

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

STATE OF ALASKA,

Plaintiff,

vs.

TUPE SMITH

DOB: 11/02/1994

APSIN ID: 9077704

DMV NO.: 7690586 AK

ATN: 111496878

Defendant.

Court No. 3AN-23-08873CR

OPPOSITION TO MOTION TO DISMISS 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 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.

COMES NOW, the State of Alaska, by and through undersigned counsel, and opposes the defendant's motion to dismiss the indictment. The defendant faults grand jury testimony that she claims was misleading and/or inaccurate. However, the testimony referenced in the defendant's motion pertains to Counts III-V, none of which the grand jury returned a true bill on. The allegations underpinning Counts I and II, for which the grand jury did indict, does not rely on, nor was it impacted by, any of the testimony complained of by the defendant. For the counts currently before the Court, the indictments relied on the defendant's sworn statement that she was a U.S. Citizen, which was disproven by citizenship records as well as her own admission to the case officer that she was not a citizen. While the State disputes there was any misleading or inaccurate testimony presented at grand jury, the defendant's claimed errors relate to evidence presented in relation to Counts III-V, which are not currently before the court. The testimony as to the falsity of the statements in Counts I and II and the defendant's mental state was straightforward, complete, and not misleading. For the following reasons, the grand jury presentation did not contain material that was false, misleading, or

1 inadmissible evidence, nor was there any uncorrected inadmissible testimony, and the
2 indictment was sufficiently supported by evidence. For the following reasons, the Court
3 should deny the defendant's motion.

4 **I. Facts and supporting evidence**

5 The grand jury in this case was presented with a proposed indictment that
6 contained five counts of Voter Misconduct in the First Degree. The grand jury issued a
7 true bill on Counts I and II, and issued a no true bill on Counts III, IV, and V.¹ Counts I
8 and II were each based on allegations that the defendant made a false statement on the
9 same type of voting document, albeit on different dates; specifically, that "TUPE SMITH
10 intentionally made a false affidavit, swore falsely, or falsely affirmed under an oath
11 required by Title 15, to wit: Voter Registration Application."² The allegations as to these
12 counts are that Ms. Smith intentionally, and falsely affirmed under oath that she was a
13 U.S. Citizen on both of these forms, when she was, in fact, not. Counts III through V
14 alleged that substantively different intentional false statements were made on different
15 types of elections documents, to include a Declaration of Candidacy (Count III),
16 Absentee Ballot Oath & Affidavit (Count IV), and Declaration of Candidacy: REAA
17 Board Member, Election: October 3, 2023 (Count V). Two witnesses testified at grand
18 jury: Michaela Thompson, the "Division Operations Manager for the Division of
19 Elections for the State of Alaska"³ and Sgt. Nathan Bucknall of the Alaska State
20 Troopers.

21 The specific alleged false statement that underlies the different counts is critical to
22 the Court's understanding of the issues before the grand jury. Grand Jury Exhibit
23 Number 1, as identified by Ms. Thompson, is a voter registration application.⁴ As Ms.
24 Thompson noted, "the very first questions" on the form "are 'yes or no, I am a citizen of

25 ¹ The defense incorrectly cites the grand jury transcript to say that the grand jury returned a no true bill on eight
26 counts; as is evidenced by both the indictment itself and the grand jury transcript, the grand jury returned no true
27 bills on three counts, not eight. See Motion to Dismiss Indictment at 13; Grand Jury transcript at 41-43.

² Indictment. Count I alleged wrongdoing on July 8, 2020, while Count II alleged wrongdoing on March 30, 2022.

³ Grand Jury Transcript at 8-9.

⁴ *Id.* at 10.

1 the United States’ and ‘yes or no, I am at least 18 years old or will be within 90 days of
2 completing this application.’”⁵ She testified that “[b]elow that, it says, ‘*if you checked*
3 *no to either question, do not complete this form, as you are not eligible to register to*
4 *vote.*’”⁶ Ms. Thompson testified that at the bottom of the document was the language:

5 Voter certificate. Read and sign. I certify under penalty of perjury that the
6 above information I provided on this document is true and correct. I am not
7 registered to vote in another state, or I provided information to cancel that
8 registration. I further certify that I am a resident of Alaska, and I have not
9 been convicted of a felony, or having been so convicted, have been
10 unconditionally discharged from incarceration, probation, and/or parole.

