

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

ARVIN MORSE KANGAS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12388
Trial Court No. 4TA-14-013 CR

MEMORANDUM OPINION

No. 6639 — June 13, 2018

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

Appearances: Jason A. Weiner, Gazewood & Weiner,
Fairbanks, for the Appellant. Patricia L. Haines, Assistant
Attorney General, Office of Criminal Appeals, Anchorage, and
Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

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

Judge MANNHEIMER.

Arvin Morse Kangas appeals his convictions on three counts of evidence tampering, as well as the composite sentence that he received for these crimes. As we explain in more detail later in this opinion, Kangas's son shot and killed two state troopers who had come to arrest Kangas. Kangas was prosecuted for altering evidence

in an effort to make things look as if his son had acted in defense of another (*i.e.*, in defense of Kangas).

On appeal, Kangas argues that the evidence presented to the grand jury was insufficient to support his indictment. As we explain in this opinion, we are treating Kangas's argument as a challenge to the sufficiency of the evidence presented at Kangas's trial to support his convictions — and we conclude that the evidence was sufficient.

Kangas also argues that the trial judge committed error by allowing the prosecutor to replay a three-minute segment of audio — audio captured by one of the slain troopers' recording devices. This audio segment contained the sounds of someone tampering with the troopers' holsters and service weapons. For the reasons explained in this opinion, we uphold the judge's ruling.

In addition, Kangas contends that the judge committed error when, at Kangas's sentencing, the judge found aggravating factor AS 12.55.155(c)(10) — *i.e.*, that Kangas's acts of tampering with the troopers' service weapons were among the most serious conduct included within the definition of the offense. We conclude that the judge properly found this aggravating factor.

Finally, Kangas argues that his composite sentence of 10 years' imprisonment with 2 years suspended (8 years to serve) is excessive. For the reasons explained in this opinion, we uphold this sentence.

Kangas's claim that the evidence presented to the grand jury was legally insufficient to support the evidence tampering counts of the indictment

Several months before his trial, Kangas asked the superior court to dismiss the evidence tampering counts on the ground that the evidence presented to the grand

jury was legally insufficient to support these counts. In a lengthy written order, the superior court concluded that the grand jury evidence was sufficient to support the charges, and the court therefore denied Kangas's pre-trial motion.

On appeal, Kangas renews his claim that the grand jury evidence was insufficient to support the charges. But Kangas's brief does not discuss the evidence presented to the grand jury. Nor does Kangas address the superior court's recitation and analysis of the grand jury evidence in its order denying the pre-trial motion. Instead, all of the citations to the record contained in Kangas's brief are citations to the evidence presented at his trial — a trial that took place four months after the superior court denied Kangas's pre-trial motion.

As the party claiming that the superior court committed error, it was Kangas's duty to address the evidence presented to the grand jury, and especially those portions of the grand jury proceedings that the superior court relied on when it analyzed and denied Kangas's pre-trial motion to dismiss the indictment.¹ Kangas has failed to satisfy this requirement. We accordingly rule that his attack on the superior court's pre-trial ruling is waived.

¹ See *Schlosser v. State*, 372 P.3d 272, 278-79 (Alaska App. 2016) (holding that party claiming error has the burden to present the appellate court with a record that is sufficient to demonstrate the occurrence of the claimed error, and sufficient to allow the appellate court to engage in meaningful review of that error). See also *Miscovich v. Tryck*, 875 P.2d 1293, 1304 (Alaska 1994); *Ketchikan Retail Liquor Dealers Ass'n v. Alcoholic Beverage Control Board*, 602 P.2d 434, 438-39 (Alaska 1979); *Natkong v. State*, 925 P.2d 672, 676-77 (Alaska App. 1996).

The evidence presented at Kangas's trial was sufficient to support the jury's verdicts

In the interest of justice, we will treat Kangas's arguments about the grand jury evidence as if he had challenged the sufficiency of the evidence presented at his trial to support his convictions for evidence tampering.

When we evaluate whether evidence is sufficient to support a criminal conviction, we view the evidence (and all reasonable inferences to be drawn from it) in the light most favorable to the jury's decision.² We therefore present the evidence in Kangas's case in that light.

