

## **ACQUITTAL ON HOMICIDE CHARGES IN KENAI, AK:**

### **SCIENCE TO THE RESCUE!**

Alaska v. D, Kenai AK, Case: 3KN-17-00208CR- 1 December 2017: Acquittal on homicide counts. Def. provided Fentanyl to another person, who died. Alaska Pub. Def. 1 December 2017. Cross-Examination of State's Pathologist; Acquittal on homicide charges.

D provided X a Fentanyl patch. The exact scenario is murky but X died... with generous Fentanyl levels. The lawyer portrayed a dismal future for this defendant because "the facts seem clear on its face." ... but they weren't.

Alaska Public Defender's office in Kenai defended against one manslaughter count and one count of criminally negligent homicide. There were other charges concerning the delivery of a controlled substance but nothing as onerous as those counts involving the death. After a week in trial, the jury acquitted D of the most serious death charges. No evidence supported that D intentionally caused the death.

The lawyer identified a "strict liability" issue with the statute and commenced review. This issue was not resolved prior to trial.

In analysis of the autopsy I spotted some room for "reasonable doubt. I used one of my trial techniques; to use the State's witness, here the pathologist, to prove the Defendant's case. There is no magic or mystery about how this works. I prepared a detailed and methodic medical cross-examination of the pathologist where I used scientific and medical principles to raise reasonable doubt: (a) the State did not know the time or even the circumstances of death; (b) no evidence supported that D intended anything other than to help his friend who was in pain; delivery was a guileless favor; (c) autopsy findings supported two causes of death: opiate overdose and coronary ischemia. The State's employee pathologist chose the one which helped the State's case; (d) the decedent was a chronic opiate user and, although his serum level of fentanyl was high according to lab norms, in someone who uses opiates, and is biologically tolerant to high opiate levels, the State was unable to prove that this level caused death. (Parenthetically, I have seen BAL's at 0.800 in DUI's with chronic alcoholics. The liver adapts miraculously.)

In using the State's own witness, the Defendant avoided the peril of "yet another witness," and paying for that witness... and you never know what your own witness may say under cross-examination.

The majority of my cases end in plea agreements. To go to trial and win was a reinforcement of the techniques I have developed in 44 years. The defense lawyer, a skilled and skeptical litigator, used scene photos to emphasize body position... someone else had been present... and the State's Pathologist agreed! The jury acquitted on the two homicide counts but the defendant will be sentenced on the delivery counts.

Please feel free to contact me when you have a case to discuss with medical and scientific evidence.

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