

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

ZACHARY ALAN WHISENHUNT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13240
Trial Court No. 4FA-16-00872 CR

SUMMARY DISPOSITION

No. 0301 — January 11, 2023

Appeal from the Superior Court, Fourth Judicial District,
Fairbanks, Douglas L. Blankenship, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, Anchorage, under contract with the Office of Public Advocacy, for the Appellant. RuthAnne Beach, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Zachary Alan Whisenhunt was convicted, following a jury trial, of second-degree murder and evidence tampering.¹ Whisenhunt appealed, primarily challenging the sufficiency of the evidence to support his convictions and the trial judge's denial of his motion for a new trial (claiming that the jury's verdict was against the weight of the

¹ *Whisenhunt v. State*, 2021 WL 5108493, at *1 (Alaska App. Nov. 3, 2021) (unpublished).

evidence).² We rejected Whisenhunt’s challenge to the sufficiency of the evidence, but remanded the new trial issue for additional findings.³ In particular, the trial judge’s written order left it unclear whether the judge recognized the full extent of his discretion in ruling on the new trial motion, and that this discretion should generally be exercised in favor of granting a new trial if the judge has serious concerns that an innocent person may have been convicted.⁴

On remand, the trial judge issued a detailed sixteen-page order setting out his analysis of Whisenhunt’s new trial motion. In the order, the judge recounted the State’s evidence and Whisenhunt’s arguments contesting this evidence, and he explained that he personally would not have convicted Whisenhunt based on the State’s evidence. The judge nevertheless made clear that he understood why the jury had convicted Whisenhunt, and he also made clear that he did not believe that a new trial was necessary in the “interests of justice.”

Whisenhunt appeals the trial judge’s order, raising two arguments. First, he argues that the trial judge erroneously focused his analysis on whether a reasonable jury could have concluded that he was guilty, rather than on his own personal view of whether Whisenhunt might be innocent. Second, he argues that the trial judge “appears to have failed to conduct a totality of the circumstances analysis in determining whether a new trial was required in the interests of justice.” We reject both arguments. While we agree that the majority of the court’s order is focused on the judge’s conclusion that the jury’s verdict was “reasonable,” the judge also demonstrated his awareness of his

² *Id.*

³ *Id.* at *5-7 (citing *Phornsavanh v. State*, 481 P.3d 1145, 1159-60 (Alaska App. 2021)).

⁴ *Id.* at *6-7.

authority to grant a new trial in the interests of justice and sufficiently explained why he was not exercising that authority.

Whether to grant a motion for a new trial based on the weight of the evidence is a decision that is entrusted to the sound discretion of the trial court.⁵ Having reviewed the trial record, the judge's original order denying the motion for a new trial, and the most recent order clarifying the judge's reasons for that denial, we conclude that the trial judge did not abuse his discretion in denying the motion for a new trial.

We therefore AFFIRM the judgment of the superior court.

⁵ *Phornsavanh*, 481 P.3d at 1157-58.