IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JIMMY A. LAMPLEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13963
Trial Court No. 3PA-20-01282 CR

MEMORANDUM OPINION

No. 7102 — April 24, 2024

Appeal from the District Court, Third Judicial District, Palmer, Amanda L. Browning, Judge.

Appearances: Jay A. Hochberg, Attorney at Law, Honolulu, Hawaii, under contract with the Public Defender Agency, and Terrence Haas, Public Defender, Anchorage, for the Appellant. RuthAnne Beach, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge ALLARD.

Jimmy A. Lampley was convicted of one count of fourth-degree assault after he attacked an acquaintance in a Walmart parking lot.[1] On appeal, Lampley argues that the trial court erred in rejecting his for-cause challenges to a number of prospective jurors. However, only one of the prospective jurors Lampley challenged was actually seated on the jury, and we conclude that the trial court did not abuse its discretion when it denied Lampley's for-cause challenge to that juror. We therefore affirm Lampley's conviction.

Background facts

Cheryl France was at the self-checkout kiosk in the Wasilla Walmart when Lampley and his stepmother entered the store. France and Lampley had known each other for several years. Lampley approached France and tried to talk to her about a prior incident in their friendship. France did not want to speak with Lampley and walked out of the Walmart.

Lampley followed France to her vehicle and continued trying to talk to her as she loaded her car and climbed into the driver's seat. According to France, when she refused to engage further, Lampley struck her in the face several times. Lampley stopped attacking France and left the parking lot after a bystander intervened. France called 911.

Lampley testified to a different version of events. He claimed that he and France were discussing a series of issues in the parking lot, including "why [he] got attacked by three different men," "the possibility of charges from [France's] ex-husband," a "firewood issue," and a "sled that was not returned." Then, shortly after France got into the driver's seat, Lampley "felt something hit [him] in [his] testicles," and he responded by punching France as hard as he could.

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[1] AS 11.41.230(a)(1).

In light of Lampley's version of events, he argued at trial that he was acting in self-defense. The jury rejected Lampley's claim of self-defense and convicted him of fourth-degree assault.

Voir dire of the prospective jurors

As we have just explained, Lampley's argument at trial was that he attacked France in self-defense after she hit him in the testicles. Under Alaska law, a person is allowed to use deadly force when the person "reasonably believes the use of deadly force is necessary" to prevent death or serious physical injury.[2] But a person may use nondeadly force, as Lampley claimed he did in this case, as long as "the person reasonably believes it is necessary for self-defense against what the person reasonably believes to be the use of unlawful force by the other person."[3] In other words, a defendant who uses only nondeadly force is *not* required to show that their life was in danger or that they faced a risk of serious physical injury.

During *voir dire* of the prospective jurors, defense counsel attempted to determine whether any of the prospective jurors believed that a man should hit a woman only when necessary to prevent death or serious physical injury, as such a belief would be contrary to the law of self-defense and directly inconsistent with Lampley's defense.

The first prospective juror to address the question (who is not identified in the transcript) indicated that, although he believed a man should not generally hit a woman unless "life, limb, or eyesight" was in danger, he would be "willing to consider defense of oneself" even if it did not involve "life or limb."

Defense counsel then asked prospective juror S.W. how he felt about the issue. S.W. is the only challenged juror who sat on the jury and thus is the main focus

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[2] AS 11.81.335(a)(1)-(2).

[3] AS 11.81.330(a). This rule is subject to certain exceptions not at issue here.

of this appeal. As we explain in more detail later in this decision, S.W.'s answers were equivocal and ambiguous, but he appeared to indicate that he would be able to fairly decide a case in which the woman was the initial aggressor.

The two prospective jurors who followed S.W. indicated that they agreed with others in the room that they would have to hear the evidence before coming to a conclusion.

At this point, defense counsel moved on to a different line of inquiry and a few minutes later, indicated that she had no more questions for the jurors. But prospective juror D.C. then interjected that he "just want[ed] to make a comment."[4] D.C. returned to the question of whether a man is ever justified in hitting a woman and explained that he was "raised a certain way" and it would "take a pretty high bar for [him] to feel it's justified a man hitting a woman." D.C. further explained that although he was a "fair person" and could "judge all the evidence," the defense "would have to prove to [him] that it was justified." D.C. indicated that the defense would have a "tough job doing that" and it would "take a lot of convincing." (This is legally incorrect, because when self-defense is properly raised, the State must disprove it beyond a reasonable doubt.[5])

Defense counsel then raised the issue with prospective juror C.L., who indicated that a man should always "walk away" if he is hit by a woman, and that he would "absolutely" be thinking about that while considering the evidence in the case. A third prospective juror, C.C., then indicated that he "agree[d] with both of these

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[4] This juror is labeled "unidentified prospective juror" in the transcript, but the defense brief labels this interaction as being with D.C., and the State does not dispute that characterization.

