IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CORY WELLS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12327 Trial Court No. 2NO-13-00907 CR MEMORANDUM OPINION No. 6799 — June 12, 2019

Appeal from the Superior Court, Second Judicial District, Nome, Timothy D. Dooley, Judge.

Appearances: Elizabeth D. Friedman, Law Office of Elizabeth D. Friedman, Redding, California, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. RuthAnne B. Bergt, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Wollenberg, Judge, and Mannheimer, Senior Judge.[*]

Judge WOLLENBERG.

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Cory Wells was charged with, and convicted of, assaulting his girlfriend, A.A. During Wells's jury trial, the trial judge made a comment about A.A. that was patently improper; the Alaska Supreme Court subsequently censured the judge in part based on this comment.

The primary question we confront in this appeal is whether Wells is entitled to a new trial based on this comment and other comments made by the trial judge that Wells claims rendered his trial unfair. Wells did not object to any of these comments at the time, so he must show plain error. Having reviewed the record, we conclude that Wells has failed to establish that the judge's comments were so prejudicial to his case that they require reversal of Wells's conviction for assault.

Wells also raises three other claims. First, Wells argues that the evidence presented at his trial was legally insufficient to support his conviction. Second, Wells argues that critical State's witnesses were intoxicated either during trial or in pretrial proceedings, and that these witnesses' intoxication violated his right to due process. Finally, Wells argues that the sentencing judge erred in prioritizing the sentencing goal of isolation.

For the reasons explained in this opinion, we reject these additional claims, and we affirm Wells's conviction and sentence.

Factual background

This case involved a domestic violence incident between Wells and his longtime girlfriend, A.A. At the time, Wells and A.A. had been in a relationship for approximately five years. They had four young children and were living in an apartment with A.A.'s sister, C.A.

Around noon on November 23, 2013, Nome Police Officer Patrick Octuck went to Wells's residence in response to a call regarding an assault. When Octuck

arrived at the residence, A.A. answered the door; she told Octuck that she did not know why he was there, and she did not report an assault.

Octuck left the residence and met with A.A.'s sister, C.A., who had reported the incident to the police. C.A. reported that Wells was "being abusive" to A.A., and that he had told C.A. that she had "better get out . . . before I hurt you, too."

Several hours later, Octuck contacted A.A. again, and she agreed to go with Octuck to the police station. At the police station, A.A. told Octuck that she had in fact been assaulted. A.A. said that Wells struck her with his fists approximately ten times in total — several times on her legs and arms and about five times on the side of her face.

A.A. said that she did not tell Octuck about the assault when he first came to the residence because she did not want Wells to go to jail, but her mother then talked her into reporting the incident. A.A. reported that Wells "beat [her] all the time," and she was afraid that Wells would beat her again.

Dr. Timothy Miller treated A.A. that day. Miller observed swelling on the left side of her face and blood behind her eardrum. When Miller asked A.A. how she was injured, she reported that Wells had struck her twice on the left cheek and that she was experiencing decreased hearing.

The following day, C.A. called the police and reported that, during the altercation the day before, Wells had threatened to "slice" her and A.A.

The State charged Wells by information with fourth-degree assault for recklessly causing physical injury to A.A.[1] A grand jury subsequently indicted Wells for third-degree assault based on a recidivist theory — *i.e.*, that he physically assaulted A.A.

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

(thus committing a fourth-degree assault), after having been convicted of two or more fourth-degree assaults within the preceding ten years.[2]

Trial proceedings

Wells proceeded to a jury trial before Superior Court Judge Timothy D. Dooley. At Wells's trial, both A.A. and her sister recanted portions of their pretrial accounts.

C.A. testified that she could not remember any details of the night of the alleged incident. The prosecutor attempted to refresh C.A.'s recollection with excerpts from her initial interview with Officer Octuck and her phone call to the police the following morning. But C.A. testified that she did not recall making these statements, and she reported that she had been drinking when she called the police the following morning. The prosecutor later introduced the audio recordings as exhibits.

A.A. provided inconsistent accounts of the events and claimed not to recall certain statements she had made to the police. Contrary to her previous statement to Octuck, A.A. testified that Wells had not hit her in the face; she asserted that she had instead tripped and hit her head on the counter. But she repeatedly testified that Wells had hit her leg and arm.