11 Ms. Thompson testified that Grand Jury Exhibit 2 was the same type of document
12 as Exhibit 1, and that Grand Jury Exhibits 1 and 2⁷ were both voter registration
13 applications for Tupe Smith.⁸ Further, she testified that Ms. Smith checked “yes” on both
14 forms to designate that she was a U.S. citizen.⁹ Ms. Thompson further testified that the
15 oath/certification she had previously read to the jury, as cited above, was the same in both
16 Grand Jury Exhibits 1 and 2, and that both were signed by Ms. Smith.¹⁰ Grand Jury
17 Exhibits 1 and 2 formed the basis for Counts I and II in the indictment. In other words,
18 the allegations in Counts I and II turn on the same false statement, certified under oath by
19 Ms. Smith—that she was a U.S. Citizen. Exhibit 1 is filled out in writing, but Exhibit 2 is
20 typed. Sgt. Bucknall testified that Exhibit 2 was filled out based on Ms. Smith’s
21 application for a PFD and was not a form specialized for voting.¹¹

22 Counts III, IV and V were based both on different factual allegations, as well as
23 related to different types of election forms, than Counts I and II. Ms. Thompson testified
24 that Grand Jury Exhibits 3 and 5 were declaration of candidacy forms for two different

25 ⁵ *Id.*

26 ⁶ *Id.* at 10-11 (emphasis added).

27 ⁷ Redacted versions of Grand Jury Exhibits 1 and 2 are jointly attached to this pleading as Exhibit 1.

⁸ Grand Jury transcript at 16.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 40.

1 elections, and Grand Jury Exhibit 4 was a “absentee in-person ballot application.”¹² The
2 grand jury was given each of the exhibits.¹³ Grand Jury Exhibits 3 and 5 both contain an
3 Oath that states: “I, the undersigned, certify that the information in this Declaration of
4 Candidacy, *required by 6 ACC 27.035*, is true and complete, and that I meet the specific
5 residency and voter qualification requirements of this office. *I further certify that I am a*
6 *qualified voter as required by law*, that I am qualified to hold this office of which I am
7 seeking election, and that I am not a candidate for this office under any other Declaration
8 of Candidacy.”¹⁴ Grand Jurors were instructed on AS 15.05.010: “A person may vote in
9 an election who is one, a citizen of the United States; two, is 18 years of age or older;
10 three, has been a resident of the state and of the house district in which the person seeks
11 to vote for at least 30 days just before the election; and four, has registered to vote before
12 the election, as required under AS 15.07, and is not registered to vote in another
13 jurisdiction.”¹⁵ Thus, these counts (which the grand jury voted no true bill on), relied on
14 an allegation that Ms. Smith intentionally falsely certified that she was a qualified voter
15 when she was not qualified to vote under the law. Critically, almost the entirety of the
16 grand jury testimony challenged by the defendant pertains to the factual basis
17 underpinning these counts, which the grand jury did not indict on, and the substance of
18 which is not relevant to the allegations related to Counts I or II.

19 During his testimony, Sgt. Bucknall testified that Ms. Smith was not a U.S. citizen
20 and had never filed an application to become a citizen.¹⁶ Sgt. Bucknall also testified that
21 when he talked to her, Ms. Smith acknowledged that she was not a U.S. citizen, nor had
22 she ever applied to be a citizen at this point.¹⁷ This summary of her statement is
23 supported by her audio recording, and is not contested by the defendant. Sgt. Bucknall
24 testified that Ms. Smith indicated that she believed she needed to be a citizen “only for

25 ¹² *Id.* at 16-18.

26 ¹³ Redacted versions of Grand Jury Exhibits 3-5 are jointly attached to this pleading as Exhibit 2.

