

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

RAFAEL MANUEL MONTAS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12050
Trial Court No. 3AN-14-056 CR

MEMORANDUM OPINION

No. 6500 — July 26, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, William F. Morse, Judge.

Appearances: J. Adam Bartlett, Anchorage, for the Appellant.
Nancy R. Simel, Assistant Attorney General, Office of Criminal
Appeals, Anchorage, and Jahna Lindemuth, Attorney General,
Juneau, for the Appellee.

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

Judge MANNHEIMER.

In December 2013, Rafael Manuel Montas was facing criminal charges in an unrelated case, and his long-time girlfriend, Julia Rivera, agreed to serve as his third-party custodian while he was on bail release in that other case.

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

Montas and Rivera got into an argument on January 2, 2014. During this argument, Montas grabbed Rivera by the neck, pushed her against the wall, hit her in the face, and threatened to kill her.

This commotion woke up Rivera's teenage son, who was sleeping in another room. When Rivera's son came to see what was the matter, Montas let go of Rivera. Rivera went downstairs, called 911, and asked to have police officers dispatched to her home. She also told the 911 operator that she no longer wanted to be Montas's third-party custodian.

The police arrived and arrested Montas, and he was charged with two counts of assault (one count for physically attacking and injuring Rivera, and one count for threatening to kill Rivera).¹ At Montas's arraignment, the court ordered him to have no contact with Rivera. In violation of that order, Montas repeatedly telephoned Rivera, demanding that she drop the charges, and telling her that he would "see [her] on the streets" after he was released.

Rivera reported these phone calls to the police, and the State charged Montas with two new crimes: first-degree unlawful contact (for contacting Rivera in violation of the court order), and interference with official proceedings (for allegedly threatening to harm Rivera if she did not drop the assault charges).²

After the State joined all of these charges for trial, Montas's attorney filed a motion asking the superior court to sever the two latter charges (*i.e.*, the unlawful contact charge and the interference with official proceedings charge) from the initial two counts of assault. The defense attorney argued that these two groups of charges were improperly joined under Alaska Criminal Rule 8(a). The attorney argued (in the

¹ AS 11.41.230(a)(1) and AS 11.41.230(a)(3), respectively.

² AS 11.56.750(a)(1)(A) and AS 11.56.510(a)(1), respectively.

alternative) that even if the charges were properly joined, they should be severed under Criminal Rule 14 because Montas would be unduly prejudiced if the jury deciding the assault charges also heard evidence of Montas's later telephone calls to Rivera.

The superior court denied Montas's motion to sever the charges, and Montas went to trial on all four charges. Montas's defense was that Rivera was mad at him for cheating on her, and that she took her revenge by falsely accusing him of crimes.

The jury found Montas guilty of two of the charges: the assault charge based on his threat to kill Rivera, and the charge of unlawful contact. The jury acquitted Montas of the other two charges (the physical assault charge and the interference with official proceedings charge).

On appeal, Montas renews his argument that Criminal Rule 8(a) did not permit the joinder of the two assault charges with the two later charges (unlawful contact and interference with official proceedings). But Criminal Rule 8(a)(3) states that criminal charges can be joined for trial if they "are based on two or more acts or transactions connected together". As this Court explained in *Shorty v. State*, 214 P.3d 374, 383 (Alaska App. 2009), the test for whether acts or transactions are "connected together" is met if the State charges a defendant with committing one or more crimes, then committing later crimes to avoid detection or prosecution for the earlier crimes.

That was the State's theory in Montas's case. The State alleged that, after Montas assaulted Rivera and was taken to jail, he unlawfully contacted Rivera and threatened her in an effort to avoid prosecution for the assault charges. Thus, the latter two charges of unlawful contact and interference with official proceedings were properly joined with the assault charges.

Montas also argues that, assuming the four charges were properly joined for trial, the superior court nevertheless should have ordered severance of the charges

under Criminal Rule 14 because of the alleged unfair prejudice that would result if a single jury heard all of the evidence pertaining to all four charges.

The question of whether criminal charges should be severed for trial under Criminal Rule 14 is a matter entrusted to the discretion of the trial court.³ Here, we find no abuse of discretion: the superior court could properly conclude that, because the charges were interconnected as they were, it would not be unfair for the jury to hear evidence of all four charges.

For these reasons, the judgement of the superior court is AFFIRMED.

³ *Pease v. State*, 54 P.3d 316, 322 (Alaska App. 2002).