

NOTICE

Memorandum decisions of this court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

SARAH MARY ELIZABETH MAUPIN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11224
Trial Court No. 3AN-11-11406 CR

MEMORANDUM OPINION

No. 6119 — November 26, 2014

Appeal from the District Court, Third Judicial District,
Anchorage, J. Patrick Hanley, Judge.

Appearances: Catherine Boruff, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Matthew J. Prieksat, Assistant District Attorney, Anchorage, and
Michael C. Geraghty, Attorney General, Juneau, for the Appel-
lee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Coats,
Senior Judge.*

Judge ALLARD.

Sarah Mary Elizabeth Maupin was convicted of repeat minor consuming
alcohol under AS 04.16.050(c). On appeal, Maupin argues that her conviction must be

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

reversed because she did not personally waive her right to a jury trial on the prior conviction element of the offense. We agree and remand the case for a new trial on that element.

Maupin's second claim is that the district court abused its discretion when it precluded her from introducing evidence of her boyfriend's domestic violence — evidence she sought to introduce to support her defense that she falsely confessed to consuming alcohol so the police would take her into protective custody. For the reasons explained here, we conclude that any error in limiting this evidence was harmless.

Underlying facts and procedural background

On October 1, 2011, Anchorage Police Officer Luke Bowe and another officer responded to a disturbance at an apartment at 8000 Greenwood Street. After being greeted at the door by an intoxicated man (later identified as Maupin's boyfriend) Bowe entered the apartment and saw Maupin, who was under 21 years old at the time. Maupin smelled of alcohol, could not remember her social security number, and performed poorly on a variety of sobriety tests. Maupin told Officer Bowe that she had been drinking and that he should arrest her for minor consuming. She then informed Bowe that she was going to drink alcohol in his presence, whereupon she picked up a bottle of beer and began to drink it. Bowe placed her under arrest.

Because Maupin had a prior conviction for minor consuming, she was charged with repeat minor consuming and/or in possession of alcohol under AS 04.16.050(c). Her trial was bifurcated so the jury would not hear any evidence of her prior conviction until after it had reached a decision on her October 2011 conduct.

At trial, Maupin's defense was that she told the police she had been drinking so they would take her into protective custody and get her away from her abusive boyfriend. Maupin expressly declined to raise the defense of necessity; that is,

she did not argue that she was justified in possessing or consuming alcohol to get the police to take her into protective custody. Rather, she argued that she never actually consumed or possessed the alcohol — she only pretended to do so to get herself arrested.

In support of this defense, Maupin sought to introduce evidence of her boyfriend’s previous domestic violence. District Court Judge J. Patrick Hanley excluded this evidence as unduly prejudicial under Evidence Rule 403, ruling that Maupin could only testify about her boyfriend’s conduct on the night in question.

Maupin testified that she had not been drinking the day Bowe arrested her but that she told the police she had been drinking — and pretended to drink a bottle of beer in front of them — because she was scared of her boyfriend, who had been drinking and who had become progressively more angry and drunk as the night wore on.

The jury found Maupin guilty of minor consuming and/or in possession. Maupin’s attorney then stipulated that Maupin had previously been convicted of minor consuming. Based on that stipulation, Judge Hanley released the jury (even though he had originally intended to hold the jury so it could determine whether Maupin had a prior conviction). Judge Hanley did not directly ask Maupin whether she agreed to her counsel’s stipulation or whether she waived her right to a jury trial on that element.

This appeal followed.

Because the district court failed to obtain a personal waiver of Maupin’s right to a jury trial on Maupin’s prior conviction, Maupin is entitled to a new trial on that element of repeat minor consuming

To be found guilty of repeat minor consuming, a defendant must (1) have “knowingly consume[d], possess[ed], or control[led] alcoholic beverages” while under the age of 21,¹ and (2) have been previously convicted either of minor consuming or a

¹ AS 04.16.050(c); AS 04.16.050(a).

set of offenses specified in AS 04.16.050(l)(2).² A defendant may waive the right to a jury trial on the prior conviction element of repeat minor consuming, but that waiver must be “personal, knowing, and voluntary” and “the record must explicitly demonstrate that the defendant understood and personally relinquished the right to trial by jury.”³ If the court fails to obtain a personal waiver from the defendant, that failure automatically requires reversal.⁴

Here, Maupin did not personally waive her right to a jury trial on the prior conviction element of repeat minor consuming; instead, the district court found Maupin guilty of repeat minor consuming based on her counsel’s stipulation to that element. As the State concedes, this was reversible error.

But, contrary to Maupin’s argument on appeal, this error only entitles Maupin to a new trial on the prior conviction element. As the State points out, Maupin’s counsel implicitly agreed to the bifurcated proceeding — that is, Maupin’s attorney agreed to an initial phase of trial to litigate the minor consuming element and a second phase to litigate the prior conviction element. Maupin’s rights will therefore not be violated if the district court “conven[es] a second jury [solely] to determine the issue of [her] prior conviction[.]”⁵ Accordingly, we reverse Maupin’s conviction of repeat minor consuming and remand the case for a retrial on the prior conviction element of the offense.

² See AS 04.16.050(c); AS 04.16.050(l)(2).

³ See *McGlaufflin v. State*, 857 P.2d 366, 368-69 (Alaska App. 1993), *abrogated on other grounds by State v. Coon*, 974 P.2d 386 (Alaska 1999).

⁴ See *Walker v. State*, 578 P.2d 1388, 1389 (Alaska 1978) (failure to obtain a personal waiver is error per se).

⁵ *Beattie v. State*, 258 P.3d 888, 892 (Alaska App. 2011).

Any error in limiting Maupin's testimony about her exposure to domestic violence and her boyfriend's violent tendencies was harmless

Maupin argues that the district court erred by precluding her from introducing evidence that her boyfriend became violent and abusive when he consumed alcohol. She argues that this evidence was necessary to establish why she was so afraid of her boyfriend that she falsely confessed to a crime to get away from him.

We do not reach the question of whether the district court erred in excluding this evidence because the error, if any, was harmless. To prove that Maupin was guilty of minor consuming, the State did not have to prove that she actually consumed alcohol, only that she “knowingly possess[ed], or control[led] alcoholic beverages.” Maupin never disputed that she picked up a bottle of beer and brought it to her lips in front of a police officer; she only disputed that she consumed the beer. This undisputed evidence established that Maupin was in possession and control of an alcoholic beverage. Therefore, any error in the court's limitations on Maupin's defense did not affect the jury's verdict.

Conclusion

The district court's judgment is REVERSED in PART and Maupin's case is remanded to the district court. Unless Maupin personally waives her right to a jury trial, the court shall convene a jury to decide the prior conviction element of the offense. We do not retain jurisdiction.