority to do so is presumed in the absence of evidence to the contrary.

of insurance coverage is a tenuous one, as is its converse, evidence of insurance coverage or of the absence of such coverage lacks great probative value on the issue of fault. More importantly, perhaps, the rule is designed to prevent a jury from deciding a close case on an improper basis — i.e., whether or not a party is insured. There is a danger that insurance evidence might skew the decision-making process of the jury by making it regret a possibly wrong decision against an uninsured person much more than a similar decision under identical facts against a person whose insurance status is unknown, or by making the jury regret any erroneous decision against an insured party less than it would an erroneous decision against a person whose insurance status is unknown. This is not to suggest that a jury will intentionally make a mistake. It suggests only that in close cases someone must bear the risk of error, that the presence or absence of insurance is not regarded as an appropriate guide for allocating the risk, and that it is possible that a jury will misuse insurance evidence. This rule, identical to the federal rule, is drafted in broad terms so as to include contributory negligence or other fault of a plaintiff as well as fault of a defendant.

The second sentence of this rule describes the limitations on it. Whereas evidence of insurance coverage is inadmissible to prove negligence, there are several well established issues for which evidence of insurance coverage, or the lack of it, has probative value and is therefore admissible. Evidence of insurance of an object often indicates the person who controls or owns the object in question. Or, if A has insured B, there is some reason to draw the inference that A considers himself responsible for B's acts. While it is inconclusive proof of an agency relationship, the existence of such insurance has evidentiary value in helping to establish such a relationship.

Fias or prejudice of a witness or juror is a common concern when a witness or juror is connected with an insurance company. Such information often has been elicited during voir dire when a prospective juror is asked whether or not he has any connection with the insurance business. Although this is often a legitimate question, it may serve to remind the jury that a party may be insured. Similarly, questions as to a witness' affiliation with insurance interests may be legitimate impeachment tools, despite the danger of misuse of the insurance evidence.

But, the fact that evidence of insurance is sometimes admissible does not mean that it must be admitted whenever offered for a proper purpose. The

danger of misuse of the evidence by the jury does not totally disappear when the evidence is introduced for a reason other than to prove fault or absence thereof, even though a limiting instruction will be given upon request under Rule 105. Rule 403 requires the trial judge to balance the probative value of the evidence on one issue against the potential danger that the jury will favor uninsured defendants and disfavor insured defendants.

Trial lawyers are on notice that insurance is admissible for some purposes and not others. Alaska R. Civ. P. 26(b) (2) allows discovery of insurance agreements, and the parties should be able to obtain a judicial decision on whether insurance evidence is to be admitted or otherwise utilized and for what purposes before such evidence is brought to the attention of the jury. *Poulin v. Zartman*, 542 P.2d 251, 265 (Alaska 1975).

If this rule is to have maximum effectiveness, it must be enforced by the trial judge. Inadvertent or deliberate tactical references to insurance should be cured immediately, if possible, with instructions to the jury to disregard the information. The trial judge is vested with wide discretion to grant a new trial where such slips are not easily cured. See *Peters v. Benson*, 425 P.2d 149, 152-153 (Alaska 1967).

Rule 412. Evidence Illegally Obtained.

Although illegally obtained evidence may be highly probative, this rule recognizes that such evidence must generally be excluded in order to breathe life into constitutional guarantees and to remove incentives for governmental intrusion into protected areas. While these rules of evidence generally do not incorporate constitutional doctrine, Rule 412 will go beyond what federal constitutional decisions require in protecting the rights of those accused of crime. Thus, for example, in *Harris v. New York*, 401 U.S. 222, 28 L.Ed.2d 1 (1971), the United States Supreme Court approved the use of statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 695 (1966), for impeachment purposes but not as part of the prosecutor's case-in-chief. *Walder v. United States*, 347 U.S. 62, 98 L.Ed. 503 (1954), sanctioned the introduction of testimony on illegally seized heroin to rebut the defendant's denial of prior drug possession. Rule 412 would forbid such uses as long as proper objection is made by the defendant. This last proviso is a change from Criminal Rule 26 (g).

This ban on the use of both testimonial and physical evidence for impeachment purposes should not amount to a significant incentive for defendants

to commit perjury. The prosecution will still be able to cross-examine the defendant on his claims, if it believes in good faith that the defendant's testimony is false. And, as discussed below, some otherwise inadmissible evidence will still be permitted in perjury prosecutions.

Rule 412 also does not bar the use as impeachment evidence of statements made by a defendant who testifies on a preliminary question of fact as permitted by Rule 104(d). If the preliminary question of fact involves a constitutional question, the argument could be made that a ruling favorable to the defendant renders any statements made during the preliminary hearing "fruit of the poisonous tree" and therefore inadmissible. *Cf. Harrison v. United States*, 392 U.S. 219 (1968) (use of evidence in case-in-chief). *But see People v. Sturgis*, 317 N.E.2d 545 (Ill. 1974), *cert. denied*, 420 U.S. 936, 43 L.Ed.2d 412 (1975). *See also United States v. Kahan*, 415 U.S. 239, 39 L.Ed.2d 297 (1974); *United States v. Mandujano*, 425 U.S. 564, 584, 48 L.Ed.2d 212, 277 (1976) (Brennan, J., concurring in the judgment). Where the defendant is successful in suppressing evidence the underlying constitutional right is protected. It seems an extravagant extension of constitutional protection to permit one version of facts from the defendant's mouth to keep evidence from a tribunal and to permit the defendant to offer another version at trial. If the motion to suppress is unsuccessful, there is even less reason to refrain from using the defendant's statements in support of the motion as impeachment evidence. The decision to take the oath and testify is attenuation enough to remove the taint of the initial illegality. The record of the statements, the advice of counsel, and the oath together remove many of the problems associated with *Harris v. New York*, *supra*.

In perjury prosecutions, the government's interest in convicting guilty defendants and the extreme difficulty of obtaining reliable evidence warrant controlled use of illegally obtained evidence. Hence Rule 412 contains two narrow exceptions to the blanket prohibition on the use of illegally obtained evidence properly objected to.

The first exception governs statements obtained in violation of the right to warnings under *Miranda*, if the statement whose admission is sought is relevant to the issue of guilt or innocence and shown to be otherwise voluntary and not coerced. The latter limitation, meant to guarantee the statement's reliability, is derived from *Harris v. New York*, *supra*, where the U.S. Supreme Court observed, "Petitioner makes no claim that the statements made to the police were coerced or involuntary." 401 U.S. at 224, 28 L.Ed.2d at 4.

The second exception governs evidence obtained in violation of the fourth amendment and/or its Alaska counterpart, article I, section 14. Again a limitation is imposed: the evidence must be relevant to the issue of guilt or innocence, and must not have been obtained "in substantial violation of rights." This limitation is not imposed to ensure reliability of the evidence, but rather recognizes that judicial integrity requires the exclusion of evidence for all purposes if the police misconduct involved in obtaining it was flagrant. The concept of a "substantial violation of rights" is necessarily flexible, and whether or not such a violation occurred will depend on the facts of each case. The simple reference to "rights" is intended to emphasize that this section has no bearing on the law of standing in search and seizure cases.

ARTICLE V. PRIVILEGES

Introductory Comment

Article V provides for eight different privileges and recognizes that other privileges may be created by statute or court rule. Because most of the privileges covered by Article V were recognized before the adoption of these Rules, the Reporter's Comments do not attempt to state the rationales for the various privileges and to justify them. Most of the privileges have been debated elsewhere, and the privileges have survived the debate. The Reporter's Comments accompanying the various rules do explain, however, why particular approaches to defining rules were taken and why others were rejected.

Two rules of privilege which are found in several jurisdictions are omitted from these rules. One is the privilege for official information; the other is the privilege previously provided by Rule 43 (h) (7), Alaska R. Civ. P., covering evidence tending to degrade the character of a witness. This Comment explains the omissions.

The Wigmore treatise, 8 Wigmore on Evidence § 2378, at 807-08, (J. McNaughton rev. 1961), states that the best collection of arguments in favor of an official information privilege is as follows (quoting Gellhorn & Byse, *Administrative Law Cases and Comments* 617-18 (4th ed. 1960):

[The discussion relates to the SEC and summarizes that agency's brief in a federal case]. The documents and testimony relating to intra-agency discussions, communications, memoranda, reports, recommendations, positions taken at staff and Commission level with respect to the

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Gerry Luckhaupt, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 16, 2004
Re: CS Request

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1322N, HB 349, incorporating the following changes:

Page 2, Line 1 and Page 2, line 13:

After "or" Insert "a" (so it reads "or a former defendant" in both places).

Page 2, Lines 3-4:

- 1) Insert commas before and after the clause "if required by law" to set it apart.
- 2) Delete "was governed by" and Insert " has been determined to be"
(if that language sounds awkward to you, then just please come up with something other than "was governed by"...Rep. Gara did not like that language).

The bill was passed out of committee last week, but we had some continuing discussion regarding the amendments.

If you have any questions, please call me at 4990. Thank you for all your work on this bill!

23-LS1322M
Luckhaupt
2/11/04

CS FOR HOUSE BILL NO. 349(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SAMUELS, MCGUIRE, STOLTZE AND DAHLSTROM, Wilson

A BILL

FOR AN ACT ENTITLED

1 **"An Act amending Rule 412, Alaska Rules of Evidence."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 **DIRECT COURT RULE AMENDMENT.** Rule 412, Alaska Rules of
6 Evidence, is amended to read:

7 **Rule 412. Evidence Illegally Obtained.** Evidence illegally obtained shall not
8 be used over proper objection by the defendant in a criminal prosecution for any
9 purpose except:

10 (1) a statement illegally obtained in violation of the right to warnings
11 under *Miranda v. Arizona*, 384 U.S. 436 (1966), may be used in

12 (A) a prosecution for perjury if the statement is relevant to the
13 issue of guilt or innocence and if the prosecution shows that the statement was
14 otherwise voluntary and not coerced; or

15 (B) any prosecution, to impeach the defendant,

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codefendant, or ^aformer defendant who made the statement if the prosecution shows that the statement was

(i) otherwise voluntary and not coerced; and

(ii) recorded if required by law or was governed by one of the recognized exceptions to the recording requirement; and

(2) other evidence illegally obtained may be admitted in

(A) a prosecution for perjury if it is relevant to the issue of guilt or innocence and if the prosecution shows that the evidence was not obtained in substantial violation of rights of the defendant; or

(B) any criminal action, to impeach the defendant, codefendant, or former defendant if the prosecution shows that the evidence was not obtained in substantial violation of rights of the defendant, codefendant, or ^aformer defendant, as appropriate.

ALASKA STATE LEGISLATURE

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Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 10, 2004
Re: CS Request

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1322\H, HB 349, incorporating the attached three amendments.

Regarding conceptual amendment #3, in addition to requirement that the statement be otherwise voluntary and not coerced, the committee wanted to add the requirement that the statement must also have been "recorded if required by law." (Rep. Gara wanted to be sure police could not abuse this law by saying they "lost" the tape.) The committee also wanted to be clear, however, that this would not exclude statements that were not recorded due to any currently recognized exception to the recording requirement (tape recorder malfunction, etc.). Please feel free to state this in any manner you see fit to make it clear this was the intent of the committee.

The bill was passed out of committee yesterday. If you have any questions, please call me at 4990. Thank you so much as always!

The information attached to this memo is **CONFIDENTIAL** and/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS1322M!
Luckhaupt
2/6/04

CS FOR HOUSE BILL NO. 349(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES SAMUELS, MCGUIRE, STOLTZE, AND DAHLSTROM, Wilson

A BILL

FOR AN ACT ENTITLED

1 "An Act amending Rule 412, Alaska Rules of Evidence."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 DIRECT COURT RULE AMENDMENT. Rule 412, Alaska Rules of
6 Evidence, is amended to read:

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8 be used over proper objection by the defendant in a criminal prosecution for any
9 purpose except:

10 (1) a statement illegally obtained in violation of the right to warnings
11 under Miranda v. Arizona, 384 U.S. 436 (1966), may be used in

12 (A) a prosecution for perjury if the statement is relevant to the
13 issue of guilt or innocence and if the prosecution shows that the statement was
14 otherwise voluntary and not coerced; or

15 (B) any prosecution, to impeach the *defendant co-defendant or former defendant*

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statement if the prosecution shows that the statement was otherwise
voluntary and not coerced; and

*recorded if required
by law, ...*

(2) other evidence illegally obtained may be admitted in

(A) a prosecution for perjury if it is relevant to the issue of
guilt or innocence and if the prosecution shows that the evidence was not
obtained in substantial violation of rights of the defendant; or

(B) any civil or criminal action, to impeach a witness if the
prosecution shows that the evidence was not obtained in substantial
violation of rights of the witness.

*the defendant, co-defendant
or former
defendant*

defendant, co-defendant or former defendant

CS HB 349/H Amendment #1 - PASSED
Offered by Rep Samuels

Page 2, line 7-9

(B) any criminal action, to impeach the defendant if the prosecution shows that the evidence was not obtained in substantial violation of rights of the defendant.

