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uncontradicted it would warrant a conviction of the person charged with an offense by the judge or jury trying the offense.” *State v. Parks*, 437 P.2d 642, 644 (Alaska 1968) (footnote omitted).¹

Alaska Rule of Criminal Procedure 6(r) governs the admissibility of evidence in a grand jury proceeding. “Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial.”²

All evidence presented to the grand jury in this matter would be legally admissible at trial.

- Grand Jury Exhibit 1 is the PFD record. This record is supported by Exhibit A³ (a two-page document). This is admissible as a business record. Additionally, the data extracts are admissible as statements of the defendant.
- Grand Jury Exhibit 2 is the Alaska Airlines record. This record is supported by Exhibit B. This grand jury exhibit is admissible as a business record.
- Grand Jury Exhibit 3 is a summary of voluminous records, kept in the normal course of business of the Department of Homeland Security. As indicated in the exhibit, the summary was compiled by Special Agent Tim Brady. Inv. Stendevad, another law enforcement officer, simply provided the summary to the grand jury

¹ *State v. Williams*, 855 P.2d 1337, 1346 (Alaska App. 1993)
² Alaska R. Crim. P. 6(r)(1)
³ Attachments to this motion are designated with letters to limit confusion with the grand jury exhibits

1 as though she were testifying to information contained in another officer's report,
2 as allowed by Rule 6(r)(3). The State intends to call Special Agent Brady at trial.

- 3 • Grand Jury Exhibit 4 is not contested by the defense.
- 4 • Grand Jury Exhibit 5 is admissible as a business record of the State of Montana.
5 The certification applies to the first eight pages of the document. The rest of the
6 pages are extrapolations of the first eight pages. Additionally, the last seven pages
7 of the exhibit are admissible as statements of the defendant – they are forms and
8 checks that the defendant signed.
- 9 • Grand Jury Exhibit 6 is part of the PFD record. Additionally, it is a document that
10 Mr. Maw signed containing a statement that he was “currently out of Alaska for 4
11 months.” It is admissible both as a business record and as a statement made by the
12 defendant.

13 The defense further argues that none of the evidence should be admissible under
14 Evidence Rule 104(b). The State may offer evidence of statements (and by extension,
15 evidence of actions as shown through records) of the defendant if there is sufficient
16 evidence to support a reasonable conclusion the statements (and actions) were in fact
17 those of the defendant. The State can prove this through circumstantial evidence.⁴ The
18 evidence, when taken as a whole, clearly shows that it was the defendant who made the
19 statements and took the actions as presented in the exhibits.
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27 ⁴ See *Bates v. State*, 258 P.3d 851, 865 (Alaska App. 2011)

1 The defense also argues that the failure to provide the grand jury with the specific
2 text of the applications in question resulted in insufficient evidence of the application
3 questions on which the grand jury could deliberate. However, testimony of the
4 investigator, and her decade plus of professional experience with permanent fund
5 dividend applications, provided the grand jury with the information necessary. Further,
6 the grand jury was told that if they needed further evidence, they simply needed to ask
7 the prosecutor to supply it.⁵

9 The evidence presented to the grand jury is admissible at trial, and therefore
10 correctly presented to the grand jury. The evidence, when viewed in favor of the grand
11 jury's decision, is sufficient to warrant the indictment of Mr. Maw. The motion to
12 dismiss must be denied.

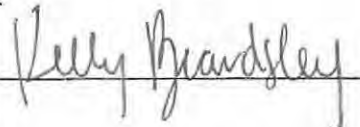
14 Dated at Juneau, Alaska, this 14th day of November, 2016.

15 JAHNA LINDEMUTH
16 ATTORNEY GENERAL

17 By: 

18 Lisa C. Kelley
19 Assistant Attorney General
20 Alaska Bar No. 0905008

21 I certify that a copy of this pleading was
22 mailed/emailed/hand-delivered on
23 November 14, 2016, to
24 Nicholas A. Polasky
25 227 Seventh St.
26 Juneau, AK 99801



27 ⁵ Grand Jury transcript, page 49, line 15

CERTIFICATION OF RECORDS

I swear to the facts in this certification under oath and under the penalties of perjury. This certification is made pursuant to Alaska Rules of Evidence 902(11) and 803(6).

I am the Custodian of Records or otherwise authorized and qualified to authenticate the records of:

Alaska Airlines

The attached records are true and correct copies of the records maintained by Alaska Airlines; were made at or near the occurrence of the matters set forth in these records, and by or from information transmitted by a person with knowledge of those matters; and made and kept pursuant to regularly conducted activities and practices of Alaska Airlines.