On April 30, 2014, in Tanana, Arvin Kangas assaulted the local village public safety officer, Sergeant Mark Haglin. A warrant was issued for Kangas's arrest, and two state troopers — Sergeant Scott Johnson and Trooper Gabriel Rich — flew to Tanana to assist Haglin in serving this arrest warrant.

The officers found Kangas getting into a vehicle outside his residence. They informed him of the warrant, but Kangas would not get out of the vehicle, and he insisted that he would not be arrested. After about twenty minutes, Kangas got out of the vehicle, but he sat down on his front porch, still refusing to accompany the troopers peaceably. When Kangas got up and announced that he was going inside his residence, the troopers attempted to handcuff him. Kangas resisted, and while Sergeant Johnson was struggling with Kangas, they fell through the front door.

At this point, Trooper Rich announced that he was going to use his taser on Kangas. VPSO Sergeant Haglin backed away so that he would not be hit accidentally by the taser probes. When Haglin glanced behind him to make sure that he would not

² See *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012); *Silvera v. State*, 244 P.3d 1138, 1142 (Alaska App. 2010).

trip over any furniture, he heard seven gunshots in quick succession. Kangas's son, Nathaniel, had shot both of the troopers — wounding them mortally. Nathaniel then pointed the gun at Haglin's head, but he did not pull the trigger.

Haglin ran from the house and summoned help. He was able to recruit a civilian pilot, a physician's assistant, two volunteer firemen, and an ambulance crew. By the time Haglin and these others returned to the Kangas residence, both Sergeant Johnson and Trooper Rich were dead.

Kangas and his son Nathaniel also left the residence after the shooting, but they returned to the house about twelve minutes later. When Kangas returned to his house, he proceeded to tamper with several objects within the house. The State presented two sources for this information: the testimony of Kangas's wife, and also the audio retrieved from the recording devices that Sergeant Johnson and Trooper Rich were wearing. Both of these devices continued to run after the troopers were killed.

When Kangas and his son returned to the house, Kangas was now wearing gloves. Kangas went to Sergeant Johnson's body and he freed Johnson's service pistol from its holster. To remove this pistol, Kangas had to manipulate three separate retaining devices. Kangas racked the pistol to remove one cartridge from the gun, and then he wedged the pistol underneath Johnson's body.

Kangas likewise went to Trooper Rich's body, freed Rich's service pistol from its holster, and racked the gun to remove one cartridge. Kangas then returned the pistol to its holster, but he did not push the weapon all the way in.

Kangas also directed his son to remove the son's marijuana plants and marijuana seeds from the house, and to throw them over the riverbank.

After performing these acts, Kangas went to a residence a few blocks away and called the state trooper post in Fairbanks. Kangas falsely told the Fairbanks troopers that Sergeant Johnson and Trooper Rich had drawn their guns before the shooting.

Kangas asserted that his son Nathaniel had shot the troopers because he perceived their actions as a home invasion.

Based on these events, Kangas was convicted of three counts of evidence tampering under AS 11.56.610(a): one count for tampering with each of the troopers' service handguns, and one count for soliciting his son Nathaniel to tamper with the marijuana plants and seeds.

The pertinent provision of the evidence tampering statute, AS 11.56.610(a), declares that a person commits this crime if they “alter”, “suppress”, “conceal”, or “remove” physical evidence, and if they do so with the intent to impair the “verity” or the “availability” of this evidence in an official proceeding or a criminal investigation, or with the intent to prevent the institution of an official proceeding. In this context, the “verity” of evidence means its “conformity to truth or fact”.³

In his brief to this Court, Kangas argues that his actions with the two service pistols “did nothing to degrade or alter the character of these items of physical evidence”. The record refutes this claim. Kangas removed a cartridge from each of the service pistols, thus altering their physical condition.

Moreover, when Kangas removed the pistols from their holsters and then re-positioned the two weapons, this was also an act of “alteration” for purposes of the evidence tampering statute. Even though these actions did not alter the handguns' mechanisms or their physical condition, these actions did alter the evidentiary significance of the handguns — because the guns were re-positioned in ways that falsely appeared to corroborate Kangas's story that the troopers drew their weapons.

³ *Webster's New World College Dictionary* (Fourth Ed. 2004), p. 1588. *See also Black's Law Dictionary* (Eighth Ed. 2004), p. 1594 (defining “verity” in pertinent part as “conformity to fact”).