CSHB 349

Amendment #2 - PASSED

by Rep. Gruenberg

P. 1, Line 15

Delete "person"

Insert "defendant, co-defendant, or former defendant"

P. 2, Line 7

Delete "witness" (A#1 actually changed "witness" to "defendant")

Insert "^{the}defendant, co-defendant, or former defendant"

P. 2, Line 9

Delete "witness" (A#1 actually changed "witness" to defendant)

Insert "^{the}defendant, co-defendant, or former defendant"

CHB 349 by Rep. GARA
Conceptual Amendment 3 - PASSED

Insert @ p. 2 line 2 after "voluntary",

" , recorded if required by law,*
and not governed by one of the*
existing/recognized exceptions to
the recording requirement,"

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
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House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 5, 2004
Re: CS Request

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1322AD, HB 349, incorporating the following amendment:

Technical A.#1" Page 2, line 4: After "to" Insert "the"
(the committee is aware that the court rules do not have the word "the" there, but feels that this is grammatically incorrect and wishes to insert it in the bill)

The following were not adopted as amendments, but we would like the following changes incorporated into the CS as well:

1) Page 1, line 15: After "prosecution" Insert a comma so that (1)(B) reads as follows:

(B) any prosecution, to impeach the person who made the statement if the prosecution shows that the statement was otherwise voluntary and not coerced.

2) Page 2, line 7: After "any" Delete "prosecution" and Insert "civil or criminal action," (including a comma) so that (2)(B) reads as follows:

(B) any civil or criminal action, to impeach a witness if the prosecution shows that the evidence was not obtained in substantial violation of rights of the witness.

The bill will be reheard on Monday, February 9th at 1:00 p.m. If you have any questions, please call me at 4990. Thank you!

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



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House Judiciary Committee

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IN THE DISTRICT COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
ISALAH L WALLNER,)
)
DOB: 12/29/76)
)
APSIN ID: 6714211)
)
DMV NO. 6714211)
)
SSN: 574-84-4768)
)
ATN: 107-284-518)
)
Defendant.)

Court No. 3AN-S02-4342 Cr.
Search Warrant Nos: 3AN-02-229, 230, 231 SW

INFORMATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: ALL COUNTS

Count I - AS 11.41.100(a)(1)(A)
Murder In The First Degree
Isaiah L Wallner - 001

Count II - AS 11.41.110(a)(1)
Murder In The Second Degree
Isaiah L Wallner - 002

Count III - AS 11.56.610(a)(1)
Tampering With Physical Evidence
Isaiah L Wallner - 003

THE DISTRICT ATTORNEY CHARGES:

Information
St. v. Isaiah L. Wallner
Page 1 of 5

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-8300

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Count I

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER intentionally caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.100(a)(1)(A) and against the peace and dignity of the State of Alaska.

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Count II

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER with intent to cause serious physical injury to Brenda L. Wallner or knowing that the conduct was substantially certain to cause death or serious physical injury to another person, caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.110(a)(1) and against the peace and dignity of the State of Alaska.

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Count III

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER destroyed, mutilated, altered, suppressed, concealed, or removed physical evidence with intent to impair its verity or availability in an official proceeding or a criminal investigation.

All of which is a class C felony offense being contrary to and in violation of AS 11.56.610(a)(1) and against the peace and dignity of the State of Alaska.

The undersigned swears under oath this Information is based upon a review of police report 02-24984 submitted to date.

On May 22, 2002, at approximately 6:52 a.m. the Anchorage Police Department received a 911 call from Patricia Barazi stating that there was a female in the parking lot, unable to breathe, who had apparently been stabbed in the chest. A second call came from the upstairs neighbors who reported a female screaming for help in apartment number nine. Anchorage Police Officers arrived at the scene, in the

Information
St. v. Isalah L. Wallner
Page 2 of 5

1 parking lot at 1338 Ingra. Officers Foraker and Robinson made contact with the female,
2 trying to hold her still, waiting for the paramedics. She was later identified as Brenda
3 Wallner. When asked who did this to her, she replied "my husband", and when asked
4 why, she said she did not know. The victim was transported to ARH and was declared
5 dead at approximately 7:30 a.m. She had at least one stab wound in her chest, one on
6 her arm, and three stab wounds in the back.

7 Sgt. Spadafora and Officer Jensen knocked at the door of the victim and
8 suspect's apartment, 1335 Hyder #9. A person later identified as the defendant, Isaiah
9 Wallner, the victim's husband, opened the door, and the police entered. The defendant
10 was seated on the floor in the corner of the kitchen, with a knife to his throat. After
11 refusing repeated demands to drop the knife, he was shot with a less lethal weapon four
12 times. He was taken into custody and transported to Providence Medical Center for
13 treatment of his injuries. He had bruising and tearing on both legs, and one arm.

14 After treatment for his injuries, he was transported to the Anchorage
15 Police Department for an interview. He stated that he had been working the night shift,
16 getting off work at 1:30 a.m. He walked home. The victim and two children were
17 asleep on mattresses in a bedroom upstairs. One child, T.W., 20 months, is the child of
18 the defendant and the victim. The other child, T.G., eight years old, is the child of the
19 victim. His father lives out of state. The defendant stated that he sat on the corner of
20 the mattress watching the victim sleep from approximately 1:45 until 5:00. He stated
21 that he was "contemplating killing her". At one point he went down to the kitchen and
22 got a paring knife, returning to the bedroom. The victim woke up and went to the
23 kitchen. The victim and the defendant got into a verbal argument. Part of the argument
24 included the fact that she was going to get a divorce, and take his child out of state. The
25 defendant stated that she was always "poking" at him, calling him names, arguing about
26 minor things. At one point the victim asked the defendant what he had been doing
earlier that morning and he told her that he had been contemplating killing her. She told
him that she was going out to call the police. He went upstairs to get the knife where he
had left it, and then returned to the kitchen. The victim pushed him away to get to the

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door, after he pulled the knife on her. He said that he did not want her to call the police. They began to struggle, and he admitted stabbing her in the back. He said he was looking for a good "vantage point" when he stabbed her in the back. When asked how far the knife went in, he stated "all the way". She fell to the floor on her back, and he stabbed her in the chest. According to the defendant, the victim then said to him "I'm going to die". The defendant let go of the knife. The victim was able to get out of the apartment. The defendant stated he began pacing around the kitchen. He said that there was a lot of blood. He began cleaning up the blood with a mop, and then heard the sirens. When he heard a knock on the door, he looked out and saw the police. He unlocked the door and left it ajar. He sat down with another knife, holding it to his throat. He admitted he wanted to kill himself. He said he would not drop the knife because he did not want to go to jail. He said that neither he nor the victim had been drinking or using drugs. When he was told that his wife had died, he responded "I wish there was the death penalty, I deserve it."

Members of the crime scene team recovered the murder weapon near where the victim had been found. Bloodstain patterns reveal that the stabbing was confined to the kitchen. There was quite a bit of blood in the kitchen, and it was noted that there was an attempt to mop up blood. There was a bloody palm print on the door leading outside from the hallway of the apartment building, where the victim had apparently run.

The eight-year-old boy, T.G. was also interviewed. He said he saw the defendant go into the kitchen and get a knife and stab his mom in the chest. He also said that his mom had been "grumpy" that morning.

BAIL INFORMATION

Defendant has following Alaska criminal conviction:

08/02/95 Damage Property

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 268-6300

1 NCIC indicates Tennessee shows the following arrests but no disposition
2 on the cases.
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- 4 03/16/00 Possession of Marijuana
- 5 03/16/00 Possession of Drug Paraphernalia
- 6 03/16/00 Carrying Weapon For Purpose Of Going Armed
- 7 01/26/02 Domestic Assault
- 8 02/29/02 Theft Of Property

9
10 Particulars of these police contacts will be filed in a bail document tomorrow.

11 Dated at Anchorage, Alaska, this 22nd day of May, 2002.

12 BRUCE M. BOTELHO
13 ATTORNEY GENERAL

14 By: Mary Anne Henry
15 Mary Anne Henry
16 Assistant District Attorney
Alaska Bar No. 7610097

17 SUBSCRIBED AND SWORN to before me this 22nd day of May, 2002
18 at Anchorage, Alaska.

19 Linda D. Kusser
20 Notary Public in and for Alaska
21 My commission expires: 06/20/05
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DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 98501
(907) 269-6300

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
ISAIAH L. WALLNER,)
)
DOB: 12/29/76)
)
APSIN ID: 6714211)
)
DMV NO. 6714211)
)
SSN: 574-84-4768)
)
ATN: 107-284-518)
)
Defendant.)

No. 3AN-S02-4342 CR.

INDICTMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.
The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: All

Count I - AS 11.41.100(a)(1)(A)
Murder In The First Degree
Isaiah L. Wallner - 001

Count II - AS 11.41.110(a)(1)
Murder In The Second Degree
Isaiah L. Wallner - 002

Count III - AS 11.56.610(a)(1)
Tampering With Physical Evidence
Isaiah L. Wallner - 003

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 268-6300

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THE GRAND JURY CHARGES:

Count I

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISAJAH L. WALLNER intentionally caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.100(a)(1)(A) and against the peace and dignity of the State of Alaska.

Count II

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISAJAH L. WALLNER with intent to cause serious physical injury to Brenda L. Wallner or knowing that the conduct was substantially certain to cause death or serious physical injury to another person, caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.110(a)(1) and against the peace and dignity of the State of Alaska.

Count III

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISAJAH L. WALLNER destroyed, mutilated, altered, suppressed, concealed, or removed physical evidence with intent to impair its verity or availability in an official proceeding or a criminal investigation.

All of which is a class C felony offense being contrary to and in violation

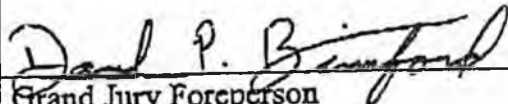
DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-6300

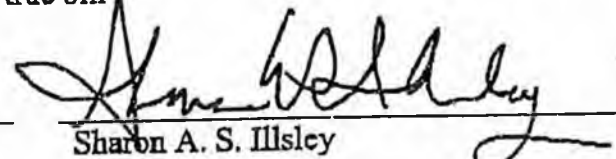
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of AS 11.56.610(a)(1) and against the peace and dignity of the State of Alaska.

DATED this ~~30~~^{31st AND} day of May, 2002 at Anchorage, Alaska.

A true bill


Grand Jury Foreperson


Sharon A. S. Illsley
Assistant District Attorney
Bar No. 9009057

02-229 SW; 02-230 SW; 02-231 SW

WITNESSES EXAMINED BEFORE THE GRAND JURY:

- Det. Pamela Perrenoud DSN 930
- Karen Larkin
- Dr. Franc Fallico

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 289-6300

Wallner convicted of murder
FIRST DEGREE: Man who killed wife destroyed evidence also, jury finds.

7/24/03

Thursday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

A man who stabbed his wife 43 times intended to kill her, an Anchorage jury concluded Wednesday, convicting Isaiah **Wallner**, 28, of first-degree murder after one day of deliberation. Judge Larry Card set sentencing for Nov. 25.

Prosecutor Sharon Illsley said after the verdict that she'll wait for a report on **Wallner** from the Department of Corrections before deciding what sentence to request. However, it's "a very aggravated case," she said.

The sentence range for first-degree murder is from 20 to 99 years with about 60 years the average.

Wallner also was convicted of destroying evidence for trying to clean up his bloodied kitchen before police arrived.

There was never any question that **Wallner** killed his wife, stabbing her repeatedly with a paring knife the morning of May 22, 2002. But defense attorney Craig Howard insisted it was an unreasoning rage killing and urged jurors to convict **Wallner** of second-degree murder or even manslaughter.

Brenda **Wallner**, 28, stumbled from the couple's Hyder Street apartment shortly after 6 a.m., crying for help, awakening several neighbors who came to her aid. She had been stabbed in both lungs and in her heart, Illsley told jurors. She named her husband as her killer before she died.

Her two sons, 8 years and 20 months, were in the apartment and the 8-year-old witnessed the murder.

Shortly after being taken in to custody, **Wallner** told police he came home from his night job at about 1:45 a.m. and watched his sleeping wife for hours, contemplating killing her. According to charging documents, he said he was unhappy because she wanted a divorce and because she was always nagging him.

He said he went to the kitchen at one point and got a knife, then returned to the bedroom. When his wife woke up, an argument started and he told her he had been thinking about killing her. She said she was going to a nearby gas station to call police. Their apartment had no phone. He started stabbing her because he didn't want her to call police, he said.

But this statement was ruled inadmissible at the trial because police continued questioning Wallner after he mentioned possibly wanting to contact a lawyer. Thus, when Wallner took the witness stand Tuesday and said that his wife had a knife, that he stabbed her in self defense only after she lunged at him, and that he wasn't thinking of killing her, Illsley couldn't use his prior statement to suggest he was lying. Illsley declined to discuss the suppressed statement but said Wednesday that there are legal consequences for lying under oath.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

All Archives

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Wallner says he stabbed his wife in self-defense
TRIAL: Defendant said he snapped when she came after him with knife.

7/23/03

Wednesday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

A man accused of killing his wife by stabbing her 43 times took the witness stand Tuesday and said it was self-defense.

Isaiah **Wallner** said his wife, Brenda, also had a knife the morning of May 22, 2002, when harsh words in the couple's apartment kitchen escalated to fatal violence.

Prosecutor Sharon Illsley told jurors **Wallner** killed his unarmed wife deliberately, stabbing her repeatedly after working himself into a fury over a series of minor irritations that culminated when she tried to leave the apartment to call police from a corner gas station.

The Hyder Street apartment did not have a phone.

Mortally wounded, Brenda **Wallner** ran from the apartment, covered in her own blood with a knife handle protruding from her chest, according to a neighbor who came to her aid. Before dying, she told witnesses and police that her husband killed her.

But **Wallner** said it wasn't an intentional killing. He just snapped when his wife lunged at him with her knife, he said. That caused him to also pick up a knife. He said he couldn't be more specific about what happened because he doesn't remember the killing.

Police found no trace of a second knife because he washed it and put it back in the drawer, he said. When police asked him about what happened that day, he didn't mention his wife also had a knife because he was trying to protect her.

