

**IN THE COURT OF APPEALS
OF THE STATE OF ALASKA**

**Notice of Appeal or Petition
and Docketing Statement**

(for court use only)

Court of Appeals No. A-_____

Trial Court No(s). 1KE-S04-1312 CR

**NOTE: No docketing statement is needed for the following:
Bail appeals (Appellate Rules 206 & 207)
Applications for stay (Appellate Rules 405 & 206)**

Appeal from the Superior Court

- Merit / Merit and Sentence (Appellate Rule 204)
- Sentence Only (Appellate Rule 215)

Appeal from the District Court

- Merit / Merit and Sentence (Appellate Rule 217)
- Sentence Only (Appellate Rule 215)
- Petition for Review** (Appellate Rule 402)
- Petition for Hearing** (Appellate Rule 302)
- Original Application for Relief** (Appellate Rule 404)
- Juvenile Appeal** (Appellate Rule 219)
- Peremptory Challenge Appeal** (Appellate Rule 216)
- Extradition Appeal** (Appellate Rule 216)

Defendant:

Name: Rachelle A. Waterman

Date of Birth: 8/26/1988

Mailing Address: P.O. Box 201
Craig, Alaska 99921

Telephone: (907) 826-3502 Fax Number: _____

E-Mail Address: _____

Is Defendant incarcerated? Yes No

If yes, please provide the name and address of the correctional facility:

Defendant's Attorney on Appeal:

If the defendant has no attorney on appeal, write "None" for the attorney's name.

Is this attorney court-appointed? Yes No

Name: Steven M. Wells Bar Number: 0010066

Firm or Agency Name: Office of Public Advocacy

Mailing Address: 268 E. Fireweed Avenue
Palmer, Alaska 99645

Telephone: (907) 745-0435 Fax Number: (907) 745-0467

E-Mail Address: Steve_Wells@admin.state.ak.us

Was defendant represented by a different attorney in the trial court? Yes No

If yes, was trial attorney court-appointed? Yes No

If yes, please list the name, address, and telephone number of trial attorney:

Prosecuting Attorney:

Name: Stephen R. West Bar Number: 7806060
Agency Name: District Attorney's Office
Mailing Address: 415 Main Street, Suite 304
Ketchikan, Alaska 99901
Telephone: (907) 225-6128 Fax Number: (907) 225-3917
E-Mail Address: Steve West@law.state.ak.us

Trial Court Information:

Case Number: 1KE-S04-1312 CR
Trial Judge: Patricia A. Collins
Date Judgment Distributed: 3-7-06
Post-judgment Motions: *List all post-judgment motions that affect the time for filing an appeal. See Appellate Rule 204(a)(3).*

<u>Type of Motion:</u>	<u>Date Filed:</u>	<u>Date Decided:</u>
<u>Motion to Reconsider</u>	<u>3-17-06</u>	<u>3-20-06</u>
_____	_____	_____
_____	_____	_____

To Complete This Filing, You Must Submit The Following:

If you check a box make sure the item is included in your packet. Failure to submit all documents may result in delay or rejection of your filing.

1. **This “Notice of Appeal or Petition and Docketing Statement”**
(original + 1 copy)
2. **Appeals:** The order or judgment from which relief is sought (2 copies) **or**
 Petitions & Original Applications: 5 copies of the petition or application, each one accompanied by any order from which relief is sought
3. **Statement of points on appeal, or a motion for an extension of time to file the points on appeal** (original + 1 copy)
(Note: Petitions and original applications for relief do not need to include a statement of points on appeal)
4. **Designation of electronic record** (See page 5)
(Note: Petitions and original applications for relief do not need to include a designation of electronic record)
5. **A filing fee of \$150** **or**
 A motion to appeal at public expense *(a sworn financial statement must be included with this motion)* (original + 1 copy) **or**
 A motion for reduction of the filing fee under AS 09.19.010
(a certified copy of the prisoner account statement and a Corrections account summary must be included with this motion) (original + 1 copy) **or**
 No filing fee is required because
 The appellant or petitioner is represented by court-appointed counsel and AS 09.19.010 does not apply, **or**
 The appellant or petitioner is the State of Alaska

Designation of Electronic Record:

Appeals filed under Appellate Rule 204 (appeals from the Superior Court):

- A designation of transcript, or
- A statement that no transcript is being requested, or
- A motion for extension of time to submit the designation of transcript

Appeals filed under Appellate Rule 215 (sentence appeals):

Note: The court will automatically prepare a transcript of the sentencing hearing. If transcription of additional sentencing proceedings is required, appellant's counsel may request additional transcripts by filing the appropriate motion with the court.