See *Commonwealth v. Tedesco*, unpublished, 2017 WL 1181226 at *16-17 (Pa. App. 2017), a case where the defendant was convicted of murder for fatally neglecting to feed and care for an elderly woman. The court upheld the defendant's conviction for evidence tampering based on evidence that, following the victim's death, the defendant moved the victim's body to a different residence, acting with the intent to mislead the authorities regarding where the victim was living at the time of her death, and where she had died.

See also *Burks v. State*, unpublished, 2016 WL 6519139 at *6-7 (Tex. Crim. App. 2016), *revised on rehearing*, 2017 WL 3443982 (Tex. Crim. App. 2017) (holding that the offense of evidence tampering was established by evidence that, following a homicide, the defendant moved the victim's body to another location).

We therefore conclude that the evidence presented at Kangas's trial established the *actus reus* of the crime of evidence tampering. And because Kangas does not challenge the jury's finding that he acted with the intent to impair the verity of this evidence in an official proceeding or a criminal investigation, we uphold Kangas's two convictions for the counts involving the handguns.

Kangas's third conviction for evidence tampering was based on evidence that he solicited or directed his son to remove all the marijuana plants and seeds from the house, and to throw these materials over the riverbank. Kangas points out that there was no evidence that he personally removed the marijuana from the residence. But the evidence showed that Kangas solicited or directed his son to remove the marijuana and dispose of it. Thus, Kangas could be found criminally responsible for his son's action. See AS 11.16.110(2)(A).

Kangas also argues that his son's possession of the marijuana was lawful. Based on this, Kangas asserts that the marijuana did not constitute evidence of a crime,

and therefore the removal of the marijuana from the house could not be evidence tampering.

But the question is not whether it was lawful or unlawful for Kangas's son to possess the marijuana. Many physical items may become relevant to a criminal investigation or prosecution, even though it is perfectly legal to possess those items. Under the evidence tampering statute, the two questions to be answered are: Did Kangas solicit or direct his son to remove the marijuana from the residence and throw it over the riverbank? And if so, did Kangas act with the intent to impair the verity or availability of the marijuana in an official proceeding or criminal investigation, or with the intent to prevent the institution of an official proceeding?

The evidence at Kangas's trial never established the precise reason why Kangas felt it was important to get rid of the marijuana. One could imagine scenarios in which the marijuana played some part in Kangas's son's motivation to shoot the troopers. Or, potentially, Kangas thought that he or his family members could be charged with additional crimes relating to the marijuana when the authorities returned to his residence to investigate the shooting.

But regardless of Kangas's precise motivation for removing the marijuana, his actions could still be legally sufficient to establish the offense of evidence tampering. The drafters of our criminal code actively considered this issue, and they decided to define the crime of evidence tampering so that it does not make any difference whether the physical evidence ultimately turns out to be material to the criminal investigation, or whether it is ultimately ruled admissible at trial. *See* the commentary to TD 11.56.610 found in *Alaska Criminal Code Revision, Tentative Draft, Part 4* (1977), p. 66.

For these reasons, we conclude that the evidence presented at Kangas's trial is sufficient to support his convictions for evidence tampering.

Whether the trial judge committed error by allowing the prosecutor to play several minutes of the audio recording that captured Kangas's acts of evidence tampering

As we explained earlier in this opinion, the two troopers were wearing audio recording devices, and these devices continued to record events after the troopers were shot. As a result, the State had an audio recording of Kangas's return to the residence, his tampering with the troopers' handguns, and his directive to his son to get rid of the marijuana.

At Kangas's trial, the trial judge allowed the prosecutor to play the audio recording that was retrieved from Trooper Rich's recording device. The prosecutor first played the complete audio recording during Trooper Investigator Ramin Dunford's testimony. The recording began when the two troopers first contacted Kangas outside his residence, and it continued until VPSO Sergeant Haglin and the supporting group of civilians returned to the residence after the shooting.