Wallner's loss of memory caused some problems for him on cross-examination. He couldn't explain why his allegedly armed wife, who weighed 20 pounds more than him, had 43 wounds and he had only what seemed to be a fingernail scratch on his face.

And, although he doesn't remember what he repeatedly referred to as "the incident," he said his stepson's eyewitness testimony that he stabbed Brenda **Wallner** three times in the back "when she wasn't looking" was wrong.

According to medical testimony, Brenda **Wallner** had three stab wounds in her back, including one in each lung. She also had a knife wound in the heart, which Illsley said was probably the last blow delivered before she ran from the apartment. "He buried the knife in her chest" to keep her from leaving, but she got out, although it was too late for anyone to save her, Illsley said.

To assist **Wallner's** memory, Illsley played a tape of him talking to police shortly after the killing. He was sitting at his kitchen table threatening suicide with a knife and they were trying to talk to him. At one point he told them, "I think I lost it when she said she was going to call the cops when I said I was contemplating killing her."

Wallner said this wasn't what happened.

"So, you have no memory of what happened," Illsley snapped. "But you remember what didn't happen."

The two-knife theory dominated a long, agitated closing argument by defense attorney Craig Howard. "This was an uncontrollable rage," he told jurors, set off by a knife swipe from Brenda, the real cause of the scrape on Isaiah's face.

The defendant had no "conscious objective" to kill his wife, so he is obviously not guilty of first-degree murder, Howard said.

"Ms. Illsley should go into writing pulp fiction," he said, accusing the prosecution of trying to hide the presence of a second knife.

The 8-year-old stepson who witnessed the killing told police his mother started the fight and said he saw his stepfather clean and put a knife in the drawer after his mother left the apartment, Howard said. Police didn't photograph the contents of the drawer because they leaped to the conclusion that the bloody knife found on the ground outside was the only one involved, he said. The woman who testified that Brenda had a knife sticking out of her chest before she fell down was wrong, Howard said. The dying woman must have been carrying it in her hand. Use deductive logic, he urged jurors.

And why was the knife found with the victim so bloody since she obviously didn't stab anyone with it? Because the Wallners must have somehow switched knives before she left the apartment, Howard said.

Illsley told jurors there was no second knife. Offering a photograph of Brenda Wallner's palms, sliced with defensive wounds, Illsley said it was obvious the victim wasn't holding anything in her hands during the attack.

The jury is expected to begin deliberating the case today.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

BILL ROTH / Anchorage Daily News

Murder defendant Isaiah Wallner said Tuesday that police found no trace of a second knife because he washed it and put it back in the drawer.

Photo 1: [IsaiahWallner_072303.jpg](#)

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**Trial focuses on whether man meant to kill wife
MURDER? Brenda Wallner was cut 43 times in May 2002.**

7/15/03

Tuesday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

With stab wounds in both lungs, a knife handle protruding from her chest, and blood leaking from dozens of slices in her body, Brenda Wallner ran from her Fairview apartment one Wednesday morning last summer, screaming for help.

She collapsed near Patricia Barazi's first-floor balcony in a pool of blood that so drenched her T-shirt that the first police officer on the scene thought she was wearing a red top.

She fought to keep breathing and lived long enough to tell police and other people who came to her aid that her husband, Isaiah Wallner, killed her.

"I asked her, 'Who did this to you,' " said Karen Larkin, who was driving down Ingra Street on her way to work about 6:45 a.m. on May 22, 2002, and stopped to help.

"She told me, 'My husband did it.' "

In all, her husband did it 43 times, according to prosecutor Sharon Ilisley in opening statements Monday at Wallner's trial: 24 stab wounds were found on Brenda Wallner's body, and 19 defensive cuts.

So whodunit is not an issue in Judge Larry Card's sixth-floor courtroom. The only question is intent. Despite the carnage, Isaiah intended only to hurt Brenda, attorney Craig Howard told jurors. He did not intend to kill her.

The issue is first-degree murder vs. second-degree murder and a commensurate difference in the likely prison sentence. First-degree sentences tend to be from 65 to 99 years.

Second-degree is more likely to earn a defendant 30 to 60 years.

Howard said the fact that most of the stab wounds, made with a common kitchen paring knife, were superficial is evidence the defendant didn't mean to kill his wife. Only three wounds were fatal, he said.

The Wallners met in Tennessee. She was a customer at a gas station where he worked, Howard said. They fell in love but had a contentious off-and-on relationship. She had an 8-year-old son by a previous marriage, and the two of them had a son together in September 2000. They married in 2001 and life was great, Howard said.

Isaiah's father is an Alaska state trooper and his mother lives in Tennessee, so he split his time between the two, Howard said. He came back to Alaska hoping to find a better job.

At the time of the murder, Isaiah, now 28, worked nights at a fast-food restaurant and Brenda, 30, worked days in an ulu factory.

Everything was fine on May 21 and 22, Howard told jurors during the defense opening

statement. Isaiah walked home from work with a co-worker and was upbeat about life. So how did Brenda end up mortally wounded a few hours later?

"Sometime in the early morning hours there was a confrontation between Isaiah and Brenda. It became irrational on both sides," Howard said. Isaiah's attack was a rage killing, he said. Brenda was walking and yelling when she left the apartment, so Isaiah had no way of knowing she was mortally wounded.

Howard said the fact that Wallner didn't realize his wife was dead until police told him shows he didn't intend to kill her.

After Brenda ran out, Isaiah started mopping up the blood in the kitchen, Illsley said. When police tracked Brenda's blood trail back to the apartment, they found Isaiah holding a knife to his neck, threatening suicide. Police tried to talk him down, then shot him with nonlethal ammunition and took him into custody.

What no one mentioned Monday were Isaiah's alleged statements to police as he sat there with the knife. He said he watched his wife sleep for about three hours after he got home from work and contemplated killing her because she wanted a divorce, according to charging papers filed at the time of his arrest. The statements are not admissible at the trial.

Wallner is a slight, pale man with a long, dark pony tail. He has not cut his hair since his wife died, Howard said. At the defense table, Wallner closed his eyes at the sight of bloody pictures of his wife on the overhead projector and bowed his head at the sound of her voice on a tape made as she lay dying.

The trial is expected to wrap up this week or early next week.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

Graphic 1: Quote marks_071503.pdf

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Supreme Court of the United States

WALDER
v.
UNITED STATES.

No. 121.

Argued Nov. 30, 1953.
Decided Feb. 1, 1954.

Prosecution for unlawful sale of narcotics. The United States District Court for the Western District of Missouri entered judgment of conviction, and defendant appealed. The United States Court of Appeals for the Eighth Circuit, 201 F.2d 715, entered judgment affirming the conviction. On writ of certiorari, the United States Supreme Court, Mr. Justice Frankfurter, held that defendant's assertion on direct examination that he had never possessed any narcotics opened the door, solely for purpose of attacking his credibility, to evidence that heroin had been unlawfully seized from him in connection with earlier prosecution.

Affirmed.

Mr. Justice Black and Mr. Justice Douglas dissented.

West Headnotes

[1] Criminal Law ↪394.1(3)
110k394.1(3) Most Cited Cases
(Formerly 110k394)

The government cannot violate the constitutional right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures and use the fruits of such unlawful conduct to secure a conviction and cannot make indirect use of such evidence in order to secure conviction, and a conviction cannot be supported by evidence obtained through leads from evidence obtained in violation of such constitutional right. U.S.C.A.Const. Amend. 4.

[2] Witnesses ↪337(4)
410k337(4) Most Cited Cases

Defendant's assertion on direct examination in prosecution for unlawful sales of narcotics that he had never possessed any narcotics opened the door, solely for purpose of attacking his credibility, to evidence that heroin had been unlawfully seized from him in connection with earlier prosecution. 26 U.S.C.A. (I.R.C.1939) § 2554(a); U.S.C.A.Const. Amend. 4.

**354 *62 Mr. Paul A. Porter, Washington, D.C., for petitioner.

Mr. Robert S. Erdahl, for respondent.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

**355 In May 1950, petitioner was indicted in the United States District Court for the Western District of Missouri for purchasing and possessing one grain of heroin. Claiming that the heroin capsule had been obtained through an unlawful search and seizure, petitioner moved *63 to suppress it. The motion was granted, and shortly thereafter, on the Government's motion, the case against petitioner was dismissed.

In January of 1952, petitioner was again indicted, this time for four other illicit transactions in narcotics. The Government's case consisted principally of the testimony of two drug addicts who claimed to have procured the illicit stuff from petitioner under the direction of federal agents. The only witness for the defense was the defendant himself, petitioner here. He denied any narcotics dealings with the two Government informers and attributed the testimony against him to personal hostility.

Early on his direct examination petitioner testified as follows:

'Q. Now, first, Mr. Walder, before we go further in your testimony, I want to you (sic) tell the Court and jury whether, not referring to these informers in this case, but whether you have ever sold any narcotics to anyone. A. I have never sold any narcotics to anyone in my life.

'Q. Have you ever had any narcotics in your possession, other than what may have been given to you by a physician for an ailment? A. No.

'Q. Now, I will ask you one more thing. Have

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you ever handed or given any narcotics to anyone as a gift or in any other manner without the receipt of any money or any other compensation?

A. I have not.

'Q. Have you ever even acted as, say, have you acted as a conduit for the purpose of handling what you knew to be a narcotic from one person to another? A. No, Sir.'

*64 On cross-examination, in response to a question by Government counsel making reference to this direct testimony, petitioner reiterated his assertion that he had never purchased, sold or possessed any narcotics. Over the defendant's objection, the Government then questioned him about the heroin capsule unlawfully seized from his home in his presence back in February 1950. The defendant stoutly denied that any narcotics were taken from him at that time. [FN1] The Government then put on the stand one of the officers who had participated in the unlawful search and seizure and also the chemist who had analyzed the heroin capsule there seized. The trial judge admitted this evidence, but carefully charged the jury that it was not to be used to determine whether the defendant had committed the crimes here charged, but solely for the purpose of impeaching the defendant's credibility. The defendant was convicted and the Court of Appeals for the Eighth Circuit affirmed, one judge dissenting. 201 F.2d 715. The question which divided that court, and the sole issue here, is whether the defendant's assertion on direct examination that he had never possessed any narcotics opened the door, solely for the purpose of attacking the defendant's credibility, to evidence of the heroin unlawfully seized in connection with the earlier proceeding. Because this question presents a novel aspect of the scope of the doctrine of *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, we granted certiorari. 345 U.S. 992, 73 S.Ct. 1144.

FN1. This denial squarely contradicted the affidavit filed by the defendant in the earlier proceeding, in connection with his motion under Fed.Rules Crim.Proc. rule 41(e), 18 U.S.C.A. to suppress the evidence unlawfully seized.

Fourth Amendment [FN2]--in the only way in which the Government can do anything, namely through its agents--and use the fruits *65 of such unlawful conduct to secure a conviction. *Weeks v. United States*, supra. Nor can the Government make indirect use of such evidence for its case, *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence, cf. *Nardone v. United States*, 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 307. All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men.

FN2. 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *'

[2] It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths. Such an extension of the *Weeks* doctrine would be a perversion of the Fourth Amendment.

Take the present situation. Of his own accord, the defendant went beyond a mere denial of complicity in the crimes of which he was charged and made the sweeping claim that he had never dealt in or possessed any narcotics. Of course, the Constitution guarantees a defendant the fullest opportunity to meet the accusation against him. He must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal evidence illegally secured by it, and therefore not available for its case in chief. Beyond that, however, there is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility. [FN3]

**356 [1] The Government cannot violate the

FN3. Cf. *Michelson v. United States*, 335

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U.S. 469, 479, 69 S.Ct. 213, 220, 93 L.Ed. 168: 'The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him.'

The underlying rationale of the Michelson case also disposes of the evidentiary question raised by petitioner, to wit, 'whether defendant's actual guilt under a former indictment which was dismissed may be proved by extrinsic evidence introduced to impeach him in a prosecution for a subsequent offense.'

Affirmed.

Mr. Justice BLACK and Mr. Justice DOUGLAS dissent.

74 S.Ct. 354, 347 U.S. 62, 98 L.Ed. 503

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*66 The situation here involved is to be sharply contrasted with that presented by *Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145. There the Government, after having failed in its efforts to introduce the tainted evidence in its case in chief, tried to smuggle it in on cross-examination by asking the accused the broad question 'Did you ever see narcotics before?' [FN4] After eliciting the expected denial, it sought to introduce evidence of narcotics located in the defendant's home by means of an unlawful search and seizure, in order to discredit the defendant. In holding that the Government could no more work in this evidence on cross-examination than it could in its case in chief, the Court foreshadowed, perhaps unwittingly, the result we reach today:

FN4. Transcript of Record, p. 476, *Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145.

'And the contention that the evidence of the search and seizure was admissible in rebuttal is without merit. In his direct examination, Agnello was not asked and did not testify concerning the can of cocaine. In cross-examination, in answer to a question permitted over **357 his objection, he said he had never seen it. He did nothing to waive his constitutional protection or to justify cross-examination in respect of the evidence claimed to have been obtained by the search. * *
 * 269 U.S. at page 35, 46 S.Ct. at page 7.

The judgment is affirmed.

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Supreme Court of the United States

Viven HARRIS
v.
NEW YORK.

No. 206.

Argued Dec. 17, 1970.
Decided Feb. 24, 1971.

The Westchester County Court, Robert E. Dempsey, J., found defendant guilty of selling narcotics and he appealed. The Supreme Court, Appellate Division, Second Judicial Department, 31 A.D.2d 828, 298 N.Y.S.2d 245, affirmed and defendant appealed. The Court of Appeals, 25 N.Y.2d 175, 303 N.Y.S.2d 71, 250 N.E.2d 349, affirmed and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that statement which was inadmissible against defendant in prosecution's case in chief because defendant had not been advised of his rights to counsel and to remain silent prior to making statement but which otherwise satisfied legal standards of trustworthiness was properly usable for impeachment purposes to attack credibility of defendant's trial testimony.