A.A. also testified that she was intoxicated during both her interview with Octuck and at the grand jury proceeding. The State played the audio of A.A.'s prior statements to the police and her testimony before the grand jury.

In the first stage of a bifurcated trial, the jury found Wells guilty of fourth-degree assault for physically assaulting A.A. Then, based on judgments showing that

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[2] AS 11.41.220(a)(5).

Wells had been convicted of fourth-degree assault in March 2009 and June 2010, the jury found Wells guilty of third-degree assault.

The facts underlying Wells's judicial misconduct claim

On appeal, Wells argues that the trial judge made a number of disparaging or offensive comments about the State's witnesses that entitle him to a new trial. Wells's claim rests primarily on two comments that the judge made in the presence of the jury during A.A.'s and C.A.'s testimony.

The most troubling of these statements occurred during the State's direct examination of A.A. During that examination, both the judge and the jury were having difficulty hearing A.A., and the judge asked her several times to repeat her answers.

After testifying for approximately ten minutes, A.A. requested and was given a bathroom break. During A.A.'s absence from the courtroom, the judge instructed the jurors that, when A.A.'s testimony resumed, they could raise their hands if they were unable to hear her.

One of the jurors responded that A.A. was "mumbling" and that it was difficult to understand what she was saying. The judge then responded with the following statement: "I know. I'm not allowed to slap her around; I can just say something."

A.A. returned to the courtroom shortly thereafter, and her testimony resumed. Neither party commented on the judge's statement, and no further reference was made to it during trial.

The second challenged statement occurred at the conclusion of C.A.'s testimony. Before she left the stand, the judge informed C.A. that she was still under subpoena. He added: "Remember, it's a subpoena. 'Sub' is under; 'poena' comes from

the penitentiary. It's not an invitation. And so these folks need you to be available tomorrow morning."[3] Neither party objected to the judge's comment.

Why we conclude that the judge's comments, while improper, do not require reversal of Wells's conviction

On appeal, Wells argues that the trial judge's comments regarding A.A. and C.A. amounted to judicial misconduct. He further argues that he was prejudiced by this misconduct — that it denied him due process and the right to a fair trial.

There is no question that the judge's comment that he was "not allowed to slap [A.A.] around" was offensive and plainly improper. In *Disciplinary Matter Involving Dooley*, the Alaska Supreme Court censured the judge in part based on this comment.[4] The court accepted the findings of the Alaska Commission on Judicial Conduct that this comment — in addition to statements the judge made in other cases — adversely reflected on the judiciary, was "undignified and discourteous," and suggested bias or prejudice in violation of the judicial canons.[5] The judge's comment was especially egregious in the context of this case, which involved a charge of domestic assault, as it implied a dismissive attitude by the judge toward acts of violence against a woman.

Although the judge's comment to C.A. about the meaning of the word "subpoena" was not part of the conduct for which the judge was censured by the supreme court, we agree with Wells that, in this context, the comment could be viewed as disparaging or condescending.

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[3] The Latin term "poena" actually means "penalty."

[4] *See In Disciplinary Matter Involving Dooley*, 376 P.3d 1249 (Alaska 2016).

[5] *Id.* at 1251 (citing Alaska Code of Judicial Conduct Canons 1, 2A, 3B(4), and 3B(5)).

The State acknowledges that both of the judge's comments were inappropriate, but the State argues that these comments were not likely to have influenced the jury, or that any prejudice would cut against the State and not Wells.

The fact that the judge was censured for one of his comments in this case does not alone entitle Wells to relief. A judge's ethical obligations are governed by the Alaska Code of Judicial Conduct, but these duties are generally enforced in separate judicial disciplinary proceedings like the one that occurred in this case before the Alaska Commission on Judicial Conduct and the Alaska Supreme Court.[6]

The central question we face is whether the judge's comments were so prejudicial as to deny Wells a fair trial and entitle him to relief in this legal proceeding.