[5] *See* AS 11.81.300; AS 11.81.900(b)(19); *see also Morrell v. State*, 216 P.3d 574, 577-78 (Alaska App. 2009).

gentleman 100 percent" that "there's no excuse for striking a woman other than to protect your life."

Lampley's for-cause and peremptory challenges

Lampley challenged D.C., C.L., and C.C. for cause based on their belief that a man should never hit a woman unless his life is in danger. The court denied all three challenges, finding that the defense never directly questioned the jurors as to whether they could put their biases aside and apply the law to the facts presented.

Lampley also challenged S.W. for cause. The court denied the challenge, stating that S.W. did not say he could not follow the law or that he could not be fair and impartial.

Lampley also challenged two other jurors for cause: (1) C.E., on the grounds that C.E.'s wife was an assault victim and C.E. expressed concern that he would be thinking about that as the evidence was presented; and (2) K.H., on the grounds that he believed police officers were more credible than other witnesses. The court denied both of these challenges as well.

Lampley then exercised his three peremptory challenges against D.C., C.L., and C.E. This meant that three of Lampley's challenged jurors still remained in the jury pool: C.C., who expressed that a man should never hit a woman; K.H., who believed police officers were more credible than other witnesses; and S.W., whose *voir dire* testimony we discuss in more detail below.

Before swearing in the jury, the court asked the remaining jurors if any of them felt they could not be a fair and impartial juror in the case. C.C. raised his hand and said, "I don't feel that I could make an unbiased judgment as far as the assault." The court then agreed to dismiss C.C. for cause.

K.H. then indicated that he "might be in the same boat as the gentleman before," and that he was not "asked the question on [his] personal views of man on woman violence." K.H. explained that he was raised to believe that a man should never

hit a woman, and that although he would try, to "the best of [his] ability," to apply the law fairly, it was a "touchy subject" for him and there was "always going to be something in the back of [his] head about how [he] was raised." Lampley renewed his for-cause challenge to K.H., and the court agreed to dismiss K.H. for cause.

S.W. did not speak up when the court asked the jurors if there was any reason they could not be fair and impartial. S.W. was the only juror Lampley challenged for cause who was seated on the jury.

Why we affirm Lampley's conviction

On appeal, Lampley argues that the trial court erroneously denied his for-cause challenges to the various jurors noted above, and that he was prejudiced by these errors.

Alaska Criminal Rule 24(c) provides that a prospective juror should not serve on the jury if "the person shows a state of mind which will prevent the person from rendering a just verdict" or "has opinions . . . which would improperly influence the person's verdict." Bias on the part of prospective jurors, however, "will never be presumed and the challenging party bears the burden of proof."[6] "The trial court has discretion to grant or deny a challenge for cause and this court will interfere with that discretion 'only in exceptional circumstances and to prevent a miscarriage of justice.'"[7]

Furthermore, in order to obtain reversal on appeal, the defendant must do more than show that the court erroneously denied a for-cause challenge; the defendant must demonstrate that he was prejudiced, which means that he must "demonstrate some

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[6] *Young v. State*, 848 P.2d 267, 269-70 (Alaska App. 1993) (quoting *City of Kotzebue v. Ipalook*, 462 P.2d 75, 77 (Alaska 1969)).

[7] *Hammock v. State*, 52 P.3d 746, 748-49 (Alaska App. 2002) (quoting *Sirotiak v. H.C. Price Co.*, 758 P.2d 1271, 1275 (Alaska 1988)).

reason to believe that one or more of the jurors who decided his case were, in fact, not fair."[8]

We are troubled by the trial court's denial of some of Lampley's for-cause challenges. For example, D.C., C.L., and C.C. each expressed a belief that is inconsistent with the law of self-defense in Alaska. The jurors believed a man should never hit a woman unless his life is in danger — *i.e.*, they believed that a man should not use force against a woman in response to a woman's unlawful use of nondeadly force against the man. The jurors also indicated that they would be thinking about this opinion during the trial. This suggests that these jurors demonstrated a state of mind or opinion that would improperly influence their verdict.[9]

The trial court denied the challenges for cause, however, on the grounds that the prospective jurors had not affirmatively stated they would not apply the law to the facts. We have previously held that, "[t]o support the court's decision to deny a challenge for cause, ... '[a]ll that is required of a prospective juror is a good faith statement that he or she will be fair, impartial and follow directions.'"[10] But the trial court in this case appeared to believe that it should only grant a for-cause challenge when the prospective juror expressly affirms that they *cannot* be fair and impartial. To the extent the trial court denied Lampley's for-cause challenges solely because the prospective jurors had not affirmatively stated they would not be fair and impartial, that ruling was error.

