



## DPS TRAINING BULLETIN



LEGAL BULLETIN NO. 332  
December 10, 2008

**IN CERTAIN INSTANCES, STATEMENTS UNLAWFULLY  
OBTAINED AS A RESULT OF MIRANDA VIOLATION  
MAY BE USED TO IMPEACH DEFENDANT IF HE TESTIFIES AT TRIAL**

**Reference:** State of Alaska  
v.  
Jeron Batts

Alaska Court of Appeals  
Opinion No. 2189  
\_\_\_\_\_ P.3d  
October 31, 2008

**FACTS:**

Police arrested BATTIS for homicide. He was given and waived his MIRANDA rights. At the time of his arrest, BATTIS had been driving near a gas station. During the course of the interview, when asked where he was prior to being at the gas station, he said: "I'd rather not answer." The officer sought clarification by saying: "I'm sorry?" BATTIS responded "I'd rather not answer." He then said "plead the Fifth." The officer said: "So you don't want to answer that question?" and BATTIS said "No." The officers did not pursue that question further and instead asked BATTIS if he was alone in his car at the time of the shooting. He said he was not. When the officer asked BATTIS to identify the passenger he said: "plead the Fifth." The officer continued to question BATTIS, who ultimately told them that it was his friend, who he refused to identify, that shot and killed the victim. He was unable to describe the gun that his friend used. During the course of the interview with the police BATTIS asserted his Fifth Amendment right to silence a total of eighteen times. He ultimately said he wanted to talk with a lawyer. The interview went on for over an hour. BATTIS was charged with the homicide. BATTIS had testified at his trial. He admitted that it was he who shot and killed the victim but did so in self-defense. The jury was "hung" and he was tried a second time which resulted in another hung jury. The State filed an appeal requesting a ruling that would allow the prosecutor to use the statement BATTIS made to the police in violation of MIRANDA to be used to impeach BATTIS.

**ISSUE NO. 1:**

When the defendant takes the stand at a criminal trial does Alaska Evidence Rule 412 (412) allow the government to impeach the defendant's testimony with statements unlawfully obtained from the

defendant after the defendant invoked the right to silence or counsel under MIRANDA?

**HELD:** Yes - 412 allows a defendant to be impeached with statements "obtained in violation of MIRANDA," so long as the police violation was neither intentional or egregious. (emphasis added)

**ISSUE NO. 2:**

Is Evidence Rule 412 constitutional under Article 1, Section 9 of the Alaska Constitution if the rule permits this type of impeachment?

**HELD:** Yes, it is constitutional to the extent that it permits this impeachment in cases where the violation was neither intentional or egregious - by which we mean a violation that would have been obvious to any reasonable police officer.

**REASONING:**

1. A defendant who voluntarily takes the stand is under an obligation to speak truthfully, and the defendant's testimony should be subjected to the traditional truth-testing devices of the adversary process. The shield provided by MIRANDA cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.
2. Article 1, Section 9 of the Alaska Constitution forbids the use of statements obtained in violation of MIRANDA if the MIRANDA violation was either intentional or egregious. The police must not be allowed to make violation of MIRANDA a tactic, nor should the government be allowed to profit from a MIRANDA violation that no reasonable police officer would have committed. (emphasis added)
3. When evidence of a defendant's prior statements is admitted under Evidence Rule 412, this evidence can only be used for impeachment purposes to assess the credibility of the defendant's trial testimony. This evidence is not admissible to prove the truth of any matters asserted.

**NOTE TO SUBSCRIBERS TO THE ALASKA LEGAL BRIEF MANUAL:**

File Legal Bulletin No. 332 numerically under Section R of the manual.