Later in Investigator Dunford's testimony, the prosecutor asked Dunford a series of questions about a particular part of this audio recording — the three minutes during which Kangas can be heard tampering with the troopers' holsters and weapons. To aid the jury in understanding Dunford's responses, the prosecutor asked to replay this three-minute excerpt. Kangas's attorney objected on the grounds that the audio had already been played in its entirety, and that it was "highly prejudicial" for the jury to hear the three-minute excerpt again. The trial judge overruled this objection.

Not long after, the prosecutor replayed two short excerpts that captured the snapping sounds of the holsters being undone and the handguns being removed.

Finally, the prosecutor replayed the three-minute excerpt during his cross-examination of Kangas, after Kangas claimed that he could not remember any of his actions following the shooting. (There was no objection to this replay.)

On appeal, Kangas argues that there was “no justifiable basis” for allowing the prosecutor to replay these excerpts of the audio recording, and he asserts that these replays only “heightened the undue prejudice” of the evidence. But the record shows that the prosecutor had a reasonable basis for replaying the audio. And while this evidence may have bolstered the State’s case, Kangas has not shown that the evidence would cause “undue prejudice”. In this context, the phrase “undue prejudice” means “not merely evidence that is harmful to the other party, but evidence that will result in a decision being reached by the trier of facts on an improper basis.”⁴

We therefore conclude that the trial judge did not abuse his discretion when he allowed the challenged replay.

(We also note that any error in the judge’s ruling would be harmless because (1) the defense attorney offered no objection when the prosecutor replayed the three-minute audio excerpt during his cross-examination of Kangas, and (2) during jury deliberations, the jurors themselves repeatedly asked for replays of this three-minute excerpt.)

Whether the trial judge committed error by allowing the jury to deliberate on whether Kangas’s acts of evidence tampering were among the most serious conduct included in the definition of the offense

At Kangas’s trial, pursuant to AS 12.55.155(f)(2), the prosecutor sought a jury verdict on aggravating factor AS 12.55.155(c)(10) — the aggravator that applies when a defendant’s conduct is among the most serious included within the definition of the charged offense. In response, Kangas’s attorney asked the judge to “strike” this

⁴ *Getchell v. Lodge*, 65 P.3d 50, 57 (Alaska 2003); *see also Jackson v. State*, 695 P.2d 227, 236 (Alaska App. 1985).

aggravator rather than submit it to the jury. In essence, Kangas sought a judgement of acquittal on this aggravator, arguing that the State's evidence was legally insufficient to establish the aggravator.

More specifically, Kangas argued that, for purposes of determining whether conduct is “among the most serious” within the definition of evidence tampering, the defendant's “conduct” should be narrowly defined as the actual physical act of altering, destroying, removing, or concealing the piece of physical evidence — and that the trier of fact should not consider the defendant's motive for doing so. Kangas further argued that the trier of fact should not consider any of the circumstances that existed *before* the defendant performed the act of evidence tampering, even though those circumstances may have provided the context for the defendant's act. Under this rationale, Kangas argued that it was irrelevant that the two homicide victims were state troopers, and it was likewise irrelevant that Kangas's motive for evidence tampering might have been to provide his son with a plausible defense to murder (either defense of another, or heat of passion).

The trial judge denied Kangas's motion and submitted the “among the most serious” issue to the jury. On appeal, Kangas argues that this was error. He contends that his motion for a judgement of acquittal was well-taken, and that the issue of the “among the most serious” aggravator should never have been submitted to the jury.

This claim is moot.

For each of the three counts of evidence tampering, the jury was asked to find whether Kangas's conduct was among the most serious within the definition of the offense. The jury ultimately rejected this aggravator with respect to two counts: the count relating to the marijuana and the count relating to Trooper Rich's handgun. The jury was unable to reach a unanimous decision with respect to the third count — the count relating to Sergeant Johnson's handgun.

Rather than seek a retrial on this third count, the State simply proceeded to sentencing and litigated the “among the most serious” issue to the judge, under the provisions of AS 12.55.155(h).

In short, the record shows that Kangas was not prejudiced by the judge’s decision to submit the “among the most serious” aggravator to the jury. Kangas’s claim of error is therefore moot.