Appeals filed under Appellate Rule 217 (appeals from the District Court):

and

Appeals filed under Appellate Rules 216 and 219 (peremptory challenge appeals, extradition appeals, and juvenile appeals):

- A designation of the audio record, or
- An explanation of why no audio record is being requested, or
- A motion for an extension of time to submit the designation of the audio record

Note: In appeals under Appellate Rules 216 and 219, motions for extensions of time to submit a designation of record are disfavored.

WARNING: In addition to the foregoing, if this appeal is not filed within the time limits provided by the applicable appellate rules, you must file a motion to accept this late appeal.

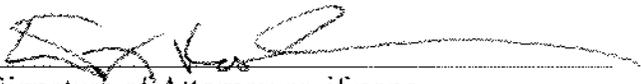
Proof of Service:

I certify that on 4/19/06 a copy of the above paperwork and all attachments (except the filing fee) were mailed or delivered to the following parties or their attorneys.

(Note: You must serve all of the parties in the trial court.)

- 1. Steven M. Wells
 mailed delivered
- 2. _____
 mailed delivered
- 3. _____
 mailed delivered
- 4. _____
 mailed delivered

Date: 4/19/06


Signature of Attorney or, if none,
Signature of the Appellant

(for court use only)			
If Filing Fee Paid:		Receipt No. _____	
Amount	___ \$150	or	\$ _____
Method	___ Cash	or	Check No. _____

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

STATE OF ALASKA,

Plaintiff,

v.

RACHELLE WATERMAN,

Defendant.

FILED IN CIVIL
STATE OF ALASKA
FIRST JUDICIAL DISTRICT
AT JUNEAU

3.7.06
BY: *[Signature]*

IKF-04-1312 CR

ORDER ON MOTION FOR JUDGMENT OF ACQUITTAL

Rachelle Waterman seeks a judgment of acquittal following deadlock by the jury on all counts against Ms. Waterman. This question requires the court to determine whether, viewing the evidence and all inferences from the evidence in a light most favorable to the state, fair-minded jurors could differ on whether guilt has been established beyond a reasonable doubt. That motion is denied. Consideration of the motion for judgment of acquittal and the entirety of the trial record has, however, caused the court to review and reflect on an earlier order denying the motion to suppress statements Rachelle Waterman made to police on November 19, 2004.

In denying the motion to suppress, the court made a number of fact findings and concluded that, while the evidence was not unequivocal, consideration of the totality of circumstances surrounding the statements supported the conclusion that the statements were not coerced and were voluntary. Trial testimony and exhibits revealed a number of facts not known or recognized as significant at the time the suppression order entered. That evidence makes some of the earlier fact findings regarding the November 19

1 statements incomplete or inaccurate. Consideration of the trial evidence also changes the
2 court's view of the totality of the circumstances and relative coerciveness of the
3 interrogation.

4 Specifically, this court found that the officers that interviewed Ms. Waterman
5 were truthful with her, as argued by the state. Sgt. McPherron admitted in trial
6 testimony that he repeatedly lied to Ms. Waterman during this interview about the
7 evidence in the case and statements he attributed to the co-defendants. He also
8 acknowledged that he lied in an earlier interview with Ms. Waterman on November 17,
9 where he (and Trooper Claus) told Ms. Waterman that they believed that she was not
10 involved in or responsible for her mother's death. Finally, it became clear at trial that the
11 officers lied to Ms. Waterman on the 17th, when they repeatedly told her that the
12 interview would be "confidential."¹

13 Lying to a suspect about the existence or weight of evidence does not
14 automatically render a confession involuntary. But it is a factor to be considered in
15 viewing the totality of circumstances. Some of the lies the officers repeated to Ms.
16 Waterman are especially problematic. Specifically, Waterman was repeatedly told on
17 November 19 that Radel and Arrant stated that she assisted in the planning for the murder
18 of November 13 by telling them which window in the garage would be open for them to
19 gain access to the Waterman home and that Radel, as directed, used that window to gain
20 entry.