27 ¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* 25.

¹⁷ *Id.* at 26.

1 presidential elections...” but she acknowledged she had “filled out the forms saying she
2 was a U.S. citizen.”¹⁸ Sgt. Bucknall told the Grand Jury that Ms. Smith told him she had
3 “talked to people at the City of Whittier, who stated that even though she was a U.S.
4 National that she should just check the U.S. Citizen box on the—when she went to
5 vote.”¹⁹ Sgt. Bucknall later said that Ms. Smith told him her belief that you had to be a
6 U.S. citizen only to vote for presidential elections was based on something she was told
7 “from an employment that she had in California—that that was the only thing that she
8 could vote—or could not vote for. But that---also admitted that’s all she knew about the
9 voting system.”²⁰

10 Following a period of deliberations, the Grand Jury paused deliberations to ask
11 additional questions. The undersigned asked Sgt. Bucknall further questions about Ms.
12 Smith’s statement that “officials” at Whittier had told her to check the U.S. Citizen box.
13 Sgt. Bucknall clarified that “when you vote, there is no—on the registry, there is no place
14 to indicate that (whether you are a citizen or not). So that really wasn’t a truthful
15 statement.”²¹ Immediately, the undersigned cautioned the jurors “not to listen to that last
16 statement about whether it was truthful or not. That’s something for you all to decide,
17 not something for Sgt. Bucknall to testify to.”²² The undersigned then inquired about
18 whether any juror had a problem disregarding that statement. No juror responded with
19 any concerns regarding their inability to disregard the improper statement.

20 Sgt. Bucknall then testified that typically, voter registration forms were not filled
21 out at the time of voting, “because once you register to vote, you have to, I believe wait
22 30 days before you can actually vote.”²³ He then noted that specifically, the registration
23 in Exhibit 2 had come from Ms. Smith filing her PFD application, and that “these
24 applications here would have been most likely filled outside of anyone and at home, on

25 ¹⁸ *Id.* at 26.

26 ¹⁹ *Id.* at 26-27.

27 ²⁰ *Id.* at 38.

²¹ *Id.* at 31.

²² *Id.* at 31.

²³ *Id.*

1 computers, somewhere like that.”²⁴ Sgt. Bucknall also testified that Ms. Smith indicated
2 “that she knew she was a U.S. national the whole time and that she hadn’t applied for
3 citizenship yet.”²⁵

4 The Grand Jurors then asked questions about when, or whether, Ms. Smith had
5 been alerted that she was a registered voter, as well as questions about why the Division
6 of Elections had not “caught” her for not being a citizen, even though she certified she
7 was, as well as questions about her belief about her ability to vote as a U.S. National.²⁶
8 This section of the grand jury and Ms. Smith’s statement on this topic, which is almost
9 the entirety of the basis of the defendant’s motion, is linked to questions regarding Ms.
10 Smith’s belief that she was a qualified voter, i.e., questions and statements by Ms. Smith
11 that are directly related to Counts III-V, where Ms. Smith’s knowledge as to her
12 qualifications to vote were at issue. Importantly, this line of questioning challenged by
13 the defendant, was evaluated by the grand jury, and the underlying charges based on
14 these issues were all *rejected* by the grand jury, contradicting the defendant’s assertion
15 that there was unfair or misleading testimony presented.

16 The two remaining counts are premised on the allegation that on two different
17 occasions, July 8, 2020 and March 30, 2022, Ms. Smith intentionally and falsely certified
18 that she was a U.S. Citizen. Neither of the remaining counts is premised at all on Ms.
19 Smith’s knowledge of, or belief about, her eligibility to vote. Rather, the question for the
20 grand jurors as to those counts was whether Ms. Smith knew that she was not a U.S.
21 Citizen, and intentionally made a false statement to the contrary, on her sworn
22 applications. Her belief about her eligibility to vote is frankly not at issue in the
23 remaining counts.

24 *Id.* at 32.

25 *Id.* at 34-35.

26 *Id.* at 35-37.

