

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

CHARLES NEEDHAM,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12465  
Trial Court No. 1JU-14-756 CR

MEMORANDUM OPINION

No. 6775 — February 27, 2019

Appeal from the Superior Court, First Judicial District, Juneau,  
Louis James Menendez, Judge.

Appearances: Nicholas A. Polasky, Attorney at Law, Juneau,  
for the Appellant. Lisa C. Kelley, Assistant Attorney General,  
Office of Special Prosecution, Anchorage, and Jahna  
Lindemuth, Attorney General, Juneau, for the Appellee.

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

Judge WOLLENBERG.

Following a jury trial, Charles Needham was convicted of four counts of  
first-degree unsworn falsification in connection with statements he made when applying

for a Permanent Fund Dividend (PFD) and, later, when appealing the denial of his dividend application.<sup>1</sup>

Needham now appeals three of his four convictions. Needham argues that the State presented insufficient evidence to support these convictions. Additionally, Needham argues that the prosecutor's questions to the PFD Division investigator at trial improperly shifted the burden of proof. Needham argues that this questioning constitutes plain error that independently necessitates reversal of Count III.

For the reasons explained in this opinion, we reject Needham's claims and affirm his convictions.

*Underlying facts and proceedings*

In 2012, Needham applied for a Permanent Fund Dividend (for the 2011 calendar year). In his application, Needham claimed that his Alaska residency began on April 10, 2011. Because eligibility for a dividend for any given year requires the applicant to have been an Alaska resident for the full calendar year, Needham's application was denied.<sup>2</sup>

In 2013, Needham again applied for a dividend (for the 2012 calendar year). In his application, Needham stated that his most recent Alaska residency began on April 24, 2012. Because Needham claimed that his residency began after the start of the 2012 calendar year, Needham's application was again denied. The PFD Division sent Needham a letter informing him that his application had been denied and that he had the right to appeal the denial.

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<sup>1</sup> AS 11.56.205.

<sup>2</sup> See AS 43.23.005(a)(3).

Needham subsequently filed a request for an informal appeal. In that request, Needham stated that he left Alaska in 2009 due to his wife's death, but that he returned in March 2010 and had been an Alaska resident since then.

An appeals specialist with the PFD Division reviewed Needham's appeal and sent Needham a letter asking for further information regarding his arrivals and departures, and requesting that Needham complete a new 2013 Adult Supplemental Schedule. The letter noted that certain statements Needham made in his appeal contradicted information he had previously provided in his application.

In response, Needham filed a 2013 Adult Supplemental Schedule. Needham also filed a copy of his previously submitted 2012 dividend application (for the 2011 calendar year) and an edited 2012 Adult Supplemental Schedule, in which he again amended the start date of his Alaska residency.

The Division denied Needham's informal appeal, ruling that he had not established that he was a "state resident" for purposes of the dividend application, or that his most recent Alaska residency began prior to January 1, 2012. Among other things, the denial letter noted that Needham had failed to disclose that he held a Washington State driver's license during part of 2012.

Needham then filed a request for a formal hearing. At his hearing before an administrative law judge, Needham stated that he had been present in Alaska for the entire 2012 calendar year. The judge gave Needham additional time to collect documentation to support his assertion. Needham subsequently submitted electric and utility bills from Alaska, as well as bank records.

Following this formal hearing, the PFD Division forwarded Needham's case to the Criminal Investigations Unit of the Alaska Department of Revenue. Based on the inconsistent dates Needham had provided regarding his presence in and absences

from Alaska, Investigator Michael Partlow contacted the Department of Homeland Security to get information regarding Needham's international travels.

The information from Homeland Security showed that Needham was outside of Alaska on dates that he previously said he was present. Investigator Partlow also obtained documentation showing that Needham had obtained a Washington State driver's license (and registered to vote in Washington) on October 27, 2011. Needham surrendered this license to the State of Alaska in July 2012, when he was issued an Alaska driver's license.

Based on this investigation, the State charged Needham with four counts of first-degree unsworn falsification for: (1) falsely stating on his 2013 dividend application that he did not maintain a driver's license in any other state during the 2012 calendar year; (2) falsely stating on his revised 2013 supplemental schedule that he did not maintain a driver's license in any other state during the 2012 calendar year; (3) falsely reporting, on his 2012 dividend application, the dates he was absent from Alaska; and (4) falsely reporting, on another form connected with his 2012 dividend application, the dates he was absent from Alaska.<sup>3</sup> (Needham does not appeal his conviction on this last count.)