Whether the trial judge committed error by finding, at sentencing, that Kangas’s acts of evidence tampering were among the most serious conduct included in the definition of the offense

As we just explained, after the jury failed to find that Kangas’s acts of evidence tampering were among the most serious, the State litigated this issue to the sentencing judge. This procedure was authorized under AS 12.55.155(h), because the sentencing judge had already found two other aggravating factors based on Kangas’s criminal history: repeated instances of assaultive behavior, *see* AS 12.55.155(c)(8), and convictions for five or more class A misdemeanors, *see* AS 12.55.155(c)(31).⁵

⁵ AS 12.55.155(h) reads: “If one of the aggravating factors in (c) of this section is established as provided in (f)(1) and (2) of this section, the court may increase the term of imprisonment up to the maximum term of imprisonment. Any additional aggravating factor may then be established by clear and convincing evidence by the court sitting without a jury, including an aggravating factor that the jury has found not to have been established beyond a reasonable doubt.”

AS 12.55.155(h) appears to be based on this Court’s decision in *Cleveland v. State*, 143 P.3d 977 (Alaska App. 2006). We held in *Cleveland* that, under Alaska’s presumptive sentencing statutes, a defendant’s right to jury trial under *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004) is satisfied “if there is at least one *Blakely*-compliant aggravating factor — *i.e.*, at least one aggravating factor that flows

(continued...)

Relying on this Court’s decision in *Whitesides v. State*, 88 P.3d 147 (Alaska App. 2004), as well as our unpublished decision in *McClelland v. State*, 1993 WL 13156787 (Alaska App. 1993), the judge concluded that he should consider the following non-exclusive list of factors when deciding whether aggravator (c)(10) was proved:

1. whether the tampered-with evidence was ultimately available for trial;
2. the relative importance of the tampered-with evidence;
3. the extent of the tampering; and
4. the seriousness of the offense to which the evidence related.

After considering these factors, the sentencing judge found that Kangas’s acts of manipulating and re-positioning the two pistols were among the most serious within the definition of evidence tampering. In particular, the judge found that the tampered-with evidence related to the homicide of two state troopers engaged in the performance of their duties, and that this tampering was designed to make it appear as if the troopers had been improperly aggressive in their efforts to arrest Kangas.

The judge found that Kangas’s motive for the tampering with the handguns was to create a fraudulent defense for his son. And the judge found that Kangas’s acts of evidence tampering were the result of planning, as opposed to being “sudden, thoughtless act[s]”:

⁵ (...continued)
directly from the jury’s verdict, or is admitted by the defendant, or is based on the defendant’s prior convictions.” *Cleveland*, 143 P.3d at 984-85. Thus, if at least one *Blakely*-compliant aggravator is proved, the sentencing judge does not violate a defendant’s right to jury trial when the judge resolves other disputed issues of fact — even when these disputed issues of fact constitute other statutory aggravators. This is true because “proof of additional aggravating factors [does] not alter the range of sentences available to the judge — although these additional aggravators [may] obviously be important to the judge’s choice of sentence within that sentencing range.” *Id.* at 984.

The Court: It was planned. The defendant left the scene, hatched a futile defense plan for his son, returned to the home, and, with a gloved hand, manipulated the troopers' service weapons and [their] bodies Arvin Kangas had time to reflect ... before he came back to the residence

The judge further found that Kangas's actions slowed the course of the criminal investigation, because the troopers had to return repeatedly to Tanana to complete their analysis of what happened inside the Kangas residence.

Finally, the judge noted that the State Troopers are commonly outnumbered when they arrive in a rural village to make an arrest, and that the Troopers therefore implicitly depend on community support and, to a certain extent, community protection when they are engaged in these duties. Kangas's acts of tampering were designed to make it appear as if the two troopers had drawn their weapons to make a misdemeanor arrest of an unarmed man — thus portraying the two troopers as overly aggressive, if not unlawfully aggressive.

The judge concluded that Kangas's actions “had a significant potential to create a negative perception [of law enforcement officers] in rural communities, [thus] undermining the community protection that [these officers] rely upon when they travel, often alone, to rural communities to enforce the law.”

Based on these considerations, the judge found aggravator (c)(10) — *i.e.*, that Kangas's conduct was among the most serious within the definition of evidence tampering.

On appeal, Kangas challenges the judge's finding of aggravator (c)(10). Kangas notes that, despite his act of tampering, “the handguns were not lost”, and he argues that his actions “did not rise to the level of making the physical evidence unavailable or more difficult to use ... or altered beyond the point of evidentiary value.”