II. Law and Argument

As a starting point, when evaluating a grand jury, there is a presumption that the grand jury acted on sufficient evidence.²⁷ In reviewing a challenge to the indictment, this Court is required to review the evidence in the light most favorable to the State²⁸ and should draw every reasonable inference from the evidence in favor of upholding the indictment.²⁹

It is well established that “the grand jury proceeding is not intended to be a mini trial in which the state would present all of the evidence necessary to establish guilt beyond a reasonable doubt.”³⁰ The prosecutor’s burden is to introduce “sufficient evidence to establish a probability of guilt.”³¹ The state has a duty to present exculpatory evidence to the grand jury.³² However, this duty does not encompass any material that might possibly be advantageous to a defendant. “[A] prosecutor need only present evidence material to the charge upon which the defendant is accused: only material substantially favorable to the defendant need be presented.”³³ “Substantially favorable” evidence, for the purpose of grand jury, is only that which “tends, in and of itself, to negate the defendant’s guilt.”³⁴ Moreover, even a failure to admit exculpatory evidence

²⁷ *Murray v. State*, 778 P.2d 237, 238 (Alaska App. 1989)(citing *Merrill v. State*, 423 P.2d 686, 695 n.37 (Alaska 1967)).

²⁸ *Id.* (citing *Mudge v. State*, 760 P.2d 1046, 1049 (Alaska App. 1988)).

²⁹ *State v. Ison*, 744 P.2d 416, 418 (Alaska App. 1987).

³⁰ *Sheldon v. State*, 796 P.2d 831, 837 (Alaska App. 1990).

³¹ *Id.*

³² *Frink v. State*, 597 P.2d 154 (Alaska 1979); *Preston v. State*, 615 P.2d 594 (Alaska 1980).

³³ *Tookak v. State*, 648 P.2d 1018, 1021 (Alaska App. 1982) (citations omitted).

³⁴ *State v. McDonald*, 872 P.2d 627, 639 (Alaska App. 1994) (citing *York v. State*, 757 P.2d 68, 73 (Alaska App. 1988)); see also *Gieffels v. State*, 590 P.2d 55, 60 (Alaska 1979) (police failure to swab for gunshot residue held not exculpatory; prosecutor has no obligation to inform grand jury of investigative steps *not* taken); *Dyer v. State*, 666 P.2d 438, 443-44 (Alaska App. 1983) (prosecutor had no duty to fully explore grand jury witness’ admitted perjury in prior proceeding in same case); *Preston v. State*, 615 P.2d 594, 602 (Alaska 1980) (prosecutor had no obligation to introduce evidence that an alleged accomplice (whose statement implicating defendant was published to grand jury) had made earlier, inconsistent statements); *Davidson v. State*, 642 P.2d 1383, 1390 n.8 (Alaska App. 1982) (the fact that witness told police that defendant also had a valid reason for going to burglary victim’s house held not exculpatory); *Lipscomb v. State*, 700 P.2d 1298, 1304, n.4 (Alaska App. 1985) (defendant’s self-exculpatory denials of guilt held not exculpatory); *Tookak*, 648 P.2d at 1021 (Alaska App. 1982) (victim’s inability to identify the weapon subsequently found in the defendant’s home as the one used by the defendant, and the eyewitnesses’ inability to positively place the defendant at the crime scene held not to be exculpatory).

1 is rendered harmless where the strength of the evidence presented to the grand jury is
2 more than sufficient to support an indictment.³⁵

3 In *Frink*, the Supreme Court noted that the duty to present exculpatory evidence to
4 the grand jury does not require the prosecution to develop evidence for the defense:

5 But the prosecutor's obligation to present exculpatory
6 evidence to the grand jury does not turn the prosecutor into a
7 defense attorney; the prosecutor does not have to develop
evidence for the defendant and present every lead possibly
favorable to the defendant.³⁶

