

DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 260 October 29, 2002

HEARSAY ADMITTED AS PRIOR INCONSISTENT STATEMENT

Reference: Henry Wassilie v. State of Alaska Alaska Court of Appeals Opinion No. 1836 _____P.2d____ October 25, 2002

FACTS:

Henry Wassilie was charged with assaulting both his mother and father. Evan Wassilie, Henry's father who was 90 years old, testified on direct examination during the trial. He was speaking Yupik, which was translated to English by an interpreter. Evan could not remember when the event took place nor how or by whom he and his wife were injured. The prosecutor asked Evan if he remember police and the VPSO coming to his residence and he said, "Yes. I didn't see any of those guys." Evan was subsequently released as a witness.

Later in the trial, the State called the investigating officer and asked him if he had interviewed Evan on the night of the alleged assault. The officer testified that Evan had told him that Henry had beat and kicked him and his wife. The defense objected to the police officer's testimony.

ISSUE:

Did the trial court properly admit Evan's out-of-court statement to the police officer as a prior inconsistent statement under Alaska Rule of Evidence 801(d)(1)(A)?

HELD: Yes.

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REASONING:

<u>1.</u> If a witness claims not to remember the substance of a prior statement at trial, the witness' trial testimony is inconsistent with the prior statement for purposes of Alaska Rule of Evidence 801(d)(1)(A).

<u>2.</u> It is irrelevant for purposes of the Rule whether the claimed memory loss is genuine or feigned, because (whether genuine or feigned) the claimed lack of memory at trial is inconsistent with the witness' earlier claim to remember.

NOTES:

Hearsay evidence has historically been allowed for obtaining search warrants. Two drug case examples are <u>Keller v. State, Legal Bulletin No. 11;</u> and <u>Resek v. State,</u> <u>Legal Bulletin No. 56</u>. Hearsay has also been allowed in the case of juvenile sex assault victims; an example of this is in <u>Dezarn v. State, Legal Bulletin No. 170</u>, where the mother of a two-year-old sex assault victim was allowed to testify as to what her daughter told her.

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