

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, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JEREMY L. LARSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12782  
Trial Court No. 3AN-12-05585 CR

MEMORANDUM OPINION

No. 6927 — March 10, 2021

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Michael L. Wolverton, Judge.

Appearances: Ember S. Tilton, Tilton Law Office, Anchorage,  
for the Appellant. Donald Soderstrom, Assistant Attorney  
General, Office of Criminal Appeals, Anchorage, and Kevin G.  
Clarkson, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

Jeremy L. Larson was convicted of first-degree sexual assault and fourth-degree assault based on allegations that he forced a woman, G.A., to perform oral sex on him in his hotel room.<sup>1</sup>

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<sup>1</sup> AS 11.41.410(a)(1) and AS 11.41.230(a)(1), respectively.

Larson raises three issues on appeal. First, he argues that he is entitled to a new trial because, according to him, a juror researched him on CourtView and discovered information about his criminal history during the trial. Second, he argues that the superior court erred when it admitted the victim's out-of-court photo identification of him. Third, he argues that he did not voluntarily consent to the warrantless police entry of his hotel room and that the superior court should have suppressed the fruits of this illegal entry.

For the reasons explained in this opinion, we reject these claims of error and affirm Larson's convictions.

### *Underlying facts*

At trial, G.A. testified that in June 2012, she accompanied her daughter's boyfriend, Brandon Nanok, to a hotel room where she drank with Nanok and Nanok's friend (Larson). G.A. had not previously met Larson. G.A. fell asleep in the hotel room. At some point after she fell asleep, Nanok left the room.

G.A. woke up early the next morning to find Larson attempting to remove her shoes, socks, and pants. G.A. testified that Larson, who was naked, yanked her to her knees, grabbed her hair, forced her to perform oral sex on him, and slapped her in the face. At some point during the assault, Larson walked away from G.A., and G.A. fled the hotel room, screaming for help and leaving her pants and glasses in the hotel room.

A hotel clerk heard the screaming and found G.A. naked from the waist down outside room 105 (Larson's hotel room). Someone gave G.A. a blanket to cover herself (and later, a pair of pants), and a hotel guest called the police.

As the bystanders sought to help G.A., she pointed in the direction of the room she had come from. But the hotel clerk could not tell if she was pointing at room 105 or at the hotel guest who had just exited room 106 and was getting ready to ride a

bicycle (M.D.). When the police arrived, the clerk told them that G.A. had either pointed at M.D. or at the door to room 105. The police contacted and arrested M.D., but G.A. continued pointing at room 105 after M.D. was arrested. G.A. also told the police that “Jeremy raped me,” although this information was not relayed to the officers who arrested M.D.

G.A. was transported to a sexual assault response center where she was interviewed and physical evidence was collected. Over the course of the next few hours, it became apparent to the police that M.D. was the wrong suspect. A search of his room revealed that it was “very neat and clean,” with no visible alcohol bottles or clothing. The police showed G.A. a photo of M.D., and G.A. said that he was not the man who attacked her.

An officer interviewed Nanok, and he gave the police the name “Jeremy” as the friend who Nanok and G.A. were drinking with. The name was relayed to an officer at the hotel scene, who then asked a hotel clerk whether a person named Jeremy was staying at the hotel. The hotel clerk told the officer that there was a “Jeremy Larson” who was registered in room 105, but he was scheduled to check out that day. Because the clerk had just begun his shift, he did not know whether Larson was still in the room.

Accompanied by the hotel clerk, the officer approached the door to room 105, knocked several times, and announced his presence. There was no response from inside the room. Assuming that Larson had checked out, the hotel clerk offered to unlock and open the door. The officer agreed. But when the clerk tried to open the door, he discovered that the deadbolt was engaged, indicating that someone was still occupying the room. Larson then opened the door.

The officer asked Larson if he could enter the room, and Larson said, “Sure.” The officer took two steps into the room and immediately noticed clumps of

hair, clothing, shoes, and alcohol bottles on the floor. Larson acknowledged to the officer that his friend had brought an older woman to the room the night before, but Larson claimed that she left sometime after he passed out from drinking. The officer applied for a search warrant for room 105 while another officer transported Larson to the police station. At the police station, Larson admitted to the police that G.A. had been in his room that morning, but he claimed that he had kicked her out because she was being obnoxious.

Meanwhile, the officer who was interviewing G.A. printed a driver's license photo of Larson and showed it to G.A., who confirmed that he was the man who assaulted her. There was some disagreement over whether G.A. initially described Larson as "white." At trial, G.A. testified that she did not describe him as white, but rather as "wide, you know, wide, fat." (Larson weighs over 300 pounds.)

Larson was charged with first-degree sexual assault and fourth-degree assault. Larson's first trial resulted in a conviction for fourth-degree assault but a hung jury on the first-degree sexual assault charge. The State tried Larson a second time for the sexual assault, and the jury found him guilty.

Larson now appeals.

*Larson's claim that a juror was exposed to prejudicial information*

Approximately one month after Larson's trial ended, Larson filed a motion for a new trial, alleging that a juror searched for his criminal history on the CourtView website during the trial. Larson attached an affidavit from a prosecutor (not one involved in this case) claiming that he had spoken with a juror in Larson's case and that the juror had revealed that he researched Larson on CourtView during the trial and learned about Larson's criminal history. Larson argued that his right to an unbiased jury was violated by the juror's research and that he was therefore entitled to a new trial.