At Needham's criminal trial, both Partlow and a second investigator, Shawn Stendevad, testified for the State. Based on a review of all the documentation, Stendevad concluded that the start of Needham's most recent Alaska residency was likely April 24, 2012, the date Needham originally provided in his 2013 application. Stendevad stated that this date tracked closely the date on which Needham activated the utilities on his Alaska property and the dates of Needham's bank transactions in Alaska.

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<sup>3</sup> AS 11.56.205. Needham was also charged with two counts of perjury (for making false statements under oath during the administrative hearing), but he was acquitted of this conduct.

The jury found Needham guilty of all four counts of unsworn falsification.

*Needham's argument that the State presented insufficient evidence to establish that he "maintained" a driver's license in another state for purposes of his convictions on Counts I and II*

The State alleged that Needham intended to mislead a public servant in the performance of a duty by falsely stating — both on his 2013 dividend application (Count I) and on the 2013 supplemental schedule that he filed as part of his informal appeal (Count II) — that he did not maintain a driver's license in any other state during the 2012 calendar year.<sup>4</sup> At trial, Needham's attorney argued that Needham was confused about his own license history and that he may have forgotten that he had a Washington State driver's license for half of 2012, but that he did not intend to mislead the PFD Division when he answered "No" to the out-of-state license question.

On appeal, Needham argues for the first time that "maintaining" a driver's license requires more than passive possession of a license. He contends that, because the State presented no evidence that Needham actively used his Washington license for any particular purpose (such as driving, identification, or flying on a commercial airplane), there is insufficient evidence to support his convictions on Counts I and II.

Although Needham frames his argument as a sufficiency-of-the-evidence question, he does not tether his argument to any particular element of unsworn falsification. It is therefore unclear which element of the offense he claims the State failed to prove. (We note that the question regarding Needham's maintenance of an out-of-state driver's license is not an element of the unsworn falsification statute; rather, it is part of a number of questions on the dividend application designed to determine a

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<sup>4</sup> AS 11.56.205; AS 11.56.210(a)(1).

person’s Alaska residency — *i.e.*, designed to evaluate the ties the person has to this state or another state.<sup>5</sup>)

To the extent Needham is arguing that there was insufficient evidence, as a matter of law, to establish that his answer was false, he must show that the PFD Division could not reasonably have intended the word “maintain” to mean simple possession of a license. But the word “maintain” has multiple meanings, and one obvious meaning is “to keep” or “to continue in or with,” as in “I maintain a membership in the gym, even though I never go.”<sup>6</sup> Under this meaning, continuing possession is sufficient.<sup>7</sup>

This definition is consistent with the phrasing of the question on the dividend application itself. The question asks whether the applicant has “[m]aintained a driver’s license in another state or country or obtained or renewed another state’s or country’s driver’s license.” The fact that the question distinguishes “maintenance” of a driver’s license from the acts of “obtaining” or “renewing” a driver’s license signals that the word “maintain” is meant to represent something other than an affirmative act taken at a motor vehicles department.

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<sup>5</sup> See AS 43.23.008(e)(4) (in determining whether an individual intends to return and remain in the state indefinitely, for purposes of establishing residency, the Department of Revenue may consider the ties the individual has established in the state or another jurisdiction, including “acquisition of a driver’s license”); 15 Alaska Administrative Code 23.143(a)(2) (in determining whether an individual claiming Alaska residency has demonstrated an intent to remain indefinitely in Alaska, the Department will consider whether the individual has “ties to another state or country that indicate continued residency in the other state or country”).

<sup>6</sup> See *Maintain*, Webster’s New World College Dictionary 866 (4th ed. 2007).

<sup>7</sup> See *Dawson v. State*, 894 P.2d 672, 676 (Alaska App. 1995) (noting that the word “maintain,” in its ordinary meaning, “strongly impl[ies] an element of continuity or duration”).

We conclude that the PFD Division could reasonably have intended the word “maintain” to mean simple possession — a meaning consistent with the definition that both the prosecutor and Needham’s attorney adopted at trial.