8 Although evidence omitted at a grand jury proceeding might be the sort of
9 material a skilled defense attorney may develop into a persuasive defense theme at trial,
10 omission of such evidence does not require dismissal of the indictment.³⁷ The State's
11 obligation to present "exculpatory evidence" to the grand jury is defined narrowly.³⁸ "A
12 witness's failure to identify the defendant as the perpetrator of the crime, or the fact that a
13 witness's post-event description of the perpetrator did not match the defendant," has been
14 found not to constitute "exculpatory evidence."³⁹ In *Peltier v. State*, when speaking to
15 her counselor, the victim identified several people who had abused her but did not
16 mention any sexual abuse on the part of the defendant.⁴⁰ The court of appeals agreed
17 with the defendant that the victim's failure to name him "is evidence that may suggest his
18 innocence."⁴¹ However, they found it nevertheless did not constitute "exculpatory
19 evidence" pursuant to the *Frink* rule.⁴²

21 ³⁵ See *Clifton v. State*, 728 P.2d 649, 649-52 (Alaska App. 1986) (failure to present questionable statement of murder
22 defendant's friend tending to bolster self-defense claim does not require dismissal) (*rev'd on other grounds*, 751
P.3d 27 (Alaska 1988)).

23 ³⁶ *Frink*, 597 P.2d at 166; see also *Konrad v. State*, 763 P.2d 1369, 1377 (Alaska App. 1988) (the prosecutor has no
duty to develop potential theories of defense).

24 ³⁷ *Id.*; see also *McDonald*, 872 P.2d at 639.

25 ³⁸ *Id.*; *Tegoseak v. State*, 221 P.3d 345, 350 (Alaska App. 2009).

26 ³⁹ *Id.* (citing *Haag v. State*, 117 P.3d 775, 777-78 (Alaska App. 2005) (holding that the prosecutor had no duty to
present evidence that a witness initially identified two black men as the perpetrators of the offense where the
defendant was a white male).

27 ⁴⁰ *Peltier v. State*, 1997 WL 242877 *2 (Alaska App. 1997).

⁴¹ *Id.*

⁴² *Id.*

1 The defense relies heavily on *Zurlo v. State*⁴³ to argue that the summary of the
2 defendant's statement presented to the grand jury in this case withheld exculpatory
3 evidence and misled the grand jury. However, this facts in this case are readily
4 distinguishable from *Zurlo*. In *Zurlo*, the defendant gave a full narrative and reasoning to
5 justify his use of deadly force in self-defense, which, if taken as true, would have
6 constituted a legally-justified use of deadly force.⁴⁴ Additionally, in *Zurlo*, the
7 defendant's self-defense narrative was corroborated by another witness and physical
8 evidence that the prosecutor also omitted from the grand jury presentation.⁴⁵ The
9 prosecutor also specifically denied that this evidence existed in his presentation.⁴⁶

10 The facts in this case are considerably different than in *Zurlo*. First, the substance
11 of the defendant's statements that are cited in the motion to dismiss may have been
12 relevant to the grand jury's determination as to whether Ms. Smith had a valid defense for
13 her actions as charged in Counts III-V, which alleged she intentionally falsely certified
14 that she was eligible to vote under Alaska law. However, they have no bearing on the
15 charges in Counts I or II, which are based on the assertion that she intentionally falsely
16 swore that she was a citizen and have nothing to do with her belief about her ability to
17 vote. Unlike in *Zurlo*, these complained-of statements are not exculpatory as to the
18 charged counts, even assuming *arguendo* that the testimony on these points was
19 misleading.

20 Moreover, unlike in *Zurlo*, where there was corroborating evidence to *support*
21 *Zurlo's* statements, the opposite is true here. In fact, there is evidence that contradicts
22 Ms. Smith's statements to Sgt. Bucknall, specifically her statement that she was told to
23 check that she was a U.S. Citizen and that the people at the office would write that she
24 was a U.S. National. This is contradicted by the evidence presented at Grand Jury that at
25 least one of the forms was filled out online, as part of her Permanent Fund Dividend

26 ⁴³ 506 P.3d 777 (Alaska App. 2022).

27 ⁴⁴ *Id.* at 780-81.