But Kangas cites no legal authority, other than the language of AS 12.55.-155(c)(10) itself, to support his proposed narrow interpretation of “conduct”. And as the sentencing judge noted when he made his ruling, Kangas’s proposed interpretation of the statute is inconsistent with the interpretation that this Court adopted in *Whitesides*.

Based on our decision in *Whitesides*, we conclude that the sentencing judge could properly consider Kangas’s motive for tampering with the evidence, as well as the fact that Kangas’s act of tampering was deliberate and planned. The judge could also consider the seriousness of the crime to which the tampering related, and the potential consequences of the tampering — both with respect to Kangas’s son’s criminal prosecution, and with respect to the efficacy of rural law enforcement and the safety of the officers engaged in that duty.

We therefore affirm the sentencing judge’s finding of aggravator (c)(10).

Kangas’s claim that his sentence is excessive

Kangas was convicted of three counts of evidence tampering, and the maximum penalty for each of those counts was 5 years’ imprisonment.⁶

As we have explained, the sentencing judge concluded that two of Kangas’s three counts — the counts involving the troopers’ service pistols — involved conduct among the most serious within the definition of the offense. Kangas had a lengthy criminal history, stretching back 37 years, to 1977. All of his prior offenses were misdemeanors, but they included resisting arrest and assaulting two police officers, as well as assaulting his own brother with a firearm, and then — one day before the events in this case — an assault on VPSO Sergeant Haglin.

⁶ See AS 11.56.610(b) (classifying evidence tampering as a class C felony) and AS 12.-55.125(e) (establishing a 5-year maximum sentence for non-sexual class C felonies).

Based on this criminal history, the judge concluded that Kangas had “an ingrained pattern of assaultive and disorderly behavior”, as well as “belligerence toward the police”. The judge noted that, “even when Arvin Kangas saw Trooper Rich mortally wounded but still living, he did nothing to assist him.”

The judge further concluded that Kangas’s potential for rehabilitation was “nearly nil”. The judge declared that, given Kangas’s age (Kangas was nearly 60 years old at the time of sentencing), as well as Kangas’s “ingrained belligerence toward authority”, Kangas was “unlikely to change his thought patterns now.”

Based on all this, the judge concluded that he needed to sentence Kangas to “a long period of incarceration to keep the public, and public safety officers, safe from harm” — a period of incarceration longer than the 5-year maximum for any single one of Kangas’s crimes.

The judge also concluded that a lengthy prison sentence was supported by another sentencing factor: the aim of deterring others from similar criminal conduct. And finally, the judge concluded that a lengthy prison sentence was supported by a third sentencing factor: the goal of expressing community condemnation of Kangas’s actions, and of re-affirming the community norms that he violated.

The judge then sentenced Kangas to a composite term of 8 years to serve, with an additional 2 years suspended, for his three crimes.

On appeal, Kangas claims that his acts of evidence tampering caused minimal harm to society, and that the judge’s true motive for imposing the 8-year sentence was to punish Kangas because his son, Nathaniel, murdered the two state troopers.

The record rebuts this claim. The sentencing judge showed extreme care when he expressly (and repeatedly) assured Kangas, the attorneys, and everyone else in the courtroom that Kangas was *not* being sentenced for murder, nor for complicity in

murder, and that the judge did not consider Kangas responsible for his son's actions.⁷ And the judge carefully explained why he concluded that a sentence of greater than 5 years was required by the sentencing criteria codified in AS 12.55.005.

Having reviewed the record, we conclude that Kangas's sentence of 8 years to serve is not clearly mistaken. We therefore uphold that sentence.⁸

Conclusion

The judgement of the superior court is AFFIRMED.

⁷ For example, at the beginning of the judge's sentencing remarks, he declared, "I think it's important [to say that] Arvin Kangas does not stand before this Court convicted of murder. He is not convicted for being indirectly liable for murder. He is not convicted for being morally responsible for murder. He is not convicted of being a poor parent. And he is not convicted for his political beliefs. He stands convicted of three counts of evidence tampering."

⁸ See *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974) (an appellate court is to affirm a sentencing decision unless the decision is clearly mistaken).