IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GAVIN AUGUSTUS CARLSON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13224 Trial Court No. 3AN-17-02020 CR MEMORANDUM OPINION No. 6938 — April 21, 2021

Appeal from the Superior Court, Third Judicial District, Anchorage, Kevin M. Saxby, Judge.

Appearances: Marilyn J. Kamm and Margot O. Knuth, Attorneys at Law, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Mackenzie C. Olson, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

Gavin Augustus Carlson and his co-defendant, Keith Wilson, were both convicted, following a jury trial, of attempted first-degree burglary, second-degree

burglary, third-degree criminal mischief, and third-degree theft.[1] Wilson was also convicted of providing false information to a police officer.[2]

Carlson raises two related claims on appeal. First, he argues that Wilson's false information charge was improperly joined with the other charges. Second, he argues that the trial court abused its discretion when it denied his mid-trial motion to sever the false information charge after Wilson's attorney sought to admit evidence related to the false information charge that Carlson claimed was unfairly prejudicial to him. For the reasons explained here, we reject these claims and affirm Carlson's convictions.

Background facts

This case arose after Carlson and Wilson were stopped by police on suspicion that they had just burglarized a nearby residence. Police discovered stolen items in their car, and later discovered that Carlson's and Wilson's shoes matched the shoe prints discovered at the scene of the burglary. When asked for his identity, Wilson gave the police the name and information of his brother, and his true identity was not discovered until he was fingerprinted.

Neither Carlson nor Wilson objected to being tried together prior to trial. In the middle of trial, Wilson's defense attorney sought to admit evidence of a federal arrest warrant showing that Wilson was a fugitive at the time police asked for his name and identification. Wilson's attorney explained that the warrant was relevant because it provided an alternative explanation for why Wilson gave false information to police —

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[1] AS 11.46.300(a)(1) & AS 11.31.100; AS 11.46.310; AS 11.46.482(a)(1); and AS 11.46.140(a)(1), respectively.

[2] AS 11.56.800(a)(1)(A).

namely that he was not lying about his involvement in the burglary (which would demonstrate consciousness of guilt), but was instead trying to avoid apprehension on the unrelated federal charges.

Carlson's attorney objected to admission of this evidence on the grounds that it was highly prejudicial to Carlson because it demonstrated that he was associating with a federal fugitive. Carlson's attorney stated that he would move for severance and a mistrial if the court admitted the evidence.

The trial court admitted the evidence, ruling that it was more probative than prejudicial, and that the prejudice to Carlson could be remedied by a limiting instruction. Carlson then moved for severance and a mistrial, which the court denied.

After the federal arrest warrant was admitted into evidence, the trial court instructed the jury that "the evidence I've just admitted is evidence only as to Mr. Wilson's state of mind. Do not draw any inferences about Mr. Carlson's state of mind or knowledge from the evidence." The court also issued a similar instruction to the jury just before deliberations. And, during closing arguments, the prosecutor explained to the jury that the false information charge was only against Wilson and should in no way be used to impute guilt to Carlson.

The jury found both defendants guilty of all charges. Carlson then filed this appeal.

Why we reject Carlson's arguments on appeal

Carlson first argues that the false information charge was improperly joined with the remaining charges under Alaska Criminal Rule 8(b), and he asserts that the trial court should have *sua sponte* severed the false information charge prior to trial. The State points out that Carlson did not raise this issue in the trial court, and the State asserts that this Court should therefore review his claim for plain error. While we agree that

plain error review applies, we also conclude that Carlson has failed to demonstrate any error.

Under Criminal Rule 8(b), two or more defendants may be charged together "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses, or if the defendants are parties to an express or tacit agreement to aid each other to commit an act or transaction constituting a criminal offense or offenses." As this Court has previously explained, "it is not necessary that each defendant participate in each act."[3] However, "the defendants' offenses will only constitute a series of acts or transactions under Rule 8(b) if there is 'a significant connection between the different acts charged.'"[4]

Here, the State alleged that Wilson provided false information to police just after he and Carlson committed a burglary while they were both still in the vehicle transporting the stolen items. Given these allegations, there was a "significant connection" between the burglary and Wilson's act of providing false information, and the charges were therefore properly joined under Criminal Rule 8(b).

Carlson's second argument is that the trial court erred in denying his mid-trial motion to either sever the false information charge or grant a mistrial. Carlson acknowledges that the trial court gave limiting instructions with regard to the evidence that Carlson considered prejudicial, but Carlson argues that the limiting instructions were insufficient to cure the prejudice created by the federal arrest warrant evidence.

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[3] *Erickson v. State*, 824 P.2d 725, 732 (Alaska App. 1991).

[4] *Id.* (quoting *Greiner v. State*, 741 P.2d 662, 664 (Alaska App. 1987)).

Having reviewed the trial record and the limiting instructions, we conclude that the limiting instructions sufficiently cured any prejudice.[5] Accordingly, the trial court did not abuse its discretion when it decided to issue a limiting instruction rather than grant severance or a mistrial.[6]

Conclusion

The judgment of the superior court is AFFIRMED.

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[5] *Cf. Anderson v. State*, 438 P.2d 228, 233 n.15 (Alaska 1968) ("[W]here the trial judge withdraws improper testimony from the jury's consideration, such an instruction is presumed to cure any error which may have been committed by its introduction.").

[6] *See Pease v. State*, 54 P.3d 316, 322 (Alaska App. 2002) ("This court will only overturn a trial court's denial of a motion to sever if the defendant can show both an abuse of discretion and actual prejudice.").