Affirmed.

Mr. Justice Black, dissented.

Mr. Justice Brennan, dissented and filed opinion in which Mr. Justice Douglas and Mr. Justice Marshall joined.

West Headnotes

[1] Witnesses ↪88
410k88 Most Cited Cases

Every criminal defendant is privileged to testify in his own defense, or to refuse to do so, but that privilege cannot be construed to include the right to commit perjury.

[2] Witnesses ↪390
410k390 Most Cited Cases

Statement which was inadmissible against defendant in prosecution's case in chief because defendant had not been advised of his rights to counsel and to remain silent prior to making statement but which otherwise satisfied legal standards of trustworthiness was properly usable for impeachment purposes to attack credibility of defendant's trial testimony.

**644 Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*222 Statement inadmissible against a defendant in the prosecution's case in chief because of lack of the procedural safeguards required by *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, may, if its trustworthiness satisfies legal standards, be used for impeachment purposes to attack the credibility of defendant's trial testimony. See *Walder v. United States*, 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503. Pp. 644--646.

25 N.Y.2d 175, 303 N.Y.S.2d 71, 250 N.E.2d 349, affirmed.

Joel Martin Aurou, White Plains, N.Y., for petitioner.

James J. Duggan, White Plains, N.Y., for respondent.

Sybil H. Landau, New York City, for District Attorney of New York County, amicus curiae.

Mr. Chief Justice BURGER delivered the opinion of the Court.

We granted the writ in this case to consider petitioner's claim that a statement made by him to police under circumstances rendering it inadmissible to establish the prosecution's case in chief under *Miranda v. Arizona*, 384 U.S. 436, 86

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S.Ct. 1602, 16 L.Ed.2d 694 (1966), may not be used to impeach his credibility.

The State of New York charged petitioner in a two-count indictment with twice selling heroin to an undercover *223 police officer. At a subsequent jury trial the officer was the State's chief witness, and he testified as to details of the two sales. A second officer verified collateral details of the sales, and a third offered testimony about the chemical analysis of the heroin.

Petitioner took the stand in his own defense. He admitted knowing the undercover police officer but denied a sale on January 4, 1966. He admitted making a sale of contents of a glassine bag to the officer on January 6 but claimed it was baking powder and part of a scheme to defraud the purchaser.

On cross-examination petitioner was asked seriatim whether he had made specified statements to the police immediately following his arrest on January 7--statements that partially contradicted petitioner's direct testimony at trial. In response to the cross-examination, petitioner testified that he could not remember virtually any of the questions or answers recited by the prosecutor. At the request of petitioner's counsel the written statement from which the prosecutor had read questions and answers in his impeaching process was placed in the record for possible use on appeal; the statement was not shown to the jury.

The trial judge instructed the jury that the statements attributed to petitioner by the prosecution could be considered only in passing on petitioner's credibility and not as evidence of guilt. In closing summations both counsel argued the substance of the impeaching statements. The jury then found petitioner guilty on the second count of the indictment. [FN1] The New York Court of **645 Appeals affirmed in a per curiam opinion, 25 N.Y.2d 175, 303 N.Y.S.2d 71, 250 N.E.2d 349 (1969).

FN1. No agreement was reached as to the first count. That count was later dropped by the State.

At trial the prosecution made no effort in its case in chief to use the statements allegedly made by petitioner, *224 conceding that they were inadmissible under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The transcript of the interrogation used in the impeachment, but not given to the jury, shows that no warning of a right to appointed counsel was given before questions were put to petitioner when he was taken into custody. Petitioner makes no claim that the statements made to the police were coerced or involuntary.

Some comments in the *Miranda* opinion can indeed be read as indicating a bar to use of an uncounseled statement for any purpose, but discussion of that issue was not at all necessary to the Court's holding and cannot be regarded as controlling. *Miranda* barred the prosecution from making its case with statements of an accused made while in custody prior to having or effectively waiving counsel. It does not follow from *Miranda* that evidence inadmissible against an accused in the prosecution's case in chief is barred for all purposes, provided of course that the trustworthiness of the evidence satisfies legal standards.

In *Walder v. United States*, 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503 (1954), the Court permitted physical evidence, inadmissible in the case in chief, to be used for impeachment purposes.

'It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths. Such an extension of the *Weeks* doctrine (*Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652) would be a perversion of the Fourth Amendment.

'(T)here is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility.' 347 U.S., at 65, 74 S.Ct., at 356.

*225 It is true that *Walder* was impeached as to collateral matters included in his direct examination, whereas petitioner here was impeached as to testimony bearing more directly on

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the crimes charged. We are not persuaded that there is a difference in principle that warrants a result different from that reached by the Court in *Walder*. Petitioner's testimony in his own behalf concerning the events of January 7 contrasted sharply with what he told the police shortly after his arrest. The impeachment process here undoubtedly provided valuable aid to the jury in assessing petitioner's credibility, and the benefits of this process should not be lost, in our view, because of the speculative possibility that impermissible police conduct will be encouraged thereby. Assuming that the exclusionary rule has a deterrent effect on proscribed police conduct, sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief.

[1] Every criminal defendant is privileged to testify in his own defense, or to refuse to do so. But that privilege cannot be construed to include the right to commit perjury. See *United States v. Knox*, 396 U.S. 77, 90 S.Ct. 363, 24 L.Ed.2d 275 (1969); cf. *Dennis v. United States*, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966). Having voluntarily taken the stand, petitioner was under an obligation to speak truthfully and accurately, and the prosecution here did no more than utilize the traditional truth-testing devices of the adversary process. [FN2] Had inconsistent statements been made by the accused to some third person, it could hardly be contended that the conflict could not be laid before the jury by way of cross-examination and impeachment.

FN2. If, for example, an accused confessed fully to a homicide and led the police to the body of the victim under circumstances making his confession inadmissible, the petitioner would have us allow that accused to take the stand and blandly deny every fact disclosed to the police or discovered as a 'fruit' of his confession, free from confrontation with his prior statements and acts. The voluntariness of the confession would, on this thesis, be totally irrelevant. We reject such an extravagant extension of the Constitution. Compare *Killough v. United States*, 114 U.S.App.D.C. 305, 315 F.2d 241 (1962).

[2] The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances. We hold, therefore, that petitioner's credibility was appropriately impeached by use of his earlier conflicting statements.

Affirmed.

Mr. Justice BLACK dissents.

Mr. Justice BRENNAN, with whom Mr. Justice DOUGLAS and Mr. Justice MARSHALL, join, dissenting.

It is conceded that the question-and-answer statement used to impeach petitioner's direct testimony was, under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), constitutionally inadmissible as part of the State's direct case against petitioner. I think that the Constitution also denied the State the use of the statement on cross-examination to impeach the credibility of petitioner's testimony given in his own defense. The decision in *Walder v. United States*, 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503 (1954), is not, as the Court today holds, dispositive to the contrary. Rather, that case supports my conclusion.

The State's case against Harris depended upon the jury's belief of the testimony of the undercover agent that petitioner 'sold' the officer heroin on January 4 and again on January 6. Petitioner took the stand and flatly denied having sold anything to the officer on January 4. He countered the officer's testimony as to the January 6 sale with testimony that he had sold the officer two glassine bags containing what appeared to be heroin, but that actually the bags contained only baking powder intended to deceive the officer in order to obtain \$12. *227 The statement contradicted petitioner's direct testimony as to the events of both days. The statement's version of the events on January 4 was that the officer had used petitioner as a middleman to buy some heroin from a third person with money furnished by the officer. The version of the events on January 6 was that petitioner had again acted for the officer in buying two bags of heroin from a third

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person for which petitioner received \$12 and a part of the heroin. Thus, it is clear that the statement was used to impeach petitioner's direct testimony not on collateral matters but on matters directly related to the crimes for which he was on trial. [FN1]

FN1. The trial transcript shows that petitioner testified that he remembered making a statement on January 7; that he remembered a few of the questions and answers; but that he did not 'remember giving too many answers.' When asked about his bad memory, petitioner, who had testified that he was a heroin addict, stated that 'my joints was down and I needed drugs.'

Walder v. United States was not a case where tainted evidence was used to impeach an accused's direct testimony on matters directly related to the case against him. In Walder the evidence was used to impeach the accused's testimony on matters collateral to the crime charged. Walder had been indicted in 1950 for purchasing and possessing heroin. When his motion to suppress use of the narcotics as illegally seized was granted, the Government dismissed the prosecution. **647 Two years later Walder was indicted for another narcotics violation completely unrelated to the 1950 one. Testifying in his own defense, he said on direct examination that he had never in his life possessed narcotics. On cross-examination he denied that law enforcement officers had seized narcotics from his home two years earlier. The Government was then permitted to introduce the testimony of one of the officers involved in the 1950 seizure, that when he had raided Walder's home at that time he had seized narcotics there. *228 The Court held that on facts where 'the defendant went beyond a mere denial of complicity in the crimes of which he was charged and made the sweeping claim that he had never dealt in or possessed any narcotics,' 347 U.S., at 65, 74 S.Ct., at 356, the exclusionary rule of Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914), would not extend to bar the Government from rebutting this testimony with evidence, although tainted, that petitioner had in fact possessed narcotics two years before. The Court

was careful, however, to distinguish the situation of an accused whose testimony, as in the instant case, was a 'denial of complicity in the crimes of which he was charged,' that is, where illegally obtained evidence was used to impeach the accused's direct testimony on matters directly related to the case against him. As to that situation, the Court said:

'Of course, the Constitution guarantees a defendant the fullest opportunity to meet the accusation against him. He must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal evidence illegally secured by it, and therefore not available for its case in chief.' 347 U.S., at 65, 74 S.Ct., at 356.

From this recital of facts it is clear that the evidence used for impeachment in Walder was related to the earlier 1950 prosecution and had no direct bearing on 'the elements of the case' being tried in 1952. The evidence tended solely to impeach the credibility of the defendant's direct testimony that he had never in his life possessed heroin. But that evidence was completely unrelated to the indictment on trial and did not in any way interfere with his freedom to deny all elements of that case against him. In contrast, here, the evidence used for impeachment, a statement concerning the details of the very sales alleged in the indictment, was directly related to the case against petitioner.

*229 While Walder did not identify the constitutional specifics that guarantee 'a defendant the fullest opportunity to meet the accusation against him * * * (and permit him to) be free to deny all the elements of the case against him,' in my view *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), identified the Fifth Amendment's privilege against self-incrimination as one of those specifics. [FN2] *230 That **648 privilege has been extended against the States. *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964). It is fulfilled only when an accused is guaranteed the right 'to remain silent unless he chooses to speak in the unfettered exercise of his own will,' *id.*, at 8, 84 S.Ct., at 1493 (emphasis added). The choice of whether to testify in one's own defense must therefore be 'unfettered,' since that choice is an exercise of the constitutional privilege, *Griffin v. California*, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965). *Griffin* held

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that comment by the prosecution upon the accused's failure to take the stand or a court instruction that such silence is evidence of guilt is impermissible because it 'fetters' that choice--'(i)t cuts down on the privilege by making its assertion costly.' *Id.*, at 614, 85 S.Ct., at 1233. For precisely the same reason the constitutional guarantee forbids the prosecution to use a tainted statement to impeach the accused who takes the stand: The prosecution's use of the tainted statement 'cuts down on the privilege by making its assertion costly.' *Ibid.* Thus, the accused is denied an 'unfettered' choice when the decision whether to take the stand is burdened by the risk that an illegally obtained prior statement may be introduced to impeach his direct testimony denying complicity in the crime charged against him. [FN3] We settled this proposition in *Miranda* where we said:

FN2. Three of the five judges of the Appellate Division in this case agreed that the State's use of petitioner's illegally obtained statement was an error of constitutional dimension. *People v. Harris*, 31 A.D.2d 828, 298 N.Y.S.2d 245 (1969). However, one of the three held that the error did not play a meaningful role in the case and was therefore harmless under our decision in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). He therefore joined in affirming the conviction with the two judges who were of the view that there was no constitutional question involved. 31 A.D.2d, at 830, 298 N.Y.S.2d, at 249. I disagree that the error was harmless and subscribe to the reasoning of the dissenting judges, *id.*, at 831--832, 298 N.Y.S.2d, at 250:

'Under the circumstances outlined above, I cannot agree that this error of constitutional dimension was 'harmless beyond a reasonable doubt' (*Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705). An error is not harmless if 'there is a reasonable possibility that the evidence complained of might have contributed to the conviction' (*Fahy v. Connecticut*, 375 U.S. 85, 86--87, 84 S.Ct. 229, 230, 11 L.Ed.2d 171). The burden of showing that a constitutional error is harmless rests with the People who, in this

case, have not even attempted to assume that demonstration (*Chapman v. California*, *supra*). Surely it cannot be said with any certainty that the improper use of defendant's statement did not tip the scales against him, especially when his conviction rests on the testimony of the same undercover agent whose testimony was apparently less than convincing on the January 4 charge (cf. *Anderson v. Nelson*, 390 U.S. 523, 525, 88 S.Ct. 1133, 20 L.Ed.2d 81). On the contrary, it is difficult to see how defendant could not have been damaged severely by use of the inconsistent statement in a case which, in the final analysis, pitted his word against the officer's. The judgment should be reversed and a new trial granted.'