We acknowledge that the word “maintain” can also mean “to keep in a certain condition” as in, “The Department of Transportation maintains the roads.”<sup>8</sup> This implies some affirmative conduct. To the extent Needham is arguing that *he* understood the question to be asking whether he engaged in any affirmative conduct with his Washington license in 2012 — and that, given his idiosyncratic understanding of the question, he did not believe his answer to be false, nor did he intend to mislead the PFD Division — he is raising this question for the first time on appeal. He did not argue this to the jury.

Rather, Needham is essentially asking us to make findings of fact about his subjective mental state. But as an appellate court, we cannot make findings of fact.

For these reasons, we reject Needham’s claim that the evidence was insufficient to establish that he “maintained” an out-of-state driver’s license.

*Needham’s other insufficiency arguments*

As explained in the previous section, in Count I, the State alleged that Needham intended to mislead a public servant in the performance of a duty by falsely stating, on his 2013 dividend application, that he did not maintain a driver’s license in any other state during the 2012 calendar year.<sup>9</sup> In Count III, the State alleged that

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<sup>8</sup> See *Maintain*, Webster’s New World College Dictionary 866 (4th ed. 2007).

<sup>9</sup> See AS 11.56.205; AS 11.56.210(a)(1).

Needham intended to mislead a public servant in the performance of a duty by falsely reporting, on his 2012 dividend application, the dates he was absent from Alaska.<sup>10</sup>

To support these charges, the prosecutor introduced “data extracts” of the information that Needham entered into the PFD Division database when he submitted his 2012 and 2013 applications online. These data extracts identified Needham’s answers to the questions on the applications along with question codes, but did not repeat the wording of the questions themselves.

Needham argues that, because the State did not introduce the actual questions that he was accused of falsely answering on his dividend applications, the evidence was insufficient to establish that his responses were false statements. We disagree.

As to Count I — the count relating to Needham’s statement on his 2013 dividend application about his driver’s license — Stendevad explained that the codes on the data extract corresponded to the questions asked on the dividend application — questions that Stendevad and other PFD Division employees had “pretty well memorized.” Stendevad also testified that the codes “correlate[d] exactly” with the actual questions shown in another exhibit, Needham’s 2013 revised supplemental schedule. Stendevad testified (and the jurors could observe) that Question 7-S on the 2013 supplemental schedule asked about Needham’s maintenance of an out-of-state driver’s license in 2012 and included a space for an applicant to list a license number. Similarly, the data extract for Needham’s 2013 dividend application had a question coded 7-S that had a space where the applicant could list a license number.

As to Count III — the count relating to Needham’s statements on his 2012 dividend application about the dates he was absent from Alaska — the data extract

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<sup>10</sup> See AS 11.56.205; AS 11.56.210(a)(1).



specifically listed and described the dates that Needham provided. The extract reflected that in the space marked “Absence Begin Date,” Needham wrote, “February 10, 2011,” and in the space marked “Absence End Date,” he wrote “October 10, 2011.” The “Absence Code” that Needham selected was “Medical Treatment,” and in the space for the “Absence Explanation,” Needham filled in, “Examination for Hip Replacement.”

When we review the sufficiency of the evidence to support a conviction, we view the evidence, and any reasonable inferences from the evidence, in the light most favorable to upholding the jury’s verdict.<sup>11</sup> Viewing the evidence in this light, we conclude that a reasonable juror could find that, as to Count I, the question Needham was accused of falsely answering on his 2013 dividend application related to his maintenance of an out-of-state driver’s license after December 31, 2011. And as to Count III, a reasonable juror could find that Needham was asked to provide the dates that he was absent from Alaska during 2011. We therefore reject Needham’s argument that this evidence was insufficient.

Needham makes one other sufficiency argument related to Count III — that there was insufficient evidence to prove that his statement that he was absent from Alaska for an examination for a hip replacement was false.

But this count, as described in the jury instruction and by the prosecutor during closing argument, related to Needham’s alleged misrepresentation of the *dates* of his absence in 2011 — not the reason for his absence. The prosecutor relied on Needham’s failure to present any medical documentation in his administrative appeal only as circumstantial evidence that the dates he reportedly left the state for that purpose were false.

