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

STATE OF ALASKA,

Plaintiff,

v.

Case No. 3AN-23-08873CR

TUPE SMITH,

Defendant.

REPLY TO STATE'S OPPOSITION TO MOTION TO DISMISS INDICTMENT

VRA CERTIFICATION

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

Tupe Smith, through counsel, replies to the State's Opposition to Ms. Smith's Motion to Dismiss Indictment.

A. Ms. Smith's beliefs about being eligible to vote and what it means to be a U.S. citizen for purposes of voting are directly relevant to all counts

The State argues that Ms. Smith's motion to dismiss indictment pertains only to Counts III-V of the indictment, none of which the grand jury returned a true bill on. But the State misunderstands Ms. Smith's argument. Ms. Smith argues that her understanding of her eligibility to vote directly pertains to her mindset when checking that she was a U.S. citizen on two separate voter registration forms, which are the basis for counts I and II. Ms. Smith argues that because she was under the impression that for *purposes of voting* she was supposed to check that she was a U.S. citizen rather than a U.S. national, she did not intentionally make a false sworn statement on her voter registration forms; she thought that for purposes of voter

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2 registration, it was accurate to state she was a U.S. citizen. Words have different
3 meanings in different contexts, and if she was told that for the purpose of voting,
4 checking that she was a U.S. citizen on a voter registration form wasn't a false
5 statement, her actions were not intentional.
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7 **B. The State attempts to improperly narrow the holding of *Zurlo***

8 The State further argues that *Zurlo* is distinguishable from Ms. Smith's case
9 because (a) the complained-of statements are not exculpatory as to the charged
10 counts; (b) there was not corroborating evidence to support Ms. Smith's statements,
11 unlike in *Zurlo*, and (c) unlike in *Zurlo*, the State's presentation in this case did not
12 obscure or distort evidence.
13

14 1. *The complained-of statements are exculpatory as to the charged counts*

15 The State argues that the complained-of statements in Ms. Smith's motion are
16 not exculpatory to counts I and II because the assertion that she intentionally falsely
17 swore that she was a citizen has "nothing to do with her belief about her ability to
18 vote."¹ As discussed above, because Ms. Smith's assertions that she was a U.S.
19 citizen in counts I and II were on *voter registration forms*, her understanding about
20 her legal status when it comes to voting in local elections is directly relevant to any
21 statements she made about her legal status on voter registration forms.
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23 2. *Corroborating evidence is not a requirement of *Zurlo**

24 *Zurlo*'s facts are extreme; as the State points out, "the defendant gave a full
25 narrative and reasoning to justify his use of deadly force in self-defense" and "the
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28 ¹ See State's Opposition at 9.

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2 defendant's self-defense narrative was corroborated by another witness and
3 physical evidence that the prosecutor also omitted from the grand jury presentation."
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5 First, like the defendant in *Zurlo*, Ms. Smith gives a reasoned explanation for her
6 behavior and repeats herself throughout her interrogation despite Sergeant
7 Bucknall's obvious attempts to trap her into making inculpatory statements. And
8 unlike in *Zurlo*, where there was a witness to the event that could provide evidence
9 to corroborate the defendant's statements, Sergeant Bucknall declined to speak with
10 anyone who could have corroborated Ms. Smith's statements. The State's additional
11 argument that there was contradictory evidence in Ms. Smith's case is meritless. The
12 fact that Ms. Smith filled out one of the forms online has no bearing on whether or
13 not sometime in the past she had filled out voter forms at an office where officials
14 had directed her to state that she was a U.S. citizen, and the fact that the forms had
15 language putting her on notice that she was not eligible to vote is an obvious fact in
16 this case. It does not undermine Ms. Smith's explanation that she thought, for
17 purposes of voting, that she was supposed to indicate that she was a U.S. citizen.
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20 More importantly, corroborating evidence is not a requirement of *Zurlo*. The
21 case stands for something much broader: misleading the jury.² There are a number
22 of ways in which this can be done, one of which is the factual scenario in *Zurlo*,
23 where the defendant was being charged with murder, officers did significant
24 investigation, and officers neglected to inform the jury about several pieces of
25 evidence indicating a claim of self-defense. But it is clear from the court's analysis in
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28 ² See generally *Zurlo v. State*, 506 P.3d 777 (Alaska Ct. App. 2022).