21 Brian Radel testified that he asked Jason Arrant for information about the home to
22 assist in the break-in but learned nothing and went in "blind." Arrant testified at trial that

23 _____
24 ¹ November 17, 2005 Interview, p. 19 (stating that any computer records found "will be
25 confidential," p. 31 ("our conversation will be confidential"); p. 34 (stating "this is between you,
me and Randy" -- not going to tell father); p. 48 (stating officers won't tell Waterman's friends
what she says).

1 Waterman told him at some unspecified point in time that she used the garage window,
2 the one that Radel used to break in, when she snuck out of the house. Even assuming,
3 without benefit of the transcripts or tapes of the statements made by Radel and Arrant to
4 police, that this testimony is consistent with earlier statements by Arrant to police, Arrant
5 was clearly mistaken or lying about the alleged use of the "break-in" window by
6 Waterman. In addition, Arrant testified at trial that he was not sure he ever told Radel
7 about the window that Rachelle Waterman used to sneak out of the house.

8 The police testified that the break-in window was covered in cobwebs and dust.
9 Doc Waterman testified that he and his wife caught Waterman sneaking in a ground floor
10 *family room window on the other side of the house* from the garage break-in window that
11 was larger and more accessible than the window in the garage. This event is one of the
12 reasons Waterman was on tight restriction in the weeks prior to the murder. Rachelle
13 Waterman echoed that she snuck out through the family room window. However, after
14 repeated statements by the police that she aided Radel and Arrant in the murder by telling
15 them how to get into the house, she ultimately began agreeing, "confessing," that she was
16 responsible for how Arrant gained entry to the house.

17 Even assuming that Waterman told Arrant which window she used to sneak out of
18 the house, it was conceded at trial that this was not the window Radel used to break into
19 the house. Therefore, this information did not aid in the break-in. Yet, it was used, at
20 grand jury and trial, as a cornerstone for the theories of conspiracy and aiding and
21 abetting. This aspect of the "confession," i.e., that Waterman aided in the break-in by
22 providing information about how to break into the house, falls apart under close scrutiny.
23 It also makes the existence of what is, in essence, a false acknowledgment of
24 responsibility shed doubt on the reliability of other statements of potential responsibility
25 for her mother's death more suspect.

1 The state's evidence against Waterman is essentially grounded on two factual
2 claims: (1) she asked, directly or indirectly, Arrant (and, by extension) Radel to kill her
3 mother, stating she was being psychologically and/or physically abused; and (2) she
4 helped accomplish the murder by advising about the "sneak-out" window (which was not
5 used to break in) and advising that she and her father would be gone for the weekend.

6 In the November 17 and 19 interviews, Waterman acknowledged that she told
7 Arrant and Radel that, from her perspective, her mother abused her and she was
8 depressed. By the time of the November 19 interview, the officers told her repeatedly that
9 they knew she asked Radel and Arrant to kill her mother and that she was lying when she
10 said otherwise. Only after being told that the officers would "stand up" with her if she
11 took responsibility, i.e., agreed with their statements, but would tell the jury, the district
12 attorney and the judge that she did not "cooperate" if she did not, did she finally state that
13 she agreed at an earlier point to the proposal to kill her mother, then told them not to do
14 it, but then did not expressly tell them not to do it when she suspected that they might
15 again make the attempt on the weekend of November 14. This threat of harsher
16 consequences if she did not change her statement was coercive. Having considered the
17 totality of circumstances, including the trial testimony, the court is not satisfied that the
18 state has proved that Ms. Waterman's will was not overcome by these statements *and* the
19 other problematic circumstances of the interview.

