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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

FILED in the Trial Courts  
State of Alaska First District  
at Juneau  
JAN 08 2013  
Clerk of the Trial Courts  
By      Deputy

STATE OF ALASKA,

Plaintiff,

vs.

ROLAND R MAW

Defendant.

No. 1JU-16-00043CR (Roland R Maw)

**OPPOSITION TO MOTION TO DISMISS SECOND 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, through Assistant Attorney General Lisa C. Kelley, and files this Opposition to Motion to Dismiss the Second Indictment. The evidence presented to the grand jury was sufficient to support the indictment. The grand jury was properly instructed on the law regarding Theft. Finally, any improper comments made by witnesses either had no bearing on the evidence or were subject to a timely curative instruction. For these reasons, as discussed below, the defendant's motion should be denied.

The defense first argues that there was insufficient evidence to prove that the defendant was the individual who filled out the PFD applications. An indictment shall be found "when all the evidence taken together, if unexplained or uncontradicted, would

1 warrant a conviction of the defendant.”<sup>1</sup> The following is the standard of review of a  
2 motion to dismiss an indictment for sufficiency of the evidence:

3 In challenges to the sufficiency of the evidence before a grand jury, every  
4 legitimate inference that may be drawn from the evidence must be drawn in  
5 favor of the indictment. *State v. Ison*, 744 P.2d 416, 418 (Alaska  
6 App.1987). The evidence is sufficient if, viewed in this manner, “it is  
7 adequate to persuade reasonable minded persons that if unexplained or  
8 uncontradicted it would warrant a conviction of the person charged with an  
9 offense by the judge or jury trying the offense.” *State v. Parks*, 437 P.2d  
10 642, 644 (Alaska 1968) (footnote omitted).<sup>2</sup>

11 The evidence presented to the grand jury supports the grand jury’s decision to indict Mr.  
12 Maw. Direct evidence, such as a video or photograph of Mr. Maw sitting at the computer  
13 filling out the PFD applications, is not necessary for the grand jury to reach the  
14 conclusion that Mr. Maw was in fact the individual who filled out the applications. “A  
15 fact may be proved by direct evidence, by circumstantial evidence, or by both.”<sup>3</sup> The  
16 circumstantial evidence presented in this case is sufficient to support the indictment.  
17 First, as noted in the defendant’s motion, the PFD applications were signed with Mr.  
18 Maw’s electronic signature.<sup>4</sup> Electronic signatures are verified through the myAlaska  
19 program.<sup>5</sup> Next, despite his heavy travel schedule, all of Mr. Maw’s PFD applications  
20 were filed from within Alaska while Mr. Maw was also in Alaska.<sup>6</sup> Third, all of Mr.  
21 Maw’s PFD disbursements were directly deposited into a checking account owned by  
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25 <sup>1</sup> *State v. Williams*, 855 P.2d 1337, 1346 (Alaska App. 1993)

26 <sup>2</sup> *Id.*

27 <sup>3</sup> Alaska Criminal Pattern Jury Instruction 1.14

<sup>4</sup> Transcript, pg 28, ln 3-5

<sup>5</sup> Transcript, pg 27, ln 23-25

<sup>6</sup> Transcript, pgs 36, 37, 39, 41, 42

1 Mr. Maw.<sup>7</sup> All of this evidence, taken together, if unexplained or uncontradicted, would  
2 support the conclusion that Mr. Maw filled out the PFD applications. Thus, the grand  
3 jury properly indicted Mr. Maw on the counts of unsworn falsification in the first degree,  
4 as there was sufficient evidence to conclude Mr. Maw was the individual who filed the  
5 PFD applications.  
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7 The defense next argues that because the State did not provide the grand jury with  
8 any instructions on how “to determine whether or not a person qualifies for a PFD,”<sup>8</sup> that  
9 the indictments for theft should fail. This is a misunderstanding of both the law and the  
10 theory of the case as provided to the grand jury. A person provides false information on a  
11 PFD is not eligible to receive that PFD. The Permanent Fund Dividend Division “will  
12 deny an application if the department determines that an individual has intentionally  
13 provided deceptive information such as failing to disclose a reportable absence to the  
14 department.”<sup>9</sup> The State’s theory to the grand jury flows from this regulation. If a person  
15 knowingly provides false information on a PFD application with the intent to mislead a  
16 public servant in the performance of a duty (i.e. committing the crime of Unsworn  
17 Falsification in the First Degree<sup>10</sup>), then any PFD payment received by that person was  
18 based on that deception. Thus, the grand jury did not need to be instructed on the  
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25 <sup>7</sup> Transcript, pg 47, ln 13-20

26 <sup>8</sup> Defendant’s Motion to Dismiss Second Indictment, pg 4

27 <sup>9</sup> 15 AAC 23.103(j)

<sup>10</sup> AS 11.56.205

1 minutiae of eligibility for the PFD. The grand jury was correctly instructed on the crime  
2 of theft, including theft by deception, and the definition of deception.<sup>11</sup>

