

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

MICHAEL EUGENE VILLA,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13534  
Trial Court No. 3KN-19-00337 CR

SUMMARY DISPOSITION

No. 0274 — June 22, 2022

Appeal from the Superior Court, Third Judicial District, Kenai,  
Lance Joanis, Judge.

Appearances: Megan R. Webb, Assistant Public Defender, and  
Samantha Cherot, Public Defender, Anchorage, for the  
Appellant. Alex Engeriser, 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.

Michael Eugene Villa was convicted, following a jury trial, of second-degree robbery after he used force in an attempt to steal a bottle of gin from a liquor store.<sup>1</sup> Villa now appeals, arguing that the evidence presented was insufficient to support his conviction. Specifically, he argues that the evidence was insufficient for the jury to

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<sup>1</sup> AS 11.41.510(a)(1).

conclude that he used force with the intent to prevent or overcome resistance to the taking or retention of the bottle.<sup>2</sup>

When a defendant challenges the sufficiency of the evidence to support a criminal conviction, we view the evidence, and all reasonable inferences arising from that evidence, in the light most favorable to upholding the verdict.<sup>3</sup> We then ask whether a reasonable juror could find that the defendant was guilty beyond a reasonable doubt.<sup>4</sup>

Interpreted in the light most favorable to the jury's verdict, the evidence established that Villa entered a liquor store and placed a bottle of gin down the front of his pants. A store clerk saw this happen and paged security, and a number of additional store employees quickly arrived and confronted Villa. A violent struggle with the store employees ensued. At one point during the altercation, Villa tossed the bottle of gin he had stolen on the ground and continued to struggle with the store employees. Villa was eventually able to escape from the store and was later apprehended by police.

On appeal, Villa argues that this evidence was insufficient to prove that he used force with the intent to take or retain the bottle of gin because, according to Villa, he was only trying to escape the store, not retain the bottle of gin. But although Villa may have ultimately discarded the bottle of gin and left the store, the evidence demonstrated that Villa used force *prior* to discarding the bottle of gin. A reasonable juror could therefore have inferred that Villa used force with the intent to retain the

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<sup>2</sup> *See id.* (robbery in the second-degree requires, in pertinent part, that “the person uses or threatens the immediate use of force upon any person with intent to prevent or overcome resistance to the taking of the property or the retention of the property after taking”).

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

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

stolen property.<sup>5</sup> The fact that Villa ultimately abandoned his attempt to retain the property does not vitiate evidence of his initial intent.

Villa raises one additional claim regarding the judgment issued in his case. In addition to second-degree robbery, the jury also found Villa guilty of one count of fourth-degree assault and one count of concealment of merchandise.<sup>6</sup> These counts merged with the second-degree robbery conviction. However, as Villa argues on appeal and the State properly concedes, Villa’s judgment form incorrectly states that a conviction of record was entered for each of the two merged counts.<sup>7</sup> Although the judgment could properly reflect that the jury found Villa guilty of all three offenses, the judgment must also make clear that a conviction of record was only entered for the robbery offense.<sup>8</sup> We therefore remand this case to the superior court so that the court can enter an amended judgment.

Villa’s conviction for second-degree robbery is **AFFIRMED**. This case is **REMANDED** to the superior court for entry of an amended judgment.

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<sup>5</sup> *Gibson v. State*, 346 P.3d 977, 981 (Alaska App. 2015) (explaining that whether the defendant used force only to escape, rather than to retain stolen property, is usually a question of fact for the jury).

<sup>6</sup> AS 11.41.230(a)(1) and AS 11.46.220(c)(3), respectively.

<sup>7</sup> *See Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972) (requiring an appellate court to independently assess whether a concession of error is supported by the record on appeal and has legal foundation).

<sup>8</sup> *See Nicklie v. State*, 402 P.3d 424, 425-26 (Alaska App. 2017) (“Alaska law does not recognize the existence of a merger ‘for sentencing purposes only.’ . . . [W]hen a defendant is found guilty of counts that must merge, the merger results in a *single* conviction of record[.]” (emphasis in original)).