The attached records are described as follows:

Flight records for Roland R. Maw (Jr.) from January 1, 2008 to February 28, 2015, related to travel in and out of the Alaska and Bozeman, MT., with Alaska Air Group

DATED this 25th day of October 2016.

Signature

Karen Conley

Printed Name

Karen Conley

Title

Law Enforcement Liaison

Subscribed and sworn before me this 25th day of October, 2016.



Laura Murray
Notary Public, state of Washington
My commission expires 10-4-17



CERTIFICATION OF RECORDS

I swear to the facts in this certification under oath and under the penalties of perjury. This certification is made pursuant to Evidence Rules 902(11) and 803(6).

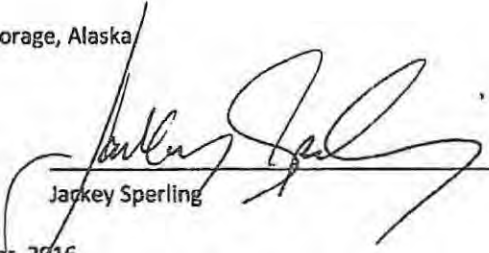
I am the Custodian of Records or otherwise authorized and qualified to authenticate the records of the State of Alaska, Department of Revenue, Permanent Fund Dividend Division.

The attached records are true and correct copies of the records maintained by the Permanent Fund Dividend Division; were made at or near the occurrence of the matters set forth in these records, and by or from information transmitted by a person with knowledge of those matters; and made and kept pursuant to regularly conducted activities and practices of the Permanent Fund Dividend Division.

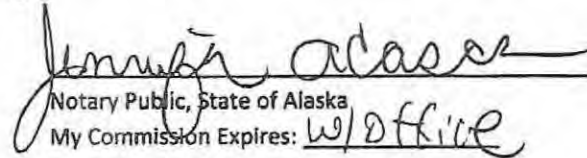
The attached records are:

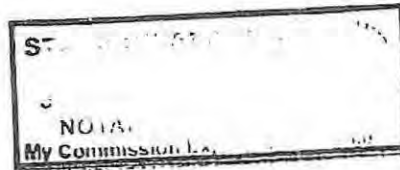
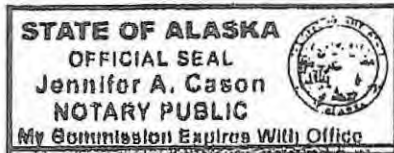
- Copies of PFD application and payment data, electronic signature pages, and PFD application history records for Roland R. Maw, Jr., DOB 11/17/1943; and
- PFD application history record for Mary Maw, Jr., DOB 12/3/1948.

DATED this 24th day of October, 2016, at Anchorage, Alaska


Jarkey Sperling

Subscribed and sworn before me this 24th day of October, 2016.


Notary Public, State of Alaska
My Commission Expires: w/office



CERTIFICATION OF RECORDS

I swear to the facts in this certification under oath and under the penalties of perjury. This certification is made pursuant to Evidence Rules 902(11) and 803(6).

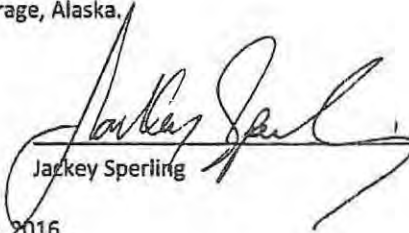
I am the Custodian of Records or otherwise authorized and qualified to authenticate the records of the State of Alaska, Department of Revenue, Permanent Fund Dividend Division.

The attached records are true and correct copies of the records maintained by the Permanent Fund Dividend Division; were made at or near the occurrence of the matters set forth in these records, and by or from information transmitted by a person with knowledge of those matters; and made and kept pursuant to regularly conducted activities and practices of the Permanent Fund Dividend Division.

The attached records are:

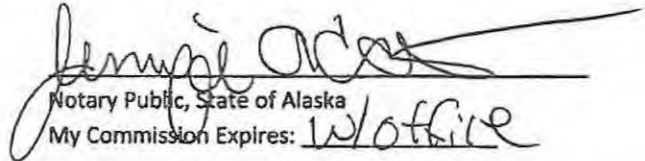
- Screen prints for the online PFD application for each year 2009 – 2014.

DATED this 24th day of October, 2016, at Anchorage, Alaska.



Jackie Sperling

Subscribed and sworn before me this 24th day of October, 2016.



Notary Public, State of Alaska
My Commission Expires: W/office

