

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOHNNY B. JOHNSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13058
Trial Court No. 3KN-11-01432 CR

SUMMARY DISPOSITION

No. 0178 — November 25, 2020

Appeal from the District Court, Third Judicial District, Kenai,
Sharon A. S. Illsley, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. Samuel D. Scott, Assistant District Attorney, Kenai, and Kevin G. Clarkson, Attorney General, Juneau, for the Appellee.

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

Johnny B. Johnson was charged with fourth-degree assault after he escaped from a restraint chair and struck a correctional officer.¹ At trial, Johnson argued that the manner in which the restraint chair was used was unlawful, and that he was therefore acting in self-defense. The jury rejected this defense and convicted Johnson of fourth-degree assault. Johnson now raises two issues on appeal.

¹ AS 11.41.230(a)(1).

First, Johnson argues that the jury instructions on the use of self-defense were provided in the wrong order. He asserts that the jury should have been instructed on when a correctional officer is authorized to use force *before* being instructed on the basic law of self-defense, and that the failure to do so created a risk that the jury would reject Johnson’s claim of self-defense without first deciding whether the correctional officers had used unlawful force when they restrained Johnson. But Johnson never objected to the *order* of the instructions, and the trial judge read the instructions to the jury in full before the jury retired for deliberations. Under these circumstances, we find no merit to Johnson’s contention that the order of the instructions prejudiced him.

Second, Johnson argues that the trial court abused its discretion when it admitted evidence of his prior attack on a correctional officer — the attack that resulted in officers putting Johnson in the restraint chair. According to Johnson, this evidence was inadmissible propensity evidence under Alaska Evidence Rule 404(b)(1) and more prejudicial than probative under Evidence Rule 403. We disagree.

Johnson’s defense was that he was responding to an unlawful use of force by the correctional officers. The jury was instructed that the use of force by a correctional officer is only lawful if it is “limited to the extent reasonably necessary to accomplish its purpose.” Thus, to rebut Johnson’s claim of self-defense, the State was permitted to argue that the manner in which the restraint chair was used was “reasonably necessary” under the circumstances, and that the use of force was therefore lawful. Evidence of the incident that precipitated use of the restraint chair was relevant and admissible for this non-propensity purpose as authorized under Evidence Rule 404(b)(1). And, having reviewed the record, we further conclude that the trial court did not abuse its discretion in concluding that the probative value of this evidence was not outweighed by the danger of unfair prejudice.

The judgment of the district court is **AFFIRMED**.