

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BOBBY GREG NASHOOKPUK,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13935
Trial Court No. 4FA-21-01277 CI

SUMMARY DISPOSITION

No. 0336 — August 2, 2023

Appeal from the Superior Court, Fourth Judicial District,
Fairbanks, Paul R. Lyle, Judge.

Appearances: Wallace Tetlow, Tetlow Christie, LLC,
Anchorage, for the Appellant. Diane L. Wendlandt, Assistant
Attorney General, Office of Criminal Appeals, Anchorage, and
Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Bobby Greg Nashookpuk was convicted, following a jury trial, of first-degree sexual assault.¹ This Court affirmed Nashookpuk's conviction on direct appeal.²

Nashookpuk subsequently filed an application for post-conviction relief alleging that his trial attorney was ineffective for failing to object to two statements made by a forensic nurse that, according to Nashookpuk, tended to bolster the victim's

¹ AS 11.41.410(a)(1).

² *Nashookpuk v. State*, 2020 WL 9177539 (Alaska App. Jan. 2, 2020) (unpublished summary disposition).

credibility. Specifically, the nurse testified that her job is to “take care of patients” who are “victims” of various crimes, including sexual assault, and that the victim appeared “kind of subdued . . . like many sexual assault patients that I have encountered.”

In Nashookpuk’s application for post-conviction relief, he claimed that his trial attorney was ineffective for not objecting to the forensic nurse’s testimony. According to Nashookpuk, the nurse’s erroneous testimony contributed to the jury’s conclusion that the sexual intercourse was non-consensual (which Nashookpuk contested at trial). The superior court concluded that Nashookpuk pleaded a prima facie case that his attorney was ineffective for failing to object to these statements, but ruled that Nashookpuk failed to plead a prima facie case of prejudice — *i.e.*, failed to establish that “there is at least a reasonable possibility that the result at the defendant’s trial would have been different but for the attorney’s incompetence.”³ Nashookpuk now appeals that ruling.

We have reviewed the record, and we agree with the superior court that there is no reasonable possibility that the forensic nurse’s testimony affected Nashookpuk’s conviction. The evidence established that the nurse was part of an investigatory team determining whether a sexual assault occurred, and thus the jury would have understood that she examined C.J. as part of that investigation. Additionally, the nurse did not directly comment on C.J.’s truthfulness; indeed, the questions from both the prosecutor and the defense attorney were focused on her medical conclusions rather than on C.J.’s demeanor.

At trial, C.J. testified that when Nashookpuk began to kiss her, she pushed him away. Then, when Nashookpuk initiated sex, C.J. said, “Please don’t do this.” She explained that she did not scream or run away because it was late at night and she could not see anyone around, and she did not know where she was. The evidence at trial also

³ *State v. Carlson*, 440 P.3d 364, 389 (Alaska App. 2019); *see also Risher v. State*, 523 P.2d 421, 425 (Alaska 1974).

showed that Nashookpuk's phone inadvertently called 911 during the sexual assault. The recorded call was admitted into evidence, and the 911 dispatcher testified that she heard a female voice mumble things like "No, don't," and heard a male voice say, "[O]pen your legs for Daddy." As the superior court noted, this was "*direct contemporaneous evidence*" that the sexual intercourse was not consensual, and this direct evidence was "devastating" to Nashookpuk's consent defense.

The judgment of the superior court is AFFIRMED.