Because Wells did not object to these comments, he concedes that he must show plain error. Plain error is error that involves "such egregious conduct as to undermine the fundamental fairness of the trial and contribute to a miscarriage of justice."[7] In order to find plain error, a court must find that the error (1) was obvious; (2) was not the result of an intelligent waiver or a tactical decision not to object; (3) affected substantial rights; and (4) was prejudicial.[8]

In his opening brief, Wells's claim of prejudice is largely conclusory. He argues that the judge's "contemptuous attitude" toward the witnesses "translated into prejudice." Wells also analogizes his case to the Alaska Supreme Court's decision in *Raphael v. State*.[9] But the facts in *Raphael* are distinguishable.

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[6] *See Phillips v. State*, 271 P.3d 457, 465 (Alaska App. 2012).

[7] *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011) (internal quotations omitted).

[8] *Id.* Wells does not argue that the error in this case is structural, constituting prejudice *per se*, and we have not identified any cases labeling this type of error as structural.

[9] *Raphael v. State*, 994 P.2d 1004 (Alaska 2000).

In *Raphael*, the trial court incarcerated the complaining witness and placed her children in protective custody, after the prosecutor alleged that the witness was intoxicated and might be unable to testify.[10] The trial judge told the complaining witness that they would "revisit" her custodial status once she testified.[11] The supreme court held that the trial court's actions — taken without notice to defense counsel or an opportunity for the complaining witness to be heard — constituted a "near-total denial" of the witness's due process rights which had a coercive effect on the witness's testimony, requiring reversal of Raphael's convictions.[12]

Wells acknowledges that the judge's statements in this case did not actively coerce the witnesses' testimony, and we agree. Judge Dooley's comment regarding A.A. occurred while she was absent from the courtroom. And Judge Dooley's comment to C.A. about remaining under subpoena did not occur until *after* she finished testifying. (Even though C.A. remained subject to recall, neither party recalled her to testify.)

Wells instead argues more generally that the judge's statements created a "hostile" atmosphere akin to *Raphael*. He points to two other instances at his trial in which he alleges that Judge Dooley made sarcastic or inappropriate comments. But at least one of these comments (in which the judge told C.A. that she would need to speak into "that funny gray thing, that's a microphone") occurred outside the presence of the jury, so it could not have influenced the jury. And the meaning of the judge's second comment, apparently referencing the appearance of a police officer who was scheduled to appear and testify, is difficult to discern from the transcript alone. (The judge said that

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[10] *Id.* at 1006.

[11] *Id.* at 1006-07.

[12] *Id.* at 1008-11.

the officer's arrival would be hastened because he "doesn't have to brush his hair" — a possible reference to the fact that the officer was bald.)

These comments suggest that the judge may have been too informal and, at times, even careless and insensitive in his choice of language — resorting to sarcasm and humor instead of more decorous and respectful comments. But, on this record, it is difficult to see how these comments undermined the fairness of the jury's verdict.

Indeed, although Wells cites the plain error test, he does not explain how the plain error standard applies to the facts of this case. That is, he does not explain how the judge's inappropriate, but isolated, comments to C.A. and about A.A. impacted his own right to a fair trial, or how these comments might reasonably have affected the verdict in more than a speculative way.[13] Rather, Wells simply asserts, in a single sentence, that the judge's comments were "obviously prejudicial" and that they "affected Wells' rights to due process and a fair trial."

There is no doubt that judges who are discourteous to, or dismissive of, the people who appear before them do a disservice to those individuals, and to the judicial system as a whole. Here, the judge's comments reflected negatively on the judge, and certainly could have influenced the jurors' opinions about the judge and the judicial system.

The jury might also have viewed the judge's comments as minimizing the seriousness of the domestic violence that A.A. described. But to the extent the jury held this view, it would largely have prejudiced the State, not Wells.

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[13] *See Anderson v. State*, 337 P.3d 534, 538-40 (Alaska App. 2014), *aff'd*, 372 P.3d 263, 264-65 (Alaska 2016) (holding that the proper standard for deciding whether a constitutional error is harmless beyond a reasonable doubt is the effect-on-the-jury approach — *i.e.*, whether there is a reasonable possibility that the error affected the verdict).