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[8] *Id.* at 750 (quoting *Minch v. State*, 934 P.2d 764, 770 (Alaska App. 1997)).

[9] We note that the State did not ask to try to rehabilitate the jurors by explaining the law to them.

[10] *Hammock*, 52 P.3d at 749 (quoting *Sirotiak*, 758 P.2d at 1277).

To obtain reversal on appeal, however, Lampley must do more than show that a for-cause challenge was improperly denied; he must show that a biased juror actually sat on his jury.[11] That did not occur in this case.

As we have explained, S.W. was the only prospective juror who was challenged for cause and actually sat on Lampley's jury. But the trial court did not abuse its discretion when it denied Lampley's for-cause challenge to S.W. Unlike the three jurors discussed above, S.W. did not indicate that he would struggle to fairly decide a case in which a man hit a woman. His responses about this issue were at best ambiguous, which is not sufficient to overcome the rule that "bias on the part of prospective jurors will never be presumed."[12]

Here is the relevant exchange between defense counsel and S.W. during *voir dire*, as reflected in the transcript:

> *Defense counsel*: And I don't mean to call you out [S.W.], but you answered a little bit on your questionnaire just having some issues with domestic violence and —
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> *S.W.*: That's — that's a tough one. Like you said, you know, if your life's in danger, I think it's for — I don't know — for a lot of males that's a hard one to do. You should never hit a woman, but if you are in life and death — it's tough — it's tough to kind of sort out. Yeah. I don't know.
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> *Defense counsel*: So would you — do you believe that a man shouldn't hit a woman if your life's not in danger?
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> *S.W.*: Well, no. That's what I'm saying. If your life's in danger, absolutely you . . . should protect yourself from that, but it's a — yeah. You still got to protect yourself so you're not in danger.
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> *Defense counsel*: Okay. I guess the situation just isn't quite that serious and what I'm trying to just figure out,

[11] *See id.* at 750.

[12] *Young v. State*, 848 P.2d 267, 269-70 (Alaska App. 1993) (quoting *City of Kotzebue v. Ipalook*, 462 P.2d 75, 77 (Alaska 1969)).

> would you have difficulty listening to a situation that involves a woman being the primary aggressor and a man striking her? Do you think that would be difficult for you?
>
> *S.W.*: I don't know. If she's the primary aggressor, yeah. She's the one bringing it on, so yeah — if she's the one aggressive it should be —
>
> *Defense counsel*: Okay. Thank you for that.

Based on this transcription, S.W.'s answers are ambiguous and equivocal. For example, when defense counsel asked S.W. if he "believe[d] that a man shouldn't hit a woman if your life's not in danger?", S.W. first answered, "Well, no" — *i.e.*, that he did *not* believe a man should only hit a woman if his life is in danger. This might indicate that S.W. thought it sometimes is appropriate for a man to respond to a woman's unlawful use of force against a man even when the force does not qualify as deadly force. But S.W. then said, "That's what I'm saying," which could be understood to mean that he was saying that a man is only entitled to use force against a woman if his life is in danger. S.W. then stated, "You still got to protect yourself so you're not in danger," which fails to distinguish between regular danger and danger of death or serious physical injury.

S.W.'s response to the next question is also unclear. Defense counsel asked S.W. if he would have difficulty listening to a situation that involves a woman being the primary aggressor and a man striking her, to which S.W. initially responded, "I don't know." S.W. then continued, "If she's the primary aggressor, yeah. She's the one bringing it on, so yeah — if she's the one aggressive it should be . . . " At this point, according to the transcript, S.W. trailed off.

The "yeahs" in S.W.'s response could conceivably be construed as affirmative answers to defense counsel's question — as in, "Yeah, listening to a situation in which a woman was the primary aggressor and a man hit her would be difficult for me."

But we have listened to the audio of this interaction, and two things became clear. First, the "yeahs" function as verbal filler akin to the word "umm," not affirmative responses to defense counsel's question. Second, although somewhat difficult to discern, S.W.'s final comment seems to have been inaccurately transcribed. Rather than saying, "If she's the one aggressive it should be . . ." and then trailing off, S.W. appears to say, "If she's the one aggressive it should*n't* be *an issue*." In other words, S.W. seems to have said that it would not be an issue for him to listen to a case involving a man hitting a woman if the woman was the first aggressor.

As we have explained above, bias on the part of prospective jurors will not be presumed, and the trial court has substantial discretion to deny a for-cause challenge. Given S.W.'s answers during *voir dire*, which were at most ambiguous, the trial court did not abuse its discretion when it denied Lampley's for-cause challenge to S.W.

Conclusion

The judgment of the district court is AFFIRMED.