In the Supreme Court of the State of Alaska

Ivan Bolden,	)	
	)	Supreme Court No. **S-17471**
Petitioner,	)	
v.	)	**Corrected Order**
	)	Transfer to Court of Appeals
State of Alaska,	)	Appellate Rule 408
	)	
Respondent.	)	Date of Order: **August 2, 2019**
	)	

Court of Appeals No. **A-12341**
Trial Court Case No. **4FA-14-02281CR**

Before: Bolger, Chief Justice, Winfree, Stowers, and Maassen, Justices. [Carney, Justice, not participating.]

Ivan Bolden petitions for hearing from a court of appeals memorandum decision affirming his conviction of third-degree assault for biting Rosie Brower in the face.

On appeal, Bolden argued that his conviction should be reversed for three errors. At the end of the prosecutor's closing argument he argued that a guilty verdict "is mandated by the evidence in this case, and it's the mechanism for keeping victims like Ms. Brower safe from abusers like him." The prosecutor also argued that "You can be strangled to death, ladies and gentlemen, with no redness to your neck whatsoever." And during the prosecutor's examination of the arresting officer, he asked, "Based on this, in your experience, do suspects that you interview always tell you the truth, the whole truth, and nothing but the truth?" The officer answered, "No, not always."

Bolden did not object to any of these statements. But on appeal, he argued that the trial judge's failure to strike or exclude these statements constituted plain error.

The court of appeals examined each statement individually and concluded that none of them were sufficiently prejudicial to be regarded as plain error.

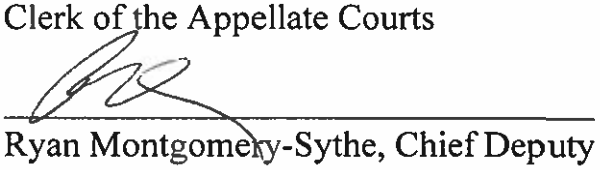
Bolden's petition does not argue that any of these individual decisions were incorrect. He argues that the court of appeals failed to address his argument that the cumulative impact of these statements affected the result of his trial: "Considering these improprieties only as individually harmless overlooks the cumulative effect these errors had in a trial that was closely decided and resulted in a mistrial on one count, and that involved at least one juror who was vocally preoccupied with consideration of punishment rather than trial evidence." This is the way that Bolden had argued the prejudice issue in the opening brief to the court of appeals.

In response, the State points out that the failure to address a briefed issue is not one of the listed grounds for granting a petition for hearing under Appellate Rule 304. If an appellate court overlooks a briefed issue, the proper remedy is a petition for rehearing under Appellate Rule 506(a)(3). We agree with the State's argument that the issue Bolden identifies is more appropriate for a petition for rehearing. We also note that under AS 22.05.015(a), we may transfer a case to the court of appeals if the case is within the jurisdiction of that court.

We therefore TRANSFER this petition to the court of appeals for consideration as a petition for rehearing.

Entered by the direction of the court.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe, Chief Deputy Clerk

cc: Supreme Court Justices
Court of Appeals Judges
Judge McConahy
Fairbanks Trial Court Clerk

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