20 Trial testimony made clear, contrary to grand jury testimony, that Rachelle
21 Waterman's father was not notified of the November 19 interview by police, although he
22 was easily accessible.² Sgt. McPherron could not recall at trial if Mr. Waterman
23

24
25 ² In response to questions about the November 19 interview by the Craig grand jury, grand
jurors were told that Rachelle Waterman *and* her father were told of the right to be present at the
interview and "they waived it." Transcript at p. 135. When asked if "he" (Mr. Waterman)

1 specifically asked him if his daughter was a suspect but stated that he never told him that
2 she was a suspect. When police picked Rachelle Waterman up for the second interview
3 at the police station, she and the neighbor that was with her were told that the interview
4 was just to tie up a few loose ends.

5 As stated in the first order, the lack of parental presence for the interview of a
6 juvenile does not, standing alone, make the interview involuntary. It is, however, another
7 factor that is considered in the totality of the circumstances surrounding the interview.
8 Here, trial testimony made clear that Mr. Waterman was not contacted before the
9 interview even though it would have been easy to do so and even though Rachelle
10 Waterman, then 16 years and three months of age, had become a target of the
11 investigation. These circumstances are troubling, particularly given the fact that, two days
12 earlier, Rachelle Waterman was repeatedly told by the officers that the interview was
13 "confidential" and that they would not divulge what she told them, including her
14 admissions about sexual relations with Arrant and Radel to anyone, including her father.
15 Thus, she had reason, at the start of the November 19 interview, not to want to have her
16 father present such that he would learn of her sexual relations with these older men, a fact
17 that he testified at trial he was not aware of at the time.

18 Waterman was advised of her *Miranda* rights at the commencement of the second
19 interview. When she asked why she was being told these rights, Sgt. McPherron told her
20 he was just being cautious. Given the promises of confidentiality two days earlier and an
21 obvious incentive not to have her father learn of her sexual history, the potential for
22 confusion and coercion was enhanced.

23
24
25 waived "her" (Rachelle Waterman) having an attorney present during the interview, the grand
jury was told "yes." *Id.* Both of these statements are contrary to trial testimony.

1 On balance, this court has become convinced that the November 19 interview
 2 should be suppressed. The Alaska appellate courts impose a "heavy burden" on the state
 3 to prove that a juvenile confession is voluntary. While, again, the totality of the evidence
 4 is not unequivocal on the question of whether the statements were voluntary, the burden
 5 has not been met.

6 The November 19 interview was the centerpiece of the grand jury case against Ms.
 7 Waterman. As her statements from that interview are inadmissible, the indictment must
 8 be dismissed. No claim has been made that the November 17 interview is inadmissible
 9 and the court assumes this was and is based on defense trial strategy.³ However, if this
 10 case is again submitted to a grand jury, the court assumes that the state will limit its
 11 presentation of evidence to accurate and admissible evidence and that errors in the prior
 12 grand jury proceeding referenced in this order will not be repeated.

13 This case is dismissed without prejudice.

14 DATED at Juneau, Alaska this 7th day of March 2006.

15
 16 

17 _____
 18 Patricia Collins
 19 Superior Court Judge

20 **CERTIFICATION**

Copies Distributed

Date 3.7.06

To _____

West ^{via}

Wells ^{fax}

Kto Court

By T. Kay

24 ³ See *Jones v. State*, 65 P.3d 903, 908-09 (Alaska App. 2003)(holding that promise of
 25 confidentiality rendered subsequent statement involuntary and inadmissible); *Hammonds v.*
State, 442 P.2d 39 (Alaska 1968)(holding that a defendant may waive potential challenges to
 statements to police for strategic reasons).

In the Superior Court for the State of Alaska at Ketchikan

Media No.: 1KEA06-51 **Judge:** Collins appearing by phone

Date: Monday, March 20, 2006 **Clerk:** Summers

Plaintiff: State vs.