⁴⁵ *Id.*

⁴⁶ *Id.*

1 application, and not done at the direction of a worker. Further, additional evidence not
2 presented at grand jury demonstrates that on the Permanent Fund Dividend Application,
3 applicants are able to check whether they are or are not a U.S. Citizen, and if not, whether
4 they are an Asylee, Refugee, U.S. National, Resident, Visa, Compact of Free
5 Association.⁴⁷ This undercuts the defendant's statements that she only checked the
6 "Citizen" box because there was not a different option. Moreover, this unrepresented
7 evidence shows that the defendant in the past, *had* correctly checked the U.S. National
8 box on her Permanent Fund Dividend application.⁴⁸ Further, Ms. Smith's testimony that
9 she did not know that she could not vote as a non-citizen is additionally undercut by the
10 clear language at the top of both voter application forms she filled out, which said that if
11 you checked no to either being a U.S. Citizen or over 18, "do not complete this form, as
12 you are not eligible to register to vote"⁴⁹ as well as language on other forms that she had
13 signed."⁵⁰ Thus, the evidence that existed outside of the Grand Jury presentation did not
14 corroborate Ms. Smith's self-serving hearsay statements, as in *Zurlo*, but rather
15 *contradicted* her statements, by showing both that she was able to check a U.S. National
16 box on the forms she filled out but chose to check that she was a Citizen, and also by
17 demonstrating that she had been repeatedly put on notice, in multiple certifications she
18 had previously signed, that she was required to be a U.S. Citizen to vote.

19 The *Zurlo* court did not hold that a defendant's self-serving assertion of innocence,
20 without corroboration, and indeed with contradictory evidence available, must be
21 admitted at grand jury. The flaws in the grand jury presentation in *Zurlo* were failures to
22 admit the exculpatory evidence that corroborated Zurlo's narrative, while introducing
23 inaccurate and misleading testimony from a peace officer that intentionally obscured
24 evidence that Zurlo acted in self-defense, and blanket erroneous assertions to the grand
25 jury that no such evidence existed. The State's presentation in this case did not obscure

25 ⁴⁷ Discovery at BS 82.

26 ⁴⁸ *Id.* at 85.

27 ⁴⁹ Transcript at 10-11.

⁵⁰ Discovery at 85 (at the bottom of the PFD application, Ms. Smith signed below an acknowledgement that said "I understand that if I am a United States citizen and otherwise eligible to vote" she would be automatically registered.

1 or distort evidence, nor did it fail to present exculpatory evidence, particularly as to the
2 Counts upon which a true bill was returned.

3 No false statements were made at Grand Jury, nor was the grand jury incorrectly
4 told that evidence did not exist, as in *Zurlo*. Specifically related to Ms. Smith's false
5 certification that she was a U.S. Citizen, as charged in the Counts currently before the
6 Court, Sgt. Bucknall testified that: Ms. Smith told him she was not a citizen, and had
7 never applied to be a citizen, that she believed she needed to be a citizen to vote in
8 presidential elections, that she acknowledged to filling out forms saying she was not a
9 U.S. Citizen, that she "talked to people at the City of Whittier, who stated that even
10 though she was a U.S. National that she should just check the U.S. Citizen box on the—
11 when she went to vote."⁵¹ Sgt. Bucknall did not hide from the jurors that there was more
12 to his conversation with Ms. Smith, and described it as "a pretty deep conversation."⁵²
13 Particularly as it pertains to the remaining counts, I and II, this is an accurate and fair
14 description of his conversation with Ms. Smith, and none of the statements described in
15 the defendant's motion are exculpatory, or even relevant to these remaining counts, as
16 they are unrelated to Ms. Smith's knowledge and belief about whether she was a citizen
17 when she certified in Exhibits 1 and 2 that she was.