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2 Zurlo that the numerous pieces of evidence were not the issue. The court
3 summarized its holding:

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5 Here, there is no question that the peace officer's testimony was both
6 incomplete and misleading. The peace officer testified that Zurlo
7 admitted to shooting Corcoran. But he did not testify to the remainder
8 of Zurlo's statement — that Zurlo claimed to have shot Corcoran in self-
9 defense because Corcoran threatened his life and appeared to be
reaching for a gun. As a result, the grand jury was left with the
erroneous impression that Zurlo had confessed to shooting Corcoran
essentially for no reason.³

10 The same reasoning applies here: the State did not accurately represent the
11 entirety of Ms. Smith's statements, leaving the grand jury with the erroneous
12 impression that Ms. Smith confessed to intentionally making a false sworn statement
13 on her voter registration forms.

14
15 The court elaborates on it's findings in *Zurlo*,

16 Moreover, the flaw in the presentation of evidence to the grand jury
17 goes much deeper than just a failure to introduce exculpatory
18 statements. By selectively curating Zurlo's statements so that the grand
19 jury heard only the portion that was inculpatory – *i.e.* Zurlo's admission
20 that he shot Corcoran – without hearing the exculpatory statements that
provided the direct context for the inculpatory statements ... the
testifying officer actively misrepresented what Zurlo had said.

21 This analysis does not mention any corroborating statements or evidence to
22 Zurlo's statements; it is focused entirely on the prosecution's failure to accurately
23 represent Zurlo's own statements. Ms. Smith makes the same argument: Sergeant
24 Bucknall testified that Ms. Smith "acknowledged that she knew she probably

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28 ³ *Id.* at 784.

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2 shouldn't have voted"⁴ and that "she's aware of the difference, that if you're a
3 national, you can't vote."⁵ But these statements by Sergeant Bucknall misrepresent
4 what Ms. Smith said throughout her interrogation; Ms. Smith made numerous
5 statements that she didn't know she couldn't vote in local elections, that she had heard
6 from officials that she was able to vote and in fact was supposed to check that she was
7 a U.S. citizen on her voter application, and that if she had known it was a problem for
8 her to vote, she wouldn't have.⁶ These statements undermine the State's presentation
9 regarding Ms. Smith's intentionality when filling out the voter registration form and
10 therefore fall directly under *Zurlo*.
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13 3. The State's presentation obscured and distorted evidence

14 Finally, the State argues that the State's presentation in this case did not
15 obscure or distort evidence and that no false statements were made. This argument
16 was addressed in subsection 2, above. In response to grand juror questions about
17 Ms. Smith's understanding of her actions, the prosecutor clarified with Sergeant
18 Bucknall that Ms. Smith always admitted to knowing she was a U.S. national, not a U.S.
19 citizen, and the "she's aware of the difference, that if you're a national, you can't vote."⁷
20 Sergeant Bucknall responded, "Yes."⁸ Again, it is clear from Ms. Smith's conversation
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25 ⁴ GJ transcript at 27.

26 ⁵ GJ transcript at 35.

27 ⁶ See Audio at 5:12-20; 9:11-37; 15:30-16:51; 18:14-40.

27 ⁷ GJ transcript at 35.

28 ⁸ *Id.*

with Sergeant Bucknall that she did not know that as a U.S. national, she was not allowed to vote.⁹

CONCLUSION

Whether Ms. Smith knew that as a U.S. national she was not allowed to vote in local elections is directly relevant to her mindset when filling out voter registration forms. In this case, there was evidence that Ms. Smith was under the impression that as a U.S. national, for purposes of voting, she was supposed to indicate that she was a U.S. citizen. The State misrepresented Ms. Smith's statements regarding her mindset when filling out the voter registration forms which prejudiced Ms. Smith's right to a grand jury under *Zurlo*. Accordingly, counts I and II of the indictment must be dismissed.

Because intent is reflected in tone as well as content, Ms. Smith requests that the court listen to the audio recording of Sergeant Bucknall's interrogation of Ms. Smith, provided as Exhibit A in Ms. Smith's original motion, before ruling on the motion.

ALASKA PUBLIC DEFENDER AGENCY

DATE 5/6/24 _____ /s/ Jesslin Wooliver _____
Jesslin Wooliver
Assistant Public Defender
Alaska Bar No. 2111135

I certify that on _____ a copy of this
document and its attachments was
emailed/eFiled/faxed/mailed/hand-delivered
to: DAO
By: _____

⁹ Audio at 5:12-20; 9:11-37; 15:30-16:51.