We acknowledge that C.A., and to a lesser extent A.A., were not entirely favorable witnesses for the State. C.A. disclaimed any memory of the events being litigated, and A.A. recanted portions of her original statement to Officer Octuck. But even though A.A. recanted portions of her previous account (in particular, her prior assertion that Wells had struck her in the face), she was consistent in saying that Wells had struck her in the leg and arm. And both witnesses gave prior statements that were not favorable to Wells. To the extent that the jury viewed the judge's comments as reflecting his own negative view of the witnesses, it could have cut in Wells's favor.

In addition, we note that the judge's comments were not directed at Wells or at Wells's attorney, and they did not disparage Wells's defense or suggest advocacy or partiality against Wells.[14] We also note that, while the comment to C.A. was delivered in a manner that could be viewed as condescending, it was designed to explain her valid legal duty to remain available for further testimony.

It is fundamental to our system of justice that judges refrain from exhibiting any appearance of partiality. Judges "should be most cautious in front of the jury, which may be vulnerable to judges' lightest word or intimation."[15] But having independently reviewed the record, we cannot say that the judge's inappropriate comments in this case

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[14] *See United States v. Kahre*, 737 F.3d 554, 578 (9th Cir. 2013) ("We will reverse a trial court for excessive judicial intervention only in cases of actual bias . . . or if the judge's remarks and questioning of witnesses projected to the jury an appearance of advocacy or partiality, and the alleged misconduct had a prejudicial effect on the trial.") (quoting *United States v. Scott*, 642 F.3d 791, 799 (9th Cir. 2011)); *United States v. Williams*, 720 F.3d 674, 694 (8th Cir. 2013) ("[T]he balance [between a judge's comments and the overall fairness of trial] is adversely tipped against the defendant in a criminal trial where the judge's role loses its color of neutrality and tends to accentuate and emphasize the prosecution's case.") (internal quotations omitted).

[15] *United States v. Marquez-Perez*, 835 F.3d 153, 158 (1st Cir. 2016) (internal quotations omitted).

had the type of impact on the jury verdict that Wells suggests.[16] That is, based on the record before us, we cannot say that the judge's conduct was so prejudicial to Wells as to "undermine the fundamental fairness of the trial and contribute to a miscarriage of justice."[17]

Wells makes one additional argument. In his reply brief, for the first time, Wells argues that the judge's comments reflected a broader disparagement of Alaska Native women. Wells did not raise this issue in the trial court, so there has been no factual record developed in relation to this claim. And because Wells raised this issue for the first time in his reply brief, the issue is forfeited for appellate review.[18]

Based on the record currently before us, we reject Wells's claim that he is entitled to a new trial based on judicial misconduct.

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[16] *Cf. Romero v. State*, 785 P.2d 904, 906 (Alaska App. 1990) (concluding that a judge's participation in the examination of a witness necessitates a reversal of the defendant's conviction only when the judge's conduct was so prejudicial as to deny the defendant a fair trial).

[17] *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011) (internal quotations omitted); *see also United States v. Rojas*, 812 F.3d 382, 410 (5th Cir. 2016) (concluding that an appellate court's role when reviewing a claim of judicial misconduct is to determine whether the judge's behavior is so prejudicial that it denied the defendant a fair, as opposed to a perfect, trial); *State v. Johnson*, 203 So.3d 1121, 1129-30 (La. App. 2016) (noting that to constitute reversible error, the effect of improper comments by a judge must be such as to have influenced the jury and contributed to the verdict).

[18] *See Berezyuk v. State*, 282 P.3d 386, 398 (Alaska App. 2012) (noting that a claim raised for the first time in a reply brief is deemed waived or forfeited).

The State presented sufficient evidence that Wells acted recklessly with respect to the infliction of injury

To convict Wells of third-degree assault under a recidivist theory, the State alleged — and was required to prove — that Wells committed a fourth-degree (injury) assault and that, within the preceding ten years, Wells was convicted of fourth-degree (injury) assaults on two or more separate occasions.[19] The State alleged that Wells committed a fourth-degree assault under AS 11.41.230(a)(1) — that he recklessly caused physical injury to A.A. Under AS 11.81.900, "physical injury" means "physical pain or an impairment of physical condition."[20]

On appeal, Wells argues that the evidence was legally insufficient to establish that he acted recklessly with respect to the infliction of injury to A.A. He points out that A.A.'s testimony was inconsistent with her prior statements, and he argues that there was no evidence that his conduct posed an unjustifiable risk of injury to A.A.