Defendant's Name: Rachelle Waterman **Case No.:** 1KE-04-1312CR **DOB:** **Address:** [Enter Defendant's Address]

Type of Proceedings: FP

Counsel Present: Plaintiff: District Attorney – West

Defendant: OPA - Wells

Defendant: Present; Out of Custody appearing by phone from the Juneau Courtroom

Bail Set/Continues:		
Transport Order:		
Other Court Orders:		
Next Court Date(s) and Time(s):	Type of Hearing(s):	Location:

Summary of Proceedings:

3:36:02 PM Court identifies case and parties

3:36:08 PM Wells - Advised the court there were problems with Alaska Airlines today or I would have been present in the Juneau court

3:37:11 PM Court - I have received and read the States motion for reconsideration
- I have carefully considered the State's motion – I carefully considered the record when I dismissed the indictment - Inquired how the State wanted to proceed –

West - The State will be appealing the courts order suppressing the statements – I will file the appeal tomorrow requested the court stay the dismissal pending the appeal

3:38:14 PM Wells - If the State files by tomorrow no objection

3:38:28 PM Court - I will stay the dismissal pending the appeal
- Inquired if there was any reason to change bail or conditions of release

West - No changes – everything is alright

Wells - Everything is fine

3:38:45 PM Court - Advised the deft she was still on conditions of release pending the outcome of the appeal – Advised the deft the appeal could take several months

3:39:24 PM Off record

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
 Appellant,)
)
 vs.)
)
 RACHELLE A. WATERMAN,)
)
 Appellee.)

Court of Appeals No. A-_____

Superior Court No. 1KE-S04-1312 Cr.

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 12.61.130 or (2) a residence or business address or telephone number of a victim 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.

STATEMENT OF POINTS ON APPEAL

The State of Alaska gives notice that it intends to raise the following points on appeal:

- (1) The superior court erred in *sua sponte* reconsidering its order denying Waterman's motion to suppress based on the testimony at trial without first giving the parties an opportunity to respond orally or in writing, present additional evidence, and argue on the propriety of her reconsidering her earlier suppression order.

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 98501
(907) 269-6260

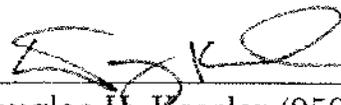
(2) The superior court erred in *sua sponte* dismissing the indictment and all charges against Waterman, based on its reconsideration of the suppression order.

(3) The superior court erred in suppressing the entirety of Waterman's November 19, 2004 statement to the police.

(4) The superior court erred at trial in refusing to allow the State to introduce into evidence the prior consistent statement of Jason Arrant to the troopers after being impeached by the defendant about his plea agreement with the State.

DATED this 19th day of April, 2006.

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: 

Douglas H. Kossler (9506030)
Assistant Attorney General

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,)
)
Appellant,)
)
vs.)
)
RACHELLE A. WATERMAN,)
)
Appellee.)

Court of Appeals No. A-_____

Superior Court No. 1KE-S04-1312 Cr.

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 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.

DESIGNATION OF TRANSCRIPT

The State of Alaska designates the following proceedings for transcription:

(1) the entire grand jury hearing held on November 26, 2004 (previously transcribed by Glacier Stenographic Reports Inc.);

(2) the entire evidentiary hearing held on August 22, 2005 before Judge Patricia Collins (previously transcribed by SEAK Professional Services, LLC);

(3) the entire trial – including all portions of the videotapes and audiotapes played into the record, but excluding jury selection – held from January 23, 2006 to February 7, 2006 before Judge Collins;

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 305
ANCHORAGE, ALASKA 99501
(907) 269-6250

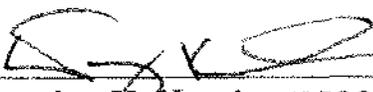
STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501
(907) 269-6250

(4) the entire morning hearing (from 8:34 a.m. to 8:59 a.m.) held on March 7, 2006 before Judge Collins; and

(5) the entire hearing held on March 20, 2006 before Judge Collins.

DATED this 19th day of April, 2006.

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: 
Douglas H. Kossler (9506030)
Assistant Attorney General