The Court of Appeals affirmed *per curiam* on the authority of its earlier opinion in *People v. Kulis*, 18 N.Y.2d 318, 274 N.Y.S.2d 873, 221 N.E.2d 541 (1966). Chief Judge Fuld and Judge Keating dissented in *Kulis* on the ground that *Miranda* precluded use of the statement for impeachment purposes, 18 N.Y.2d, at 323, 274 N.Y.S.2d, at 875, 221 N.E.2d, at 542.

FN3. It is therefore unnecessary for me to consider petitioner's argument that *Miranda* has overruled the narrow exception of *Walder* admitting impeaching evidence on collateral matters.

'The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner * * *. (S)tatements merely intended to be exculpatory by the defendant are often used to impeach his testimony at trial * * *. These statements are incriminating in any meaningful sense of the word and may not be used without the full warnings and effective waiver required for *231 any other statement.' 384 U.S., at 476--477, 86 S.Ct., at 1629 (emphasis added).

This language completely disposes of any distinction between statements used on direct as opposed to cross-examination. [FN4] **649 'An incriminating statement is as incriminating when used to impeach credibility as it is when used as

91 S.Ct. 643
 28 L.Ed.2d 1
 (Cite as: 401 U.S. 222, 91 S.Ct. 643)

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direct proof of guilt and no constitutional distinction can legitimately be drawn.' *People v. Kulis*, 18 N.Y.2d 318, 324, 274 N.Y.S.2d 873, 876, 221 N.E.2d 541, 543 (1966) (dissenting opinion).

FN4. Six federal courts of appeals and appellate courts of 14 States have reached the same result. *United States v. Fox*, 403 F.2d 97 (CA 2 1968); *United States ex rel. Hill v. Pinto*, 394 F.2d 470 (CA 3 1968); *Breedlove v. Beto*, 404 F.2d 1019 (CA 5 1968); *Groshart v. United States*, 392 F.2d 172 (CA 9 1968); *Blair v. United States*, 130 U.S.App.D.C. 322, 401 F.2d 387 (1968); *Wheeler v. United States*, 382 F.2d 998 (CA 10 1967); *People v. Barry*, 237 Cal.App.2d 154, 46 Cal.Rptr. 727 (1965), cert. denied, 386 U.S. 1024, 87 S.Ct. 1382, 18 L.Ed.2d 464 (1967); *Velarde v. People*, 171 Colo. 261, 466 P.2d 919 (1970); *State v. Galasso*, 217 So.2d 326 (Fla.1968); *People v. Luna*, 37 Ill.2d 299, 226 N.E.2d 586 (1967); *Franklin v. State*, 6 Md.App. 572, 252 A.2d 487 (1969); *People v. Wilson*, 20 Mich.App. 410, 174 N.W.2d 79 (1969); *State v. Turnbow*, 67 N.M. 241, 354 P.2d 533 (1960); *State v. Catrett*, 276 N.C. 86, 171 S.E.2d 398 (1970); *State v. Brewton*, 247 Or. 241, 422 P.2d 581, cert. denied, 387 U.S. 943, 87 S.Ct. 2074, 18 L.Ed.2d 1328 (1967); *Commonwealth v. Padgett*, 428 Pa. 229, 237 A.2d 209 (1968); *Spann v. State*, 448 S.W.2d 128 (Tex.Cr.App.1969); *Cardwell v. Commonwealth*, 209 Va. 412, 164 S.E.2d 699 (1968); *Gaertner v. State*, 35 Wis.2d 159, 150 N.W.2d 370 (1967); see also *Kelly v. King*, 196 So.2d 525 (Miss.1967). only three state appellate courts have agreed with New York. *State v. Kimbrough*, 109 N.J.Super. 57, 262 A.2d 232 (1970); *State v. Butler*, 19 Ohio St.2d 55, 249 N.E.2d 818 (1969); *State v. Grant*, 77 Wash.2d 47, 459 P.2d 639 (1969).

The objective of deterring improper police conduct is only part of the larger objective of safeguarding the integrity of our adversary system. The 'essential mainstay' of that system, *Miranda v. Arizona*, 384 U.S., at 460, 86 S.Ct. 1602, is the privilege against

self-incrimination, which for *232 that reason has occupied a central place in our jurisprudence since before the Nation's birth. Moreover, 'we may view the historical development of the privilege as one which groped for the proper scope of governmental power over the citizen. * * * All these policies point to one overriding thought: the constitutional foundation underlying the privilege is the respect a government * * * must accord to the dignity and integrity of its citizens.' *Ibid.* These values are plainly jeopardized if an exception against admission of tainted statements is made for those used for impeachment purposes. Moreover, it is monstrous that courts should aid or abet the law-breaking police officer. It is abiding truth that '(n)othing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.' *Mapp v. Ohio*, 367 U.S. 643, 659, 81 S.Ct. 1684, 1694, 6 L.Ed.2d 1081 (1961). Thus even to the extent that *Miranda* was aimed at deterring police practices in disregard of the Constitution, I fear that today's holding will seriously undermine the achievement of that objective. The Court today tells the police that they may freely interrogate an accused incommunicado and without counsel and know that although any statement they obtain in violation of *Miranda* cannot be used on the State's direct case, it may be introduced if the defendant has the temerity to testify in his own defense. This goes far toward undoing much of the progress made in conforming police methods to the Constitution. I dissent.

91 S.Ct. 643, 401 U.S. 222, 28 L.Ed.2d 1

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Citation Text:	91 S.Ct. 643
Lines:	391
Documents:	1
Images:	0

LEXSEE 666 P.2D 1042

Floyd WORTHAM, Appellant, v. STATE of Alaska, Appellee

No. 5459

Supreme Court of Alaska

666 P.2d 1042; 1983 Alas. LEXIS 449

July 8, 1983

PRIOR HISTORY: [1]**

Petition for Hearing from the Court of Appeals of the State of Alaska, on appeal from a judgment of the Superior Court of the State of Alaska, Third Judicial District, Seaborn J. Buckalew, Jr., Judge.

COUNSEL:

Joseph R. D. Loescher, and Robert L. Manley, Hughes, Thorsness, Gantz, Powell and Brundin, Anchorage, for Appellant.

Rhonda F. Butterfield, Assistant Attorney General, Anchorage, Norman C. Gorsuch, Attorney General, Juneau, for Appellee.

JUDGES:

Burke, Chief Justice, Rabinowitz, Matthews, and Compton, Justices, and Dimond, Senior Justice. ⁴ Connor, Justice, not participating.

* Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska.

OPINIONBY:

RABINOWITZ

OPINION:

[*1042] Floyd Wortham was convicted of two counts of perjury under former *AS 11.30.010(a)*, following his plea of no contest. n1 Prior to these convictions Wortham had been tried and convicted of the crime of the unlawful sale of cocaine. n2

n1 Pursuant to *Oveson v. Municipality of Anchorage*, 574 P.2d 801, 803 n.4 (Alaska 1978), and *Cooksey v. State*, 524 P.2d 1251 (Alaska 1974), Wortham preserved his right to appeal the superior court's denial of his motion to suppress certain evidence. [**2]

n2 *See Wortham v. State*, 617 P.2d 510 (Alaska 1980).

At his trial for illegal sale of cocaine, Wortham testified on his own behalf and, [*1043] during this testimony, made certain statements which resulted in his indictment for perjury. The state had notified Wortham that, at his perjury trial, it intended to use a transcript of a tape recording made of a conversation between Wortham and an undercover police agent. The recording was made without Wortham's knowledge. n3 At his trial for sale of cocaine, Wortham had successfully suppressed the tape recording on the basis of *State v. Glass*, 583 P.2d 872 (Alaska 1978). Relying on this ruling, Wortham again sought to have the same evidence suppressed in the perjury prosecution. The superior court, apparently relying on Alaska Rule of Evidence 412(2), denied the suppression motion. n4 Wortham then appealed to the court of appeals where the superior court's judgment was affirmed. n5

n3 In its decision, the court of appeals set forth in detail the factual circumstances surrounding the tape recording of the conversation. Briefly, the facts were stated as follows:

On September 25, 1978, Wortham met Ms. Gail J. Reas (an undercover police officer) and a police informant at the Kentucky Fried Chicken Restaurant on Tudor Road in Anchorage, Alaska. The purpose of the meeting was to enable Reas to purchase cocaine from Wortham. Prior to the meeting, Ms. Reas equipped herself with an electronic transmitter. Police Officer Charles M. Adams, Jr. equipped himself with an electronic monitoring and recording system in an unmarked police vehicle. The conversation surrounding the transaction was electronically monitored and recorded by Officer Adams. The electronic monitoring and recording took place without the benefit of a search warrant or any other court order.

Wortham v. State, 657 P.2d 856, 857 (Alaska App. 1983) (per curiam). The court noted that the above statement of facts was based on Wortham's brief and uncontested by the state. *Id.* at 857. [**3]

n4 The procedural history of this matter is taken essentially verbatim from the Court of Appeals' opinion. *See id.* at 856-57.

n5 *Id.* at 856.

Rule of Evidence 412(2) provides in part:

Evidence illegally obtained shall not be used over proper objection by the defendant in a criminal prosecution for any purpose except:

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

The Commentary to Rule 412(2) states in part:

The second exception governs evidence obtained in violation of the fourth amendment and/or its Alaska counterpart, article I, section 14. Again a limitation is imposed: the evidence must be relevant to the issue of guilt or innocence, and must not have been obtained "in substantial violation of rights." This limitation is not imposed to ensure reliability of the evidence, but rather recognizes that judicial integrity requires the exclusion of evidence for [**4] all purposes if the police misconduct involved in obtaining it was flagrant.

For the reasons stated by Judge Singleton in his concurring opinion, we affirm the superior court's judgment. Rule 412 provides generally that evidence which has been illegally obtained shall on proper objection be excluded in criminal prosecutions. Subsection 2 of Rule 412 provides an exception to the exclusionary rule for illegally seized evidence in

criminal prosecutions. Under this exception, illegally seized evidence may be used in perjury prosecutions, unless the police misconduct amounts to a flagrant or egregious invasion of personal rights. As Judge Singleton stated in his concurrence:

The drafters of the rule did not intend to bar the introduction of evidence obtained in violation of the fourth and fifth amendments, and their Alaska counterparts, unless the violation of rights was such that it independently violated due process. *Rochin v. California*, 342 U.S. 165, 96 L. Ed. 183, [72 S. Ct. 205] (1952). In the absence of coercion, violence or brutality to the person, I would admit evidence obtained in violation of the fourth and fifth amendments in perjury [*1044] [**5] prosecutions. See *Irvine v. California*, 347 U.S. 128, 98 L. Ed. 561, [74 S. Ct. 381] (1954) (applying the *Rochin* standard to a fact situation similar but more egregious than the instant one). It seems to me that the *Rochin* test strikes an appropriate balance between the need to deter perjury on the one hand and judicial integrity on the other. Since the instant facts do not meet the *Rochin* test, I join the decision to affirm.

657 P.2d at 858.

Given the absence of flagrant police misconduct in recording the conversation between Wortham and the undercover police agent we hold that the superior court properly ruled that, pursuant to the provisions of Rule 412(2), the transcript of this tape recording was admissible in the perjury prosecution of Wortham.

For the foregoing reasons, the court of appeals' affirmance of the superior court's judgment is AFFIRMED.

Connor, Justice, not participating.

ALASKA STATE PROSECUTOR'S ASSOCIATION

POB 202665

Anchorage, Alaska

email Board@akprosecutors.com

Honorable Representative Nancy Dahlstrom
Resources Co-Chair
State Capitol, Rm 128
Juneau, AK 99801-1182

Honorable Representative Lesil McGuire
Judiciary Chair
State Capitol, Rm 118
Juneau, AK 99801-1182

Honorable Representative Ralph Samuels
Budget and Audit Chair
State Capitol, Rm 412
Juneau, AK 99801-1182

Honorable Representative Bill Stoltze
State Capitol, Rm 421
Juneau, AK 99801-1182

Honorable Representative Peggy Wilson
HESS Chair
State Capitol, Rm 104
Juneau, AK 99801-1182

RE: CSHB349(JUD)

February 24, 2004

Dear Representatives:

The Alaska State Prosecutor's Association (ASPA) writes to express its support for passage of CSHB 349 (JUD). This Bill amends a court rule so that determinations of truth will be the primary goal in any criminal proceeding in which the defendant or co-defendants testify.

This needed amendment to Evidence Rule 412 would bring Alaska law in accord with federal law, from which the Miranda rights originate. It will also bring Alaska into the mainstream of American jurisprudence and at least 28 other states that have similar rules such including Alabama, Arizona, Arkansas,

RE: CSHB349 (JUD)

February 24, 2004

Page two

California, Colorado, Delaware, Florida, Georgia, Illinois Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New York, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington.

We thank you for your continued commitment to effective law enforcement as well as the protection and advancement of the rights of all crime victims throughout our state.

Respectfully,
2004 ASPA Board Members

Kath Ann Brady
Kath Ann Brady
Anchorage

William Hawley
William Hawley
Anchorage

Jeff O'BRYANT BY W. H. Hawley
Jeff O'Bryant (Telephonic Authorization)
Fairbanks

Jean Seaton BY W. H. Hawley
Jean Seaton (Telephonic Authorization)
Bethel

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

FRANK H. MURKOWSKI,
GOVERNOR

Mailing: PO Box 110300
Juneau, AK 99811-0300
Delivery: 123 4th Street, Ste 717
Juneau, AK 99801
Phone: (907) 465-3428
Fax: (907) 465-4043

January 26, 2004

Hon. Lesil McGuire, Chair
House Judiciary Committee
State Capital Room 118
Juneau, Alaska 99811

Re: HB 349

Dear Representative McGuire,

I am writing to voice our support of House Bill 349, which allows a witness to be impeached with evidence taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) as long as the statement was otherwise voluntary and not coerced. It would also allow the prosecution to cross-examine a witness who testifies contrary to a statement that has been suppressed, as long as it was not seized in substantial violation of the witness's rights.