Consistent with AS 11.81.900(a)(3), the court instructed the jury that a person acts "recklessly" with regard to a result

> when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur . . . . The risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

We agree with Wells that A.A.'s testimony at trial was inconsistent in many respects with her prior statements. But, as Wells recognizes, A.A. affirmatively testified that Wells struck her leg and arm.

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[19] AS 11.41.220(a)(5).

[20] Former AS 11.81.900(b)(47) (2013) (now renumbered as AS 11.81.900(b)(48)).

Moreover, although A.A. denied at trial that Wells struck her head, the jury could have credited her prior statements to Officer Octuck and Dr. Miller, in which she reported that Wells struck her in the head. It was up to the jury to decide which statements to believe.[21]

Finally, the jury was able to view A.A.'s injuries, which were documented in photographs taken that day by Octuck.

When a defendant challenges the sufficiency of the evidence to support a criminal conviction, an appellate court is obliged to view the evidence — and all reasonable inferences to be drawn from that evidence — in the light most favorable to upholding the jury's verdict.[22] Viewing the evidence in this light, a reasonable juror could conclude that Wells was aware of and consciously disregarded the risk that his actions would cause physical injury within the meaning of the statute.

Wells's claims regarding the intoxication of witnesses

Wells next argues that he is entitled to a judgment of acquittal because A.A. and C.A. gave testimony while they were intoxicated; Wells claims that the witnesses' intoxication compromised the integrity of the trial and amounted to a denial of due process. In particular, Wells asserts that C.A. was intoxicated during the trial and that A.A. was intoxicated when testifying before the grand jury and during her interview with Officer Octuck (pretrial statements that were admitted at Wells's trial).

But even if Wells's claim of error were meritorious, he would not be entitled to a judgment of acquittal. A judgment of acquittal is predicated on the assertion

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[21] *Daniels v. State*, 767 P.2d 1163, 1167 (Alaska App. 1989) (noting that the credibility of witnesses is exclusively a question for the jury).

[22] *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

that the State's proof is legally insufficient to establish the charged offense. In this claim of error, Wells is essentially challenging evidentiary rulings — *i.e.*, the admission of A.A.'s pretrial statements and C.A.'s competency to testify at trial. Even if we agreed with Wells as to these legal claims, he would not be entitled to an outright acquittal, but rather to a new trial.[23]

Moreover, Wells did not raise these claims in the trial court, so he must show plain error. We have reviewed the record and find no plain error.

In *Spencer v. State*, we rejected a categorical rule barring the testimony of a witness who has been drinking.[24] Rather, we held that "trial judges should handle these situations as the circumstance requires."[25] A.A.'s prior intoxication therefore did not render her pretrial statements *per se* inadmissible.

During her testimony, A.A. readily admitted that she was intoxicated during her grand jury testimony and during her interview with Officer Octuck. A.A. testified that she was currently living in an alcohol treatment facility, and Wells's attorney cross-examined her about how her alcohol addiction affected her veracity. The jury could consider A.A.'s prior intoxication when weighing the evidence and assessing her

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[23] *See Collins v. State*, 977 P.2d 741, 751-52 (Alaska App. 1999) (discussing the difference between a motion for judgment of acquittal, which requests dismissal and acquittal based on the State's failure to factually prove one or more elements of the offense, and other motions alleging a legal error, like the failure to properly instruct the jury as to an element of the offense, which would entitle the defendant to a new trial); *see also Langevin v. State*, 258 P.3d 866, 873-74 (Alaska App. 2011) (distinguishing between a motion challenging the sufficiency of the State's proof and a motion challenging the admissibility of a portion of the State's evidence).

[24] *Spencer v. State*, 164 P.3d 649, 653 (Alaska App. 2007).

[25] *Id.*

credibility, and the trial court was not required to *sua sponte* intervene to exclude her prior statements.

Likewise, the judge had no duty to unilaterally preclude C.A.'s testimony in the absence of an objection. Prior to C.A.'s testimony, the prosecutor alerted the court that C.A. had reportedly been drinking the previous night and that she still smelled of alcohol. Outside the presence of the jury, the prosecutor asked C.A. whether she was sober enough to testify, and C.A. responded that she was. Neither the judge nor defense counsel asked C.A. any follow-up questions about her drinking or her level of intoxication.

