

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

DAVID LYNN HIPPENHAMMER,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11761
Trial Court No. 3DI-13-322 CR

MEMORANDUM OPINION

No. 6297 — March 2, 2016

Appeal from the Superior Court, Third Judicial District,
Dillingham, Patricia Douglass, Judge.

Appearances: Catherine Boruff, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Donald Soderstrom, Assistant Attorney General, Office of
Criminal Appeals, Anchorage, and Craig W. Richards, Attorney
General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge ALLARD.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

David Lynn Hippenhammer was convicted of fourth-degree assault¹ after he punched his girlfriend, Mary Cossette, during an argument. During a recess at Hippenhammer's trial — and after Cossette had testified — the trial court judge, Superior Court Judge Patricia Douglass, observed Cossette in the jury room talking on her cell phone while three jurors were present. The judge escorted Cossette out of the jury room and then conferred with the parties about what she had seen.

Cossette was questioned about the incident. Cossette testified that she was in the courthouse lobby and asked two of the women jurors about getting hot water to make a cup of tea. A courthouse staff member approached the three women and, mistaking Cossette for a juror, directed them into the jury room. Cossette testified that she remained in the jury room for approximately fifteen minutes, speaking to family members on her cell phone, before she was eventually removed by the judge.

The three jurors who were in the jury room with Cossette were also questioned about the incident. The first juror testified that she and Cossette had tea and talked about berry picking. The second juror testified that she was trying to rest but could overhear Cossette and the other juror talking about berry picking and “family stuff.” The third juror testified that Cossette was talking on the telephone when he entered the jury room.

After hearing the testimony from Cossette and the three jurors who were present in the jury room during the incident, Hippenhammer moved for a mistrial. The judge denied the motion, concluding that two of the jurors could still remain impartial and decide the case, despite having this contact with the victim. The juror who had spoken with Cossette about berry picking and “family stuff” was dismissed as an alternate.

¹ AS 11.41.230(a)(1).

On appeal, Hippenhammer argues that the trial court abused its discretion in denying his motion for a mistrial. The State concedes error, and agrees that Hippenhammer is entitled to a new trial. We find this concession well-taken given what occurred here.² We accordingly REVERSE Hippenhammer's conviction and REMAND the case for a new trial.

² See *Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972).