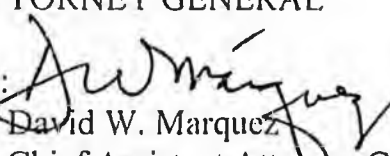
The provisions in House Bill 349 were part of the Governor's crime bill, HB 244, that was introduced last year. In our view, the technical requirements of the *Miranda* rule should not give witnesses a chance to testify falsely at trial, and this bill would contribute to the truth-finding process.

Thank you for the opportunity to express our support of House Bill 349.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By:


David W. Marquez

Chief Assistant Attorney General

cc: Representative Anderson
Representative Holm
Representative Ogg
Representative Samuels
Representative Gara
Representative Gruenberg ✓

HB

350

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Representative Carl Gatto

Representative Max Gruenberg

Date: January 29, 2004
To: Representative Lesil McGuire
Chair, Judiciary Committee
From: Representative Carl Gatto
Representative Max Gruenberg
Re: Hearing request for HB 350

We would respectfully request the committee schedule a hearing for House Bill 350, Compensation for Victims of Arson, at your earliest convenience. If you have any questions, please feel free to contact Teri at x4940 or Colleen at x3743.

Thank you for your consideration.

Alaska State Legislature

House of Representatives



State Capitol
Juneau, AK 99801-1182

Official Business

Representative Carl Gatto

Representative Max Gruenberg

SPONSOR STATEMENT

CSHB 350 (State Affairs) Compensation for Victims of Arson

Late last summer a home in Anchorage was severely damaged by a fire deliberately set by an unknown perpetrator while the family was asleep. Fortunately the family survived without injury. However many other arson victims have not been so fortunate. Deliberately setting a fire that endangers someone else is first-degree arson, a class A felony. Current Alaska law does not include first-degree arson on the list of crimes for which victims may receive compensation from the Violent Crimes Compensation Board (VCCB). CSHB 350 (State Affairs) simply adds arson to the list of crimes for which victims may receive compensation.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 350
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to adding personal Inju RDL: Violent Crimes Compensation Board
and property damage from arson. Component Violent Crimes Compensation Board
 Sponsor Representatives Gatto, Gruenberg
 Requester House State Affairs Committee Component No. 2694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other PFD Criminal Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

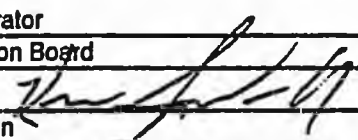
Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 350 would add arson as a compensable crime and property damage as a compensable loss under AS 18.67. Only the most serious of arson cases (first degree) would be eligible for consideration by the Violent Crimes Compensation Board. These cases would compete with other eligible applicants for available grant payments.

Prepared by: Susan L. Browne, Administrator
 Division: Violent Crimes Compensation Board
 Approved by: Commissioner Mike Miller 
 Agency: Department of Administration

Phone 465-3040
 Date/Time 1/16/04 4:03 PM
 Date 1/16/2004

VICTIMS



1057 W. Fireweed Lane, Suite • Anchorage, AK 99503
(907) 278-0977 1-888-835-1213 • Fax: (907)258-0740 • e-mail: vfj@alaskalife.net

A United Way Agency

January 20, 2004

To Whom It May Concern:

Regarding: letter in support of CSHB 350 (State Affairs)

Arson is a serious crime and not at all uncommon in the State of Alaska. Victims of arson can be left with many scars, both physical and mental. The trauma can be devastating as with any serious crime. The financial demands can be overwhelming. Too often these victims are without any support or resources. Victims for Justice would like to offer our support for CSHB 350 (State Affairs). If you have any further question please do not hesitate to give me a call at 907-278-0986.

Donna Garner,
Executive Director
Victims for Justice, Inc.

* RECEIVED VIA EMAIL

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110230
JUNEAU, ALASKA 99811-0230
PHONE: (907) 465-3040
TOLL FREE: 1-800-764-3040
FAX: (907) 465-2379

January 21, 2004

Representative Bruce Weyhrauch, Chair, House State Affairs
Representative Jim Holm, Vice-Chair, House State Affairs
Representative John Coghill, House State Affairs
Representative Bob Lynn, House State Affairs
Representative Paul Seaton, House State Affairs
Representative Ethan Berkowitz, House State Affairs
Representative Max Gruenberg, House State Affairs - Co-sponsor HB350
Representative Carl Gatto - Co-sponsor HB350
Alaska State Legislature
State Capitol
Juneau, Alaska

RE: HB350
Adding arson to AS 18.67

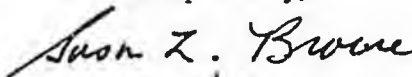
Dear Honorable Chair Weyhrauch, Honorable Vice-Chair Holm, Honorable Members of the House State Affairs Committee, and Honorable Representative Gatto:

The Violent Crimes Compensation Board (Board) appreciates the opportunity to lend its support for HB350. The toll violent crime takes on innocent victims in Alaska is immense. HB350 would add arson as a compensable crime by the Board. Only the most serious arson cases would be eligible for consideration.

While these cases would compete with other eligible applicants for awards out of the Board's limited funds, there is little doubt arson victims suffer extreme losses. I urge you to support this bill and applaud your efforts on behalf of Alaskan crime victims.

I am available to discuss this with you and will do my best to be available to you while this bill is in your committee. I can be reached at work in Valdez at 907-834-6480 and at home in Valdez at 907-835-2329.

Respectfully,



for
Gerard Godfrey
Chair

victim compensation in each state by crime category for FFY2002; Table 4, on page 16, shows the number of claims paid by crime category and by state.

SPENDING FOR GRANTS IN ALASKA

According to the report on the Victim Assistance Program submitted by the Council on Domestic Violence and Sexual Abuse for 2002, Alaska spent \$5.9 million for assistance projects and served more than 5,000 victims.¹⁷ Almost 93 percent of those persons were victims of child abuse, domestic violence, and sexual abuse.

During that same time period, according to the Violent Crimes Compensation Board's report on the Victim Compensation Program, Alaska provided almost \$1.3 million in compensation to about 500 victims of crimes.¹⁸ Of that amount, about 60 percent went to victims of assault, sexual assault, and child abuse. Approximately 12 percent went to victims of drunk drivers and other vehicular crimes. The remaining amount (approximately 30 percent) compensated victims of all other crimes, including robbery and homicide.

A report from the Office for Victims of Crime shows that Alaska was allocated just over \$1.2 million for victim assistance grants and about \$500,000 for victim compensation by the Department of Justice for FFY2003.¹⁹

CRIME STATISTICS IN ALASKA

Although it may seem as if a serious bias exists in the granting of funds for victim assistance, it may also be helpful to look at crime statistics in Alaska. According to the Bureau of Justice Statistics, Alaska ranked first in the nation for forcible rape in 2001 (per 100,000 population).²⁰ In 2001, the rate for forcible rape nationwide was 31.8 rapes per 100,000 population—Alaska's rate was 78.9. In comparison, Alaska ranked eighth for aggravated assault, 18th for murder and nonnegligent manslaughter, 34th for robbery, and 18th for all violent crimes.

¹⁷ "2002 Alaska State Wide Assistance Report," Victims of Crime Act Victim Compensation Grant Program, U.S. Department of Justice, <http://www.ojp.usdoj.gov/ovc/fund/sbsmap/ovcplak1.htm> (accessed December 2, 2003).

¹⁸ "2002 Alaska Statewide Compensation Report," Victims of Crime Act Victim Compensation Grant Program, U.S. Department of Justice, <http://www.ojp.usdoj.gov/ovc/fund/sbsmap/ovccpak1.htm> (accessed December 2, 2003).

¹⁹ "2003 Crime Victims Fund Allocations," Office for Victims of Crime, U.S. Department of Justice, March 3, 2003, <http://www.ojp.usdoj.gov/ovc> (accessed December 3, 2003).

²⁰ "Table 3.113: Rank order of States according to rates (per 100,000 population) of violent crime, murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, 2001," *SOURCEBOOK of Criminal Justice Statistics Online*, Bureau of Justice Statistics, U.S. Department of Justice, <http://www.ojp.usdoj.gov/bjs/sourcebook.htm> (accessed December 15, 2003). Statistics for 2001 are the most recent numbers available.

Table 3: Victim Compensation Grant--Amounts Spent by State in FFY 2002, by Crime Category

State	Assault	Homicide	Sexual Assault	Child Abuse	DWI/DUI	Other Vehicular Crimes	Stalking	Robbery	Terrorism	Kid-napping,	Arson	Other	Total
Alabama	\$3,095.1	\$1,680.6	\$360.1	\$191.1	\$54.3	\$282.1	\$1.9	\$154.8	\$0.0	\$5.0	\$0.0	\$177.8	\$6,002.8
Alaska	\$669.0	\$183.4	\$34.8	\$42.0	\$94.6	\$60.5	\$13.6	\$64.8	\$0.0	\$4.4	\$10.6	\$88.9	\$1,266.6
Arizona	\$1,123.7	\$937.9	\$110.4	\$154.6	\$168.4	\$123.6	\$2.6	\$27.3	\$2.2	\$7.0	\$0.4	\$71.6	\$2,729.7
Arkansas	\$1,284.1	\$483.3	\$55.2	\$180.6	\$158.0	\$39.7	\$0.0	\$20.6	\$25.0	\$0.0	\$0.3	\$0.0	\$2,246.8
California	\$67,761.5	\$22,059.9	\$5,876.6	\$27,746.7	\$4,911.3	\$6,574.3	\$586.0	\$5,483.5	\$1,689.4	\$465.9	\$24.5	\$2,495.2	\$145,674.8
Colorado	\$5,126.8	\$852.7	\$483.3	\$1,633.3	\$597.3	\$1,099.7	\$45.2	\$89.7	\$0.7	\$44.9	\$9.0	\$490.5	\$10,473.1
Connecticut	\$981.2	\$903.0	\$66.7	\$95.9	\$53.6	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1.1	\$0.0	\$2,101.5
Delaware	\$785.4	\$213.7	\$55.6	\$46.0	\$133.9	\$68.9	\$0.0	\$21.5	\$0.0	\$0.0	\$5.8	\$536.8	\$1,867.6
District of Columbia	\$2,734.0	\$1,172.1	\$41.5	\$382.7	\$0.0	\$221.0	\$0.0	\$0.0	\$2.2	\$0.0	\$3.6	\$0.0	\$4,557.1
Florida	\$10,993.0	\$3,415.2	\$678.4	\$386.1	\$1,667.3	\$1,263.4	\$37.6	\$1,002.1	\$0.0	\$12.4	\$1.5	\$373.8	\$19,830.8
Georgia	\$2,866.0	\$747.7	\$106.7	\$166.1	\$175.0	\$87.9	\$0.0	\$4.2	\$0.0	\$0.0	\$0.0	\$0.0	\$4,153.6
Hawaii	\$704.1	\$54.6	\$90.3	\$205.4	\$0.0	\$19.0	\$0.0	\$0.0	\$0.0	\$19.7	\$0.0	\$27.2	\$1,120.3
Idaho	\$1,091.6	\$148.7	\$90.2	\$262.4	\$308.8	\$111.3	\$3.2	\$13.5	\$0.0	\$22.2	\$0.0	\$15.1	\$2,067.0
Illinois	\$15,383.1	\$5,001.1	\$308.8	\$340.8	\$308.9	\$0.0	\$0.0	\$0.0	\$0.0	\$17.1	\$4.7	\$2,019.1	\$23,383.6
Indiana	\$598.9	\$263.1	\$437.1	\$435.5	\$21.5	\$17.0	\$0.0	\$16.8	\$0.0	\$0.5	\$3.4	\$127.4	\$1,921.2
Iowa	\$2,104.7	\$522.7	\$107.1	\$252.3	\$153.6	\$227.5	\$3.3	\$73.4	\$0.0	\$13.1	\$1.3	\$112.7	\$3,571.7
Kansas	\$1,992.0	\$324.2	\$84.6	\$204.6	\$100.5	\$43.3	\$0.0	\$61.2	\$0.0	\$5.1	\$6.4	\$1.9	\$2,823.8
Kentucky	\$766.1	\$259.0	\$8.7	\$14.6	\$17.4	\$0.0	\$0.9	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$1,066.7
Louisiana	\$724.0	\$555.2	\$46.3	\$29.1	\$100.7	\$20.3	\$1.0	\$93.1	\$0.0	\$5.2	\$0.0	\$3.1	\$1,578.0
Maine	\$114.1	\$50.6	\$22.8	\$47.6	\$29.3	\$0.0	\$2.0	\$5.1	\$0.0	\$1.2	\$0.0	\$5.0	\$277.7
Maryland	\$3,457.0	\$677.6	\$23.4	\$9.6	\$14.5	\$18.5	\$0.0	\$23.7	\$0.0	\$0.0	\$27.7	\$0.0	\$4,252.0
Massachusetts	\$1,524.5	\$767.0	\$227.2	\$166.1	\$254.0	\$37.1	\$8.8	\$12.7	\$520.4	\$11.6	\$0.0	\$25.3	\$3,554.7
Michigan	\$1,219.8	\$298.7	\$47.0	\$6.2	\$10.2	\$2.8	\$0.0	\$267.1	\$0.0	\$0.0	\$1.2	\$0.0	\$1,853.0
Minnesota	\$1,575.4	\$840.2	\$81.0	\$232.5	\$406.6	\$0.0	\$1.6	\$117.5	\$0.0	\$38.3	\$7.4	\$3.9	\$3,304.4
Mississippi	\$916.7	\$548.2	\$18.1	\$20.7	\$88.0	\$24.8	\$0.0	\$0.0	\$0.0	\$0.9	\$0.0	\$0.0	\$1,617.4
Missouri	\$4,293.2	\$1,551.3	\$122.2	\$149.0	\$180.3	\$319.8	\$1.5	\$563.9	\$0.0	\$0.0	\$5.5	\$63.3	\$7,250.0
Montana	\$655.0	\$79.7	\$31.6	\$91.5	\$80.2	\$12.5	\$6.4	\$0.0	\$0.0	\$1.5	\$0.0	\$0.0	\$958.4
Nebraska	\$153.6	\$46.8	\$4.4	\$7.5	\$5.0	\$0.0	\$0.0	\$11.4	\$0.0	\$0.0	\$0.0	\$0.0	\$228.7
Nevada	\$295.0	\$31.0	\$22.7	\$0.0	\$11.7	\$15.0	\$0.0	\$18.4	\$0.0	\$0.0	\$0.0	\$36.3	\$430.1
New Hampshire	\$143.0	\$61.4	\$74.7	\$32.5	\$9.1	\$17.2	\$12.2	\$4.7	\$0.0	\$0.0	\$10.0	\$2.9	\$367.7
New Jersey	\$3,054.6	\$1,045.9	\$325.7	\$265.2	\$136.7	\$0.0	\$0.0	\$96.2	\$7,311.8	\$0.7	\$4.0	\$10.9	\$12,251.6
New Mexico	\$767.9	\$276.1	\$79.5	\$164.7	\$109.4	\$0.0	\$0.0	\$0.0	\$0.0	\$19.5	\$0.0	\$30.7	\$1,447.8
New York	\$10,873.4	\$3,431.7	\$597.6	\$974.7	\$675.7	\$332.1	\$36.1	\$622.6	\$29,889.7	\$21.7	\$16.1	\$3,559.4	\$51,030.8
North Carolina	\$6,121.3	\$1,403.3	\$177.9	\$213.5	\$298.9	\$78.7	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$8,293.6
North Dakota	\$187.7	\$5.7	\$6.5	\$20.3	\$6.9	\$25.6	\$1.1	\$0.0	\$0.7	\$0.0	\$0.0	\$13.4	\$267.9