18 In other words, even if these additional statements were exculpatory statements,
19 each of the identified statements would only be relevant to Counts III-V, not Counts I-II.
20 Moreover, there was no detrimental effect on the grand jury, as any alleged fault in the
21 presentation of evidence related to Ms. Smith's beliefs about her ability to vote legally
22 clearly did not impact the jury's deliberations, as they found no true bill for the charges
23 that were related to the allegation that she falsely certified she was eligible to vote.

24 As to the argument that Sgt. Bucknall's testimony claimed one of Ms. Smith's
25 statements was untruthful, this was a minor error that did not impact the rest of the
26 presentation. A curative instruction was provided immediately after the erroneous
27

⁵¹ *Id.* at 26-27.

⁵² *Id.* 37-38.

1 testimony that told the jurors “not to listen to that last statement about whether it was
2 truthful or not. That’s something for you all to decide, not something for Sgt. Bucknall to
3 testify to.”⁵³ Alaska courts are clear that when improper testimony is provided, “a
4 curative or cautionary instruction” provided to the jury “is presumed to cure any error.”⁵⁴
5 In this case, the presentation went even further, and the grand jurors were asked whether
6 any grand juror had a problem following the instruction. None of the grand jurors voiced
7 any concerns with disregarding the improper statement. The defendant has presented no
8 evidence or legal support for the belief that the longstanding presumption that a jury will
9 follow a curative instruction should be disregarded in this instance. Sgt. Bucknall’s
10 comment, albeit improper, was not egregious; he did not say he believed Ms. Smith was a
11 liar, or that she was a bad person or had a bad character. Rather, he made a comment
12 (which is supported by evidence, albeit improper) that her statement on a particular point
13 was untruthful. This statement was immediately addressed, and the jurors were properly
14 told to disregard it. There is no harm in this error that necessitates overturning the valid
15 indictment.

16 Lastly, there was sufficient evidence to support the Grand Jury’s indictments. The
17 State was required to prove that that Ms. Smith intentionally made a false affidavit, swore
18 falsely, or falsely affirmed under an oath required by Title 15 on her Voter Registration
19 Applications dated July 8, 2020 (Count I) and March 30, 2022 (Count II). On both of
20 those applications, Ms. Smith affirmed, under oath, that she was a U.S. Citizen.
21 Evidence based on citizenship records demonstrated that statement to be untrue.
22 Moreover, based on Ms. Smith’s statement to Sgt. Bucknall, she was clearly well-aware
23 that she is not a U.S. Citizen, and therefore knew the statement was false when she
24 intentionally made it—twice. The defendant attempts to confuse the issue by discussing
25 the conversation between Ms. Smith and Sgt. Bucknall about whether she knew that she
26 could not vote in non-presidential elections. However, that component of the

26 ⁵³ *Id.* at 31.

27 ⁵⁴ *Roth v. State*, 626 P.2d 583, 585 (Alaska App.1981)(Quoting *Anderson v. State*, 438 P.2d 228, 332–33 n. 15 (Alaska 1968)).

1 conversation, while relevant to other (subsequently no-true billed) counts, is irrelevant to
2 Counts I and II. The State is not required to prove that Ms. Smith acted with a motive or
3 intent to engage in a specific act (i.e., to vote) as a result of the sworn false statement.
4 Rather, the State is only obligated to prove that Ms. Smith made the false statement
5 intentionally, and that the statement was made under an oath required by Title 15. Ms.
6 Smith clearly knew that she was not a U.S. Citizen; the jury could infer based on her
7 actions that the statement was made intentionally and that it was false. The Court should
8 uphold the presumption that the Grand Jury's indictment stemmed from sufficient
9 evidence.

10 **III. Conclusion**

11 For the reasons set forth above, the State did not present false or misleading
12 evidence at trial, the curative instruction cured any improper testimony presented by Sgt.
13 Bucknall, and there was sufficient evidence to support the indictment. The Court should
14 deny the defendant's motion.

15 Dated at Anchorage, Alaska, this 25th day of April, 2024.

16 TREG TAYLOR
17 ATTORNEY GENERAL

18 By:



19 Jenna L. Gruenstein
20 Chief Assistant Attorney General
21 Alaska Bar No. 0912086
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