

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

JEFFREY C. FLEEK,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12186
Trial Court No. 3AN-13-13407 CR

MEMORANDUM OPINION

No. 6563 — January 10, 2018

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael R. Spaan, Judge.

Appearances: Gavin Kentch, Law Office of Gavin Kentch,
LLC, Anchorage, for the Appellant. Arne F. Soldwedel,
Assistant District Attorney, Anchorage, and Jahna Lindemuth,
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge SUDDOCK.

Jeffrey C. Fleek was convicted of second-degree assault after he strangled his girlfriend during a domestic dispute. On appeal, Fleek argues that there was insufficient evidence to support his conviction.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

For the reasons explained in this opinion, we conclude that the verdict was supported by sufficient evidence. We therefore affirm Fleek’s conviction.

Facts and proceedings

We recite the evidence in this case in the light most favorable to upholding the jury’s verdict,¹ as follows. On an afternoon in December 2013, Fleek argued with his live-in girlfriend, Laura Bartman. Fleek pushed Bartman, and she fell backwards to the floor. Fleek then strangled her with both hands. Bartman’s daughter, Hillary Nelson, heard Bartman call for help, and Nelson called 911. Nelson’s boyfriend, George Ramondos, punched Fleek repeatedly and put Fleek in a choke hold, as Fleek continued to strangle Bartman. Eventually, Fleek let go of Bartman.

When the police arrived, both Bartman and Fleek told them that Bartman had accidentally fallen in the kitchen. But the police saw injuries on Bartman’s neck that appeared to be consistent with strangulation.

After she was taken to a hospital, Bartman told both a police officer and her attending physician that she had been strangled. But Bartman recanted these statements at trial, and reverted to her story that she hurt herself by accidentally falling. The jury found Fleek guilty of second-degree assault.²

Sufficiency of the evidence

When reviewing claims of insufficient evidence, we view the evidence, and all reasonable inferences to be drawn from that evidence, in the light most favorable to

¹ See *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

² AS 11.41.210(a)(1).

upholding the verdict.³ Applying this standard, we must resolve all conflicts in the evidence in favor of the verdict, and then ask whether a reasonable juror could have concluded that the State proved its case beyond a reasonable doubt.⁴

To prove second-degree assault pursuant to AS 11.41.210(a)(1), the State had to prove beyond a reasonable doubt that (1) Fleek acted with the intent to cause physical injury to Bartman, (2) Fleek actually caused physical injury to Bartman, and (3) the physical injury was caused by means of a dangerous instrument. Under Alaska law, a person's hands qualify as a dangerous instrument when they are used "to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth."⁵

Here, witnesses testified that Fleek was strangling Bartman with his hands and that Bartman's injuries were consistent with strangulation. The jury also heard testimony about Bartman's prior statements to the police and to her doctor in which she stated that Fleek had strangled her and that she was unable to breathe.

Fleek argues that the evidence is insufficient to convict him because Bartman's interview by the police at the hospital was improperly leading and suggestive, and because Bartman was medicated at the time. But the jury heard a digital recording of this interview, and could assess for itself whether Bartman's statements were credible. The jury also heard testimony from other witnesses confirming that Fleek had strangled

³ *Iyapana*, 284 P.3d at 848-49.

⁴ *Johnson v. State*, 188 P.3d 700, 702 (Alaska App. 2008).

⁵ AS 11.81.900(b)(15)(A).

Bartman. We do not re-weigh the credibility of witness testimony, because that is exclusively a question for the jury.⁶

Viewing the evidence in the light most favorable to upholding the jury's verdict, we conclude that reasonable jurors could find that the evidence presented at trial was sufficient to prove beyond a reasonable doubt that Fleek was guilty of second-degree assault.

Conclusion

We AFFIRM the judgment of the superior court.

⁶ *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009); *Daniels v. State*, 767 P.3d 1163, 1167 (Alaska App. 1989).