Table 4: Victim Compensation Grant--Number of Claims Paid by State in FFY 2002, by Crime Category

State	Assault	Homicide	Sexual Assault	Child Abuse	DWI/ DUI	Other Vehicular Crimes	Stalking	Robbery	Terrorism	Kidnapping	Arson	Other	Total
Alabama	920	374	620	167	13	104	6	63	0	6	0	0	2,273
Alaska	259	68	30	76	21	4	2	20	0	9	5	19	513
Arizona	458	229	69	174	57	20	5	22	0	10	1	52	1,097
Arkansas	580	134	59	274	36	20	0	6	1	0	1	0	1,111
California	20,490	5,358	3,324	17,463	916	1,093	294	1,692	200	237	15	1,289	52,371
Colorado	4,233	480	745	3,357	273	416	98	198	1	61	12	725	10,599
Connecticut	389	127	30	67	27	0	0	0	0	0	1	0	641
Delaware	185	36	9	42	18	8	0	8	0	0	7	71	384
District of Columbia	939	356	49	313	0	32	0	0	1	0	3	0	1,693
Florida	5,677	633	903	625	287	339	40	687	0	10	3	200	9,404
Georgia	880	258	80	164	41	22	0	3	0	0	0	0	1,448
Hawaii	487	16	47	123	0	2	0	0	0	4	0	14	693
Idaho	492	41	119	495	57	19	3	8	0	9	0	13	1,256
Illinois	1,965	730	92	4	38	0	0	0	0	6	5	396	3,236
Indiana	510	116	595	1,014	21	18	0	7	0	1	6	41	2,329
Iowa	1,189	171	171	406	37	69	9	34	0	16	5	92	2,199
Kansas	490	101	70	218	30	10	0	17	0	2	6	2	946
Kentucky	196	84	11	21	6	0	1	0	0	0	0	0	319
Louisiana	289	161	59	59	21	8	1	30	0	7	0	4	639
Maine	104	18	24	58	9	0	2	6	0	1	0	5	227
Maryland	440	151	6	6	3	2	0	9	0	0	6	0	623
Massachusetts	267	126	38	9	4	2	0	3	0	0	1	0	450
Michigan	425	221	30	55	37	9	0	0	0	6	0	0	783
Minnesota	901	200	69	220	83	0	2	54	0	14	11	6	1,560
Mississippi	425	221	30	55	37	9	0	0	0	6	0	0	783
Missouri	703	279	130	119	31	57	1	68	0	0	2	12	1,402
Montana	246	41	12	135	11	1	7	0	0	3	0	0	456
Nebraska	36	12	2	5	1	0	0	4	0	0	0	0	60
Nevada	809	112	421	32	63	54	0	149	0	0	0	31	1,671

Arson injury stats

Subject: Arson injury stats

Date: Wed, 21 Jan 2004 14:41:40 -0900

From: Jodie Hettrick <jodie_hettrick@dps.state.ak.us>

To: kelly_nicolello <kelly_nicolello@dps.state.ak.us>

Kelly,

We found the following stats -

2001 - 4 injuries - 2 incidents

2002 - 7 injuries - 3 incidents

2003 - 7 injuries - 1 incident (2003 stats are incomplete so far)

Jodie

Community	Full Name	Sex	Race	D.O.B	Age	Date of Fire	Date of Death	Loss Cause	Multi-Victim	Fire Cause	Smoke Detector Installed	Drugs or Alcohol	Occupancy
Upper Kalsina	Kameroff, M	M	Native American		24	4/19/1975	4/19/1975	Asphyxiation	No	Arson	Not Installed	No	Residential, home
Anchorage	Whitelhorn, M	M	Caucasian		23	2/5/1976	2/5/1976	Hemorrhage	No	Arson	Not Installed	No	Structural, Business
Anchorage	Hiratuska, F	F	Other		8	12/7/1978	12/7/1978	Carbon Monoxide	No	Arson	Not Installed	No	Residential, home
Anchorage	Smith, My F	F	Other		20	1/25/1981	1/25/1981	Asphyx. &	No	Arson	Not Installed	Yes	Structural, Business
Northway	Ervin, Leo M	M	Native Am	11/5/1959	22	4/10/1984	4/10/1984	Burns	No	Arson	Undetermined	Unknown	Residential, home
Nome	Pootogoc, F	F	Native Am	1/12/1963	21	9/22/1984	9/22/1984	Asphyxiation	Yes	Arson	Not Installed	Yes	Residential, home
Nome	Olanna, D M	M	Native Am	8/24/1974	10	9/22/1984	9/22/1984	Asphyxiation	Yes	Arson	Not Installed	Yes	Residential, home
Fairbanks	Silas, Sus F	F	Native Am	7/15/1955	29	9/23/1984	10/12/1984	Burns	No	Arson	Not Installed	No	Residential, home
Fairbanks	Hansen, A M	M	Caucasian	9/23/1925	59	2/4/1985	2/5/1985	Burns	No	Arson	Not Installed	Yes	Residential, home
Akiak	Jackson, M	M	Native Am	6/28/1970	17	6/28/1987	6/28/1987	Burns	No	Arson	Undetermined	Yes	Other
Anchorage	Smith, Jeff M	M	Caucasian	5/4/1953	37	1/11/1991	1/11/1991	Asphyxiation	Yes	Arson	Undetermined	Yes	Residential, trailer
Anchorage	Dohman, F	F	Caucasian	5/9/1956	34	1/11/1991	1/11/1991	Asphyxiation	Yes	Arson	Undetermined	Yes	Residential, trailer
Knik Area	DeBeaulieu M	M	Native American		6	4/1/1996	4/1/1996	Asphyxiation	No	Arson	Not Installed	No	Residential, trailer
Anchorage	Alex, Aled M	M	Native Am	4/9/1941	55	4/24/1996	4/24/1996	Asphyx. &	No	Arson	Not Installed	Yes	Residential, home
Bear Creek	Ferguson, M	M	Caucasian	9/19/1952	46	11/16/1998	11/16/1998	Asphyxiation	No	Arson	Not Installed	Undetermined	Residential, home
Anchorage	Dubose, J M	M	Black	3/22/1953	45	12/3/1998	12/3/1998	Burns	No	Arson	Did not operate	Yes	Multi-dwelling structure
Anchorage	Robinson, F	F	Black	1/14/1968	29	12/3/1998	12/7/1998	Burns	No	Arson	Did not operate	Yes	Multi-dwelling structure
Delta Junction	Roll, Walt M	M	Caucasian	1/7/1920	79	3/21/1999	3/21/1999	Asphyxiation	No	Arson/Homicide	Undetermined	Yes	Residential, home
Soldotna	Richel, Dc F	F	Caucasian	1/1/1948	51	9/10/1999	9/10/1999	Asphyx. &	No	Arson	Undetermined	Undetermined	Residential, home
Kenai	Adams, D M	M	Caucasian	10/11/1957	41	9/17/1999	9/17/1999	Burns	No	Arson/Suicide	Operated	Yes	Residential, home
Klawock	Williams, M	M		2/1/1997	3	6/10/2000	6/10/2000	Burns	No	Arson - Juvenile	Not Installed	Undetermined	Residential, trailer
Wasilla	Wellon, S M	M	Caucasian	11/12/1985	15	9/15/2000	9/15/2000	Asphyxiation	No	Arson	Did not operate	No	Multi-dwelling structure
North Pole	Rainer, Vic F	F	Caucasian	7/16/1944	57	10/23/2000	10/23/2000	Asphyxiation	No	Arson	Did not operate	Undetermined	Residential, home

Deaths resulting from arson
(in Alaska)

**JAY HAMMOND**

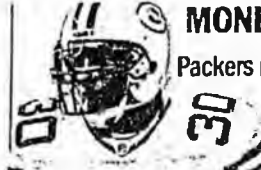
Endowment plan must meet certain conditions

OP-ED

**SPECIAL KIDS**

Screening program catches disease early

LIFE

**MONDAY NIGHT**

Packers run past Bears, spoil new den

SPORTS

WEATHERSeptember drips out
High 58; low 48

50 cents

Final Edit

Anchorage Daily News

Tuesday, September 30, 2003

ALASKA'S NEWSPAPER

www.adn.com

ARSONS HIT NORTHEAST ANCHORAGE

PHOTO BY BILL WORTH / Anchorage Daily News

Miles Vallejo, 15, a freshman at East High, salvaged smoke-damaged family photographs from his home Monday. Vallejo was awake when someone set fire to the house. He woke the other occupants in the house, and everyone escaped serious injury.

Home damaged, but no one hurt

Several fire stations also respond to string of vehicle blazes

By TATABOLINE BRANT
Anchorage Daily News

A house and at least four vehicles were set ablaze in a string of arsons Monday in northeast Anchorage.

The fires occurred between 6:15 and 7:15 a.m. in the Mountain View and Russian Jack neighborhoods. Firefighters came from as far away as 80th Avenue, Tudor Road and Spenard to fight the back-to-back blazes.

A 15-year-old boy cut his thumb while trying to extinguish a fire that had been set at his house while his family slept, but other than that, there were no injuries. The boy roused his family and everyone got out safely, but they lost a cat named Precious and their house was badly damaged.

Hattie Nichols, 71, said her great-grandson, Miles Vallejo, is a hero.

"Had it not been for him, we all would have died in the fire," she said.

In all, fires at about half a dozen locations were called in Monday morning, and there were other reports of two attempted arsons and an accidental carpet fire, Anchorage Police Department spokesman Ron McGee said.

Police and fire officials were still trying to piece together the details Monday night. They did not yet know how many of the fires were related or what the motive for setting them might have been. Total damages are estimated to be \$265,000, Anchorage Fire Department spokesman Tom Kempton said.

McGee and Kempton said a witness saw a woman in the vicinity of one fire who was said to be holding a cylindrical object that might have been a torch. Police want to talk to the woman, who had dark hair, was about 5 feet 5 inches tall and weighed about 120 pounds. Anyone

See Back Page, FIRES



Tricia Estores, in white, embraces her grandmother Hattie Nichols outside the home in the Russian Jack neighborhood where they escaped an early-morning fire Monday. Two other people also escaped.

FIRES: String of suspicious blazes

Continued from A-1

with information is asked to call police. The first fire occurred at a green ranch-style house at 4211 E. Third Ave.

Miles, an East High freshman, was getting ready for school around 6 a.m. when he heard a crash near the front of his home. He thought it might be the cats at first, said his great-grandmother, Nichols, but when he opened the front door, he found flames covering the doorway and a partially burned plastic fuel can with kerosene in it sitting on the porch.

Miles rushed to wake his family and then climbed out a window with his aunt's fiance and turned a hose on the fire. They found the garage engulfed in flames.

Nichols said her family has lived in the house for more than 30 years. They used the garage for storage. There was little they could do Monday but watch as the family's Hawaiian cultural items, photographs, golf clubs, tools, clothes, luggage and other items burned.

All four people in the house

— three adults and Miles — got out safely. Firefighters were dispatched at 6:18 a.m. and were able to contain the blaze to the garage and attic, but there was smoke damage in the house, the family said.

Miles' father, Trevis Kordus, picked through the charred, soggy mess Monday afternoon. A plumber and golf pro, he wasn't home at the time of the fire; he had spent the night in Wasilla after a golf tournament Sunday in Palmer.

"It's amazing that everyone got out OK," he said.

Miles said he doesn't consider himself a hero.