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<sup>11</sup> *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

Stendevad testified that the dates Needham claimed to have left the state for medical treatment (February 10, 2011 to October 10, 2011) were inconsistent with information from the Department of Homeland Security. The prosecutor introduced a report from Homeland Security showing that Needham entered Japan in January 2011 and returned from Japan to the United States in July 2011. The prosecutor argued that Needham could not have left Alaska on February 10, 2011, as he reported, since he was already out of the country at that time.

Viewing this evidence — and the reasonable inferences to be drawn from this evidence — in the light most favorable to the jury’s verdict, a reasonable juror could conclude that Needham falsely reported the dates of his absence from Alaska in 2011.

*The court did not plainly err in failing to intervene to halt the prosecutor’s questioning with respect to Count III*

During the prosecutor’s direct examination, Stendevad noted that, on Needham’s 2012 dividend application, he had reported being absent from Alaska between February 10, 2011 and October 10, 2011 to be examined for a hip replacement. Stendevad explained that medical treatment could be an allowable absence:

*Stendevad:* In order to claim the allowable absence for medical treatment, you have to first disclose the absence. Then the PFD [Division] will send a letter to you saying you — you need to provide this document from your doctor to confirm that this was a bona fide medical absence, that you were absent for — for a medical reason, and that was the primary reason for your absence.

*Prosecutor:* Okay. Did you ever find that documentation?

*Stendevad:* That was never — no, it was never provided.

On appeal, Needham argues that the prosecutor improperly shifted the burden of proof with regard to Count III and improperly commented on Needham's right to remain silent by pointing out Needham's failure to submit medical treatment documentation during the administrative appeal process. Specifically, Needham argues that the prosecutor's question "was on the border of shifting the burden to Mr. Needham to prove . . . his statement that he had been gone for a hip replacement was not false," and that Stendevad's answer then "crossed the line."

Needham did not object to this testimony in the trial court. He must therefore establish that the court committed plain error by failing to intervene.

Needham has not established that this questioning was so obviously improper as to require the trial judge to take action. When Needham voluntarily appealed the denial of his 2013 dividend application, Needham bore the burden of demonstrating that he was in fact eligible for a dividend, and that his application had been erroneously denied. The entire criminal case was predicated on what Needham did, or did not, disclose during the dividend application process.

Here, both the prosecutor's question and Stendevad's comment — about whether Needham provided medical documentation — were related to the requirement that, in his appeal, Needham submit documentation to demonstrate that his absence was allowed, and that he was therefore eligible for a dividend. Stendevad was not commenting on Needham's failure to present evidence in the criminal case.

Moreover, both parties relied to some extent on Needham's actions in the appeal process as reflective of his culpability or lack thereof. During his cross-examination of Stendevad, Needham's attorney emphasized the number of documents that Needham *had* provided during the appeal process. And in closing argument, defense counsel pointed to Needham's participation in the appeal process to rebut the notion that he was actively seeking to mislead the PFD Division regarding his eligibility.

Even if the exchange between the prosecutor and Stendevad was improper, we conclude that any error was cured by the prosecutor's closing argument, during which the prosecutor explained the State's burden of proof. Specifically, the prosecutor stated:

[I]n this courtroom, at this time, it's my job to prove this to you beyond a reasonable doubt. When PFD is asking someone for information, it's their job. Okay? I don't want you to think [Needham] has to prove anything in this courtroom. But then [for his dividend application] he did. He had the opportunity to provide the information to PFD to support his claim, and he didn't.

Similarly, in her closing argument, Needham's attorney reiterated the proper burden of proof:

As was stated by [the prosecutor], during the PFD hearing, you . . . have to prove, "Yeah, I was a resident." But the burden switches when you're in a criminal trial, and it always stays with the State. It never switches from the government to the defendant.

The court also instructed the jury on the proper burden of proof.

Based on the totality of the closing arguments and instructions, the jury would have understood that the State had the burden of proving that Needham made false statements on his dividend paperwork and that Needham's failure to submit documentation in the administrative appeal was only relevant to explain why his application and appeals were denied, and as circumstantial evidence that the dates he was reportedly absent in 2011 were false. We therefore do not find plain error.

### *Conclusion*

The judgment of the superior court is AFFIRMED.