Wells's attorney apparently accepted C.A.'s answer that she was able to testify because he never objected to C.A.'s competency to do so. When the trial resumed and the prosecutor commenced his direct examination of C.A., the prosecutor immediately questioned C.A. about the fact that she had consumed a few drinks the previous night and asked her whether she was capable of testifying. Wells's attorney asked no questions of C.A. regarding her consumption of alcohol; indeed, he did not cross-examine C.A. at all.

Wells's attorney observed C.A. firsthand and apparently saw no need to object to her testimony or even question her about her drinking. Given this factual record, the trial court did not err, let alone plainly err, in permitting C.A. to testify.

The sentencing court was not clearly mistaken in evaluating the Chaney criteria

As a third felony offender, Wells faced a presumptive sentencing range of 3 to 5 years.[26] At the time he committed the offense in this case, Wells had at least

[26] Former AS 12.55.125(e)(3) (pre-July 2016 version).

twenty-five prior convictions, including seven assault convictions. Based on this criminal history, the State argued that the court should make a "worst offender" finding and sentence Wells to the 5-year maximum term.

Wells's attorney noted that Wells had completed several classes while in custody, and he argued that Wells still had rehabilitative potential.

The trial court complimented Wells on taking multiple classes while incarcerated. But based on Wells's lengthy criminal history, the court concluded that Wells had almost no chance at rehabilitation and that the most important sentencing consideration was isolation — in particular, isolating Wells to protect his family and others. The trial court found that Wells was a worst offender and imposed a sentence of 5 years to serve.

On appeal, Wells does not contest the court's worst offender finding. Rather, Wells argues that the trial court misapplied the *Chaney* criteria; in particular, Wells contends that the court erred in making isolation the primary goal and failing to give any weight to rehabilitation.[27]

Wells was thirty-five years old at the time of the events in this case, and he was on felony probation. Wells's criminal conduct began when he was a juvenile, and his criminal history includes repeated instances of assaultive behavior, including prior assaultive conduct against A.A. The author of the presentence report found that "alcohol and domestic violence have been consistent elements in [Wells's] criminal conduct" and that, "quite often when under the influence, [Wells] focuses his aggression towards his loved ones."

A sentencing judge has substantial discretion when evaluating the priority of the *Chaney* sentencing goals and assessing the weight each goal should receive based

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[27] *See State v. Chaney*, 477 P.2d 441, 444 (Alaska 1970).

on the circumstances in a particular case.[28] Based on our independent review of the record, we cannot find that the trial court's evaluation of the priority of the sentencing goals in Wells's case was clearly mistaken.[29]

Wells also challenges the judge's finding that Wells needed to be isolated from his children. In particular, Wells argues that there was no showing that he committed violence toward his children.

In support of this claim, Wells relies on case law explaining that a probation condition that restricts a defendant's contact with his own children is subject to special scrutiny.[30] This case law is inapposite. The court here did not impose a condition restricting Wells's contact with his children. Rather, the court simply referenced the danger the defendant posed to his own family in explaining the need to prioritize isolation as a sentencing criterion and to isolate Wells from society generally.

Moreover, the State did present evidence at trial that Wells posed a danger to his family. In particular, the State presented evidence that Wells's children witnessed the assault upon their mother. The State also presented evidence that Wells hit A.A. while she was lying in bed, holding one of their children. Lastly, the State presented evidence that Wells had previously assaulted A.A., and that, on the present occasion, he threatened to "slice" both C.A. and A.A. if they reported him to the police.

We conclude that the judge was not clearly mistaken in his application of the *Chaney* criteria.

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[28] *Evan v. State*, 899 P.2d 926, 931 (Alaska App. 1995) (citing *Asitonia v. State*, 508 P.2d 1023, 1026 (Alaska 1973)).

[29] *See Pickard v. State*, 965 P.2d 755, 760 (Alaska App. 1998).

[30] *See, e.g.*, *Hinson v. State*, 199 P.3d 1166, 1174 (Alaska App. 2008).

Conclusion

We AFFIRM the judgment of the superior court.