"I just consider myself in the right place at the right time to save my family — especially my grandmother," he said. "She was sleeping right next to the garage."

Kordus said the family will probably stay with relatives for the immediate future. After that, he's not sure what they'll do. The family had insurance, but not enough to cover damage that Kempton estimated at \$145,000.

Kordus said he had numerous photo albums and his son's memorabilia from as far back as kindergarten stored in the garage.

"Pretty much half my life is gone now," he said. "Stuff that you can't replace with money."

Minutes after firefighters were dispatched to the house fire, a flurry of other calls started coming in from Mountain View.

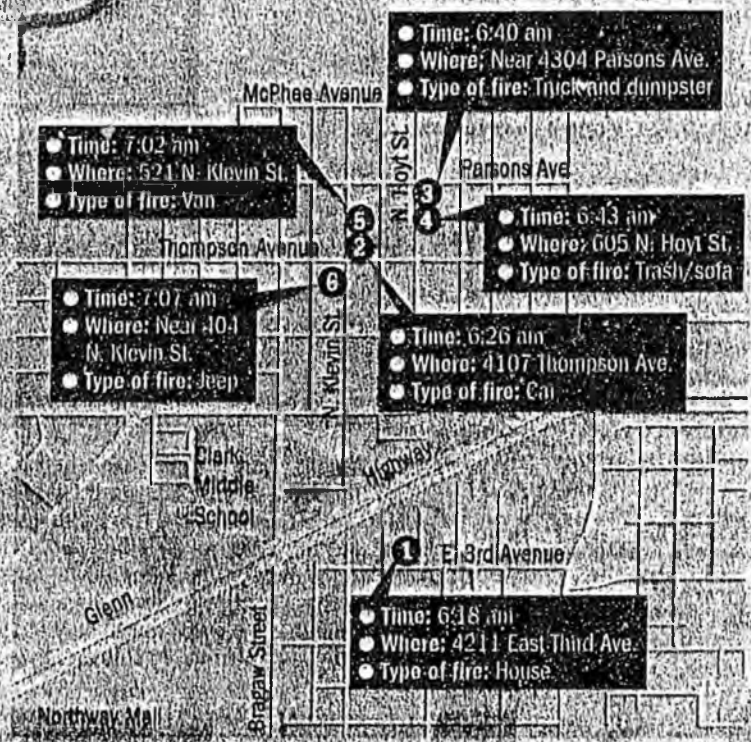
Outside a ranch-style house at 4107 Thompson Ave., a Chevrolet Celebrity was torched down to its metal frame. Down an alley a few houses away, a Dodge caravan behind 521 N. Klevin St. met the same fate. All the van's windows were gone, and copper wires hung in a tangled mess where the dash used to be.

About a block away, a fire in a red Jeep Cherokee parked on the street near 402 N. Klevin St. burned into a seat cushion. The rest of the Jeep did not catch fire, but burn marks were visible around the gas tank.

Near 4304 Parsons Ave., a trash bin and a Chevrolet S-10 pickup were torched. The fire melted the camper shell on the truck.

Mountain View area fires

Police are seeking a 5-foot-5, 120-pound, female who was seen in the area.



Source: Anchorage Fire and Police Department reports. BY ROWEN BOSTROM / Anchorage Daily News

A sofa sitting outside an apartment building at 605 N. Hoyt St. also was set on fire, \$120,000, Kempton said. Damage to the vehicles and their contents is estimated at \$120,000, Kempton said.

Anchorage Daily News

(1986-Current)

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Record 1 of -1

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November 17, 1999

ARSON SUSPECTED IN WASILLA BLAZE

Author: Karen Aho
Daily News Reporter
Staff

Edition: Final
Section: Metro
Page: B2

Estimated printed pages: 2

Article Text:

Alaska State Troopers are investigating an arson that gutted a teacher's house in Wasilla early Tuesday.

William Sterns, 49, woke about 3:45 a.m. to a thud on the porch, firefighters said. He found the lower level of his Willow Road home illuminated by flames through the front windows.

"I did what anybody would do at that time, grabbed a few essentials and bolted," Sterns said.

He dialed 911 on his portable phone as he ran out the back door and around the front of his house to move the truck, which was about 10 feet from the flames.

Troopers arrived minutes later and put out much of the fire with portable extinguishers, but the flames spread through the wall and up into the eaves of the two-story frame house, Central Mat-Su Fire Department Battalion Chief Michael Keenan said.

Troopers called the fire an arson but would not say what was used to start it, pending an investigation.

Sterns, who has taught government and politics at Wasilla High School for 15 years, said he has no reason to believe he was the target of a personal attack.

"There hasn't been any agitated interaction, adverse relations with kids," he said. "There's nothing like that."

Damage was estimated at \$50,000.

"It could be a mistaken location," trooper Sgt. Dennis Ponder said. "Obviously someone intended someone harm."

Reporter Karen Aho can be reached at kaho@adn.com.

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Record Number: 55302

Article Bookmark(OpenURL Compliant):Anchorage Daily News (AK) : ARSON SUSPECTED IN WASILLA BLAZE
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Anchorage Daily News (AK)

December 9, 1998

**GASOLINE IGNITED FATAL BLAZE
BEACHFRONT ARSON CLAIMS 2ND VICTIM**

Author: Don Hunter
Daily News Reporter
Staff

Edition: Final
Section: Nation
Page: A1

Estimated printed pages: 2

Article Text:

A second victim burned in the Beachfront Apartments arson has died in a Seattle hospital. Records of the medical examiner there say the fire started when someone broke a window, dumped gasoline inside and lit it.

Jacqueline M. Robinson, 30, died at 11:34 p.m. Monday at Harborview Medical Center in Seattle, a hospital spokesman said. Coroner's records say she had suffered burns over 80 percent of her body in the Thursday morning fire and died of complications from her injuries.

The fire's first victim was identified Tuesday by Anchorage investigators as 45-year-old Julius DuBose. Authorities had declined to name DuBose until dental records could confirm his identity.

The arson at the East Anchorage complex displaced six families, some 30 people in all. Several residents said after the fire that investigators told them they suspected an apartment was firebombed. One described hearing glass break and seeing a flash of light outside his upstairs window before an explosion shook the building.

Witnesses said Robinson ran from Apartment 2 in flames about 4:45 a.m. Thursday. DuBose, screaming, fell inside the living room. Residents of another ground-floor unit threw water on him and tried to pull him to safety, but intense heat forced them back.

Fire department spokeswoman Kayle Foster said Tuesday the fire was ignited in a bedroom. Several other people who were in the apartment at the time were able to escape.

Anchorage police and arson investigators have refused to discuss how the fire was set. But Foster, after hearing the King County, Wash., medical examiner's account of the fire's origin, said she could confirm it.

The police and fire departments are collaborating on the investigation, and have asked anyone with information about the crimes to call Crime Stoppers or the arson hotline. The number for Crime Stoppers is 561-7867. The arson hotline is 267-5060.

The fire was the second arson at the Beachfront in the last six weeks. On Oct. 25, two boys, ages 10 and 11, set fire to a car in a carport and the blaze spread to two other buildings in the complex, leaving 18 families homeless. The children were charged with arson and taken to McLaughlin Youth Center.

Reporter Don Hunter can be reached at dhunter@adn.com.

Barbara, to call 911.

While she was on the phone with police dispatchers, Clarence Copeland saw the man grab a can of gasoline off Durling's front deck. He sloshed the liquid on the deck and lighted it on fire.

Copeland yelled to his wife, who relayed the news to dispatchers.

"I said, 'Oh my god, he lit the house on fire,' " she said.

The man then ran back to the street and starting running up and down the gravel road, she said.

"He was yelling, 'I didn't set it. I didn't set it,' " she said.

Meanwhile, flames were shooting up the front of the cedar-sided home, Barbara Copeland said.

Then Samel started walking up the Copeland's driveway.

Copeland told his wife to get his gun. She grabbed the biggest one she could find -- a .243 caliber rifle with a scope.

What she didn't know was that it was unloaded. Her husband realized that soon after she handed it to him, but pretended it was loaded anyway.

He pointed the rifle at Samel and told him to leave. Samel slowly started backing up.

About the time he got to the end of the driveway, two troopers rolled up in patrol cars, Clarence Copeland said. They tried to wrestle Samel to the ground, but he fought back, and they hit him with the Tazer, Copeland said.

That was enough to get him into handcuffs, but even then he kept fighting, Cox said. They were still wrestling with him when fire crews showed up, said Central Mat-Su Fire Chief Jack Krill.

Finally the officers got Samel into a patrol car, where he proceeded to kick out the back passenger side window, Cox said. Broken glass from the window lay in the ditch next to the road Wednesday evening.

Durling, who was at work when a neighbor called to tell her that her house was on fire, said she arrived shortly after Samel was arrested.

Officers asked her to look at him to see if she recognized him. She didn't. But what she did see scared her.

"He just looked at me," she said. "It was really creepy. Just his eyes. You could tell he was on something."

Durling, who has lived in the neighborhood for past nine years, had no explanation for the attack on her home. She doesn't even own cats, she said, only a small "mutt" named Fritz.

Officers were at a loss as well, although Cox noted troopers had responded to numerous strange calls Wednesday.

"It's a full moon," he said. "I checked."

Reporter S.J. Komarnitsky can be reached at skomarnitsky@adn.com or 352-6711.

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Record Number: 27155

Article Bookmark(OpenURL Compliant): [Anchorage Daily News \(AK\) : Man attacks neighborhood, sets house ablaze](http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:ADNB&rft_val_format=info:ofi/fmt:kev:mtx:txt&rft_dat=0F7ADB215DD7575D&svc_dat=InfoWeb:current&req_dat=0FC00EA2EBA62E28)
http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:ADNB&rft_val_format=info:ofi/fmt:kev:mtx:txt&rft_dat=0F7ADB215DD7575D&svc_dat=InfoWeb:current&req_dat=0FC00EA2EBA62E28

Anchorage Daily News

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[E-Mail](#) [Text Only Display](#) [List](#)**Anchorage Daily News (AK)**

June 7, 2001

**Man attacks neighborhood, sets house ablaze
Neighbor holds suspect at gunpoint until troopers arrive**

Author: S.J. Komarnitsky
Anchorage Daily News
Staff

Edition: Final
Section: Nation
Page: A1

Estimated printed pages: 3

Article Text:

A man wearing a single shoe and shouting about his plans to kill cats terrorized a Wasilla area neighborhood Wednesday, throwing rocks at houses, tipping over garbage cans and setting a home on fire.

The spree ended only after a neighbor pointed a rifle at the man.

Even so, it took two officers to get Gordon E. Samel, 39, of Wasilla into custody, Alaska State Troopers said. They hit him with a Tazer, a device that shoots a nonlethal jolt of electricity, and had to wrestle him to the ground, said Sgt. Robert Cox.

Samel, who has been arrested several times over the past 20 years, was being held Wednesday at Mat-Su Pre-Trial Facility in Palmer. He was first taken to Valley Hospital in part because he told officers he had taken drugs, Cox said. He likely will face charges of arson and resisting arrest, Cox said.

Fire officials estimated damage to a two story A-frame on Caribou Loop near the intersection of Seldon and Wasilla-Fishhook roads at about \$60,000.

Shirley Durling, who lives at the home with her two young sons, said Wednesday evening she was still in shock. The deck and front of her home were scorched black, and her roof was pocked with holes where firefighters had punched through to get to the flames.

"It's been a really good neighborhood," Durling said. "I've never worried about my kids going out to play, or anything. It's just really weird."

The problems for the neighborhood -- a wooded residential area about three miles north of Wasilla -- started about 3 p.m. when Samel popped out of the trees, residents said.

He was wearing a T-shirt, sweats and a single sandal, said Clarence Copeland, 55, an ex-Marine and truck driver who was raking his yard at the time.

"He was mumbling to himself and he said that he was going to kill my cats," Copeland said. "I told him, 'I don't have any cats.'"

He then started walking down the road, but not before tipping Copeland's trash cans over.

He then went next door to Durling's home and started throwing rocks at it. Copeland told his wife,

HB

351



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 351, dated 3-19-04
bill # / subject public hearing date

I would like to provide my support for HB 351.

The Kenai Fire Department has responded to over 20 calls this winter for carbon monoxide problems. On at least two of the calls we had to transport family members to our local hospital for emergency treatment of CO poisoning.

The 15 members of the Kenai Fire Department support this bill and we think HB 351 will save numerous Alaskan lives in the future if passed.

Signed: James Baisden, Fire Marshal
Testifier *James C Baisden*

Kenai Fire Dept
Representing (optional)

105 S Willow Kenai, AK 99611
Address

283-7666
Phone number

ALASKA STATE LEGISLATURE

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Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Terri Bannister, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 20, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1325\V, HB 351. The bill was passed out of committee on Friday with no amendments.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

23-LS1325W
Bannister
3/18/04

CS FOR HOUSE BILL NO. 351()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES GATTO AND GRUENBERG, Gara, Meyer, Guttenberg, Kerttula

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the devices, including carbon monoxide detection devices, required**
2 **in dwellings; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 18.70.095(a) is amended to read:

5 (a) Smoke detection devices shall be installed and maintained in all dwelling
6 units in the state, and carbon monoxide detection devices shall be installed and
7 maintained in all qualifying dwelling units in the state. The smoke detection
8 devices must [SHALL] be of a type and shall be installed in a manner approved by
9 the state fire marshal. The carbon monoxide detection devices must have an alarm
10 and shall be installed and maintained according to manufacturers'
11 recommendations.

12 *** Sec. 2.** AS 18.70.095(b) is amended to read:

13 (b) In a dwelling unit occupied under the terms of a rental agreement or under
14 a month-to-month tenancy,