3 The defense further argues that, somehow, if Mr. Maw had been entitled to receive  
4 a PFD, then he could not possibly have stolen a PFD payment. This is simply  
5 nonsensical. Eligibility does not equal legal ownership of something. Just because a  
6 person is eligible to purchase a car does not mean that person owns the car until a transfer  
7 of legal ownership is made. Until a determination is made that a PFD payment is  
8 appropriate, ownership of the funds in the Permanent Fund is retained by the State of  
9 Alaska.  
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12 Finally, the defense argues that there were two improper pieces of testimony  
13 presented to the grand jury. First, Special Agent Tim Brady opined briefly that “it  
14 appears to [him] that [Mr. Maw] resides in Montana and travels to Alaska to work in the  
15 summertime and returns back home again at the end of the [fishing season].”<sup>12</sup> This  
16 passing comment had little to do with the determination the State was asking the jury to  
17 make – whether Mr. Maw had failed to disclose absences on his PFD applications. The  
18 conclusion that Mr. Maw resided in Montana was based on S.A. Brady’s knowledge of  
19 the information in front of him. While the residency of Mr. Maw was not directly at  
20 issue, the statement helped illustrate S.A. Brady’s testimony. Thus, the testimony was  
21 not improper under Evidence Rule 701. Further, the grand jury was provided with a  
22 document containing all of the travel S.A. Brady testified to, allowing the grand jury to  
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27 <sup>11</sup> Transcript, pg 9-11

<sup>12</sup> Transcript, pg 18, ln 24 – pg 19, ln 4

1 reach its own conclusions. If, however, the court determines it was improper, the  
2 remaining evidence, that of the dates of Mr. Maw's travel, clearly provide sufficient  
3 evidence for the grand jury to conclude that Mr. Maw failed to disclose his travel as  
4 required on his PFD applications. If the court finds that the reference to residency was  
5 improper, the court must "subtract[] the improper evidence from the total case heard by  
6 the grand jury and determine[] whether the remaining evidence would be legally  
7 sufficient to support the indictment. If the remaining evidence is legally sufficient, the  
8 court then assesses the degree to which the improper evidence might have unfairly  
9 prejudiced the grand jury's consideration of the case."<sup>13</sup> If you subtract the comment  
10 regarding residency, no dent is even made in the rest of the evidence provided to the  
11 grand jury. The remaining evidence on the point, that of the travel dates, remains  
12 sufficient to conclude that Mr. Maw failed to disclose travel as required by PFD.

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15 The defense also argues that the grand jury heard improper evidence that Mr. Maw  
16 was contacted by the investigator and referred the investigator to his attorney. The  
17 investigator did testify to this, in response to a juror question.<sup>14</sup> Immediately after the  
18 testimony, the grand jury was given a curative instruction.<sup>15</sup> Because "a timely curative  
19 instruction is presumed to remedy the unfair prejudice that might otherwise arise from  
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26 <sup>13</sup> *Stern v. State*, 827 p.2d 442, 445 (Alaska App. 1992), citing *Oxereok v. State*, 611 P.2d 913, 916  
(Alaska 1980).

27 <sup>14</sup> Transcript, pg 60 lines 11-12

<sup>15</sup> Transcript, pg 60, lines 13-25

Department of Law, Criminal Division  
310 K Street Suite 601, Anchorage, AK 99501  
Phone: (907) 269-6250 Fax: (907) 269-7939  
LawOSP@alaska.gov

1 inadmissible testimony,"<sup>16</sup> we must trust that the grand jury followed the instructions  
2 given, and did not use the testimony of the investigator for any inappropriate purpose.

3 The evidence presented to the grand jury was legally sufficient to indict Mr. Maw.  
4 Further, the grand jury was appropriately instructed on the law of the case and any  
5 improper the statements of the witnesses could not have unfairly prejudiced the grand  
6 jury's consideration of the case. As such, Mr. Maw's motion to dismiss the second  
7 indictment must be DENIED.  
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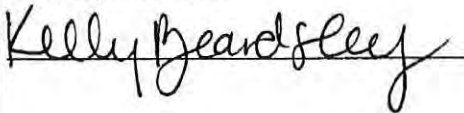
9  
10 Dated at Anchorage, Alaska, this 8<sup>th</sup> day of January, 2018.

11 JAHNA LINDEMUTH  
12 ATTORNEY GENERAL

13  
14 By: 

15 Lisa C. Kelley  
16 Assistant Attorney General  
17 Alaska Bar No. 0905008

18 I certify that a copy of this pleading was  
19 mailed/emailed/hand-delivered on  
20 January 8, 2018, to  
21 Nicholas A. Polasky  
22 3000 Vintage Blvd, Suite 190  
23 Juneau, AK 99801

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27 <sup>16</sup> *Hamilton v. State*, 59 P.3d 760, 769 (Alaska App. 2002)