The superior court held an evidentiary hearing and took testimony from both the juror and the prosecutor. The juror denied that he had researched Larson on CourtView, and the court, while commending the prosecutor for bringing the information before the court, found the juror's testimony credible. The court therefore denied Larson's motion for a new trial. Additionally, the court also concluded that knowing that a defendant had "some criminal history" was not the type of extraneous information that was inherently likely to influence a juror's vote.

In this appeal, Larson argues that the court committed a legal error when it concluded that knowing that a defendant has a criminal history is not the type of extraneous information that is inherently likely to influence a juror's vote. But Larson does not address, or challenge as clearly erroneous, the court's factual finding that the juror was never actually exposed to extraneous information. The State pointed out this deficiency in its brief, and Larson did not file a reply brief.

We agree with the State that absent a challenge to the superior court's factual finding that the juror was not exposed to extraneous information, there is no basis to reverse the superior court's denial of Larson's motion for a new trial. We therefore reject Larson's challenge to the superior court's denial of his motion for a new trial without reaching the merits of his claim of legal error.

*Larson's challenge to the victim's out-of-court identification*

Prior to trial, Larson asked the superior court to suppress G.A.'s photo identification of him, arguing that showing her a single photograph was suggestive and rendered her subsequent identifications unreliable. At the time this issue was litigated in the trial court proceedings, the governing test was set out in the United States Supreme

Court’s opinion in *Manson v. Brathwaite*.<sup>2</sup> Applying that test, the court denied Larson’s motion to suppress the identification evidence.

In this appeal, Larson challenges the superior court’s *Brathwaite* analysis. But as the State points out, after Larson’s trial, the Alaska Supreme Court held in *Young v. State* that the *Brathwaite* test does not adequately protect a defendant’s right to due process under the Alaska Constitution.<sup>3</sup> The controlling test for analyzing the reliability of an out-of-court identification is now set out in *Young*.<sup>4</sup>

We have previously remanded a case to give the superior court an opportunity to analyze the admissibility of the challenged show-up identification under the *Young* test.<sup>5</sup> The State argues that no remand is needed in this case because any error in admitting the out-of-court identification was harmless beyond a reasonable doubt. We agree.

As the State points out, there was independent evidence establishing Larson’s identity as G.A.’s assailant. G.A. identified her assailant as “Jeremy.” Nanok likewise confirmed that he and G.A. had gone to “Jeremy’s” hotel room to drink. And Larson admitted to drinking with Nanok and an older woman, although he denied sexually assaulting the woman.

In addition, G.A. repeatedly pointed to room 105 as the location of her assault, and the hotel clerk confirmed that room 105 was registered to Jeremy Larson.

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<sup>2</sup> *Manson v. Brathwaite*, 432 U.S. 98 (1977); *see also Anderson v. State*, 123 P.3d 1110, 1116 (Alaska App. 2005).

<sup>3</sup> *Young v. State*, 374 P.3d 395 (Alaska 2016).

<sup>4</sup> *Id.*

<sup>5</sup> *See Brigman v. State*, 2020 WL 704854 (Alaska App. Feb. 12, 2020) (unpublished) (remanding for a re-evaluation of a show-up identification procedure under the *Young* test).

Moreover, when the police went to the room, the room contained G.A.'s clothing, shoes, glasses, and clumps of her hair. Larson also opened the door to the room and was the only occupant.

In other words, despite the confusion that led to M.D.'s arrest, the identity of G.A.'s assailant was not really in question at trial. Larson's defense attorney argued that the assailant could have been M.D., but he primarily argued that G.A. was not credible and that, while something physical may have happened, there had been no sexual assault. Given these circumstances, we agree with the State that any error in admitting the single-photo out-of-court identification was harmless beyond a reasonable doubt.

*Larson's motion to suppress the physical evidence found in his hotel room*

In addition to asking the superior court to suppress the victim's identification of Larson as the assailant, Larson also asked the court to suppress the physical evidence found in his hotel room and the statements he made to police. Larson argued that he did not voluntarily allow the police officer to enter his hotel room and instead merely submitted to an unlawful claim of authority. The court rejected this argument, finding that Larson's will was not overborne and that his consent was validly given. Larson now appeals that ruling, repeating the same arguments he made below. We find his arguments unpersuasive.

Here, the evidence established that the investigating officer was not sure if Larson was still in his room, or if he had checked out.<sup>6</sup> The officer went with the hotel clerk to see if Larson was still around. The officer knocked three or four times, but no

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<sup>6</sup> See *Castillo v. State*, 614 P.2d 756, 765 (Alaska 1980) (explaining that, in reviewing a denial of a motion to suppress, the appellate court interprets the facts in the light most favorable to upholding the trial court's ruling).

one answered. At this time, the officer and the clerk believed that Larson must have checked out, and that they were therefore free to enter the room. The clerk offered to unlock the door, but upon attempting to open the door, the clerk discovered that the deadbolt was still engaged, suggesting that Larson was still occupying the room. Larson then opened the door. The officer asked Larson if he could enter the room, and Larson responded, “Sure.”

Nothing about this police conduct was inherently coercive, and nothing about Larson’s response suggests that his will was overborne. We therefore affirm the ruling of the superior court.

### *Conclusion*

The judgment of the superior court is AFFIRMED.