IN THE COURT OF APPEALS OF THE STATE OF ALASKA

KAREN RENÉE HUDSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12171
Trial Court No. 3PA-13-3185 CR

MEMORANDUM OPINION

No. 6505 — August 2, 2017

Appeal from the District Court, Third Judicial District, Palmer, William L. Estelle, Judge.

Appearances: Laurence Blakely, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Eric A. Senta, Assistant District Attorney, Palmer, and James E. Cantor, Acting Attorney General, Juneau, for the Appellee.

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

Judge MANNHEIMER.

Karen Renée Hudson appeals her conviction for driving under the influence.[1] She contends that the trial judge committed error when, at the end of

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

[1] AS 28.35.030(a)(1).

Hudson's trial testimony, the judge declined to ask Hudson a supplemental question that was proposed by one of the jurors. For the reasons explained in this opinion, we conclude that the judge did not abuse his discretion when he declined to ask the juror's proposed question. We therefore affirm Hudson's conviction.

*Underlying facts*

Hudson took the stand at her trial, and the defense attorney announced that he would rest the defense case after Hudson completed her testimony.

Apparently, it was the practice of the trial judge to allow jurors to propose supplemental questions for witnesses after the two attorneys had completed their examinations of the witness. The judge (with the input of the attorneys) would screen these questions outside the hearing of the jury, and then any approved questions would be put to the witness in open court.

At the conclusion of Hudson's testimony, the jurors submitted several proposed questions for Hudson. One of these proposed questions concerned the possibility that Hudson might have suffered a traumatic brain injury in the past.

The juror's proposed question was, "Has Mrs. Hudson ever experienced a TBI — traumatic brain injury?"

This question was apparently prompted by Hudson's behavior in court. We infer this from the comments of the defense attorney during the discussion of whether the juror's proposed question was proper. The defense attorney argued that the juror's question might have been prompted by concerns about the demeanor that Hudson had demonstrated in court — her "ability to perceive [and] her ability to speak, [or] other cognitive functions — all the things that the jury's been watching her do, and observing her, not just when she's on the stand, but [also] when she's sitting here."

The judge decided to conduct a *voir dire* examination of Hudson before he ruled on the juror's question. On *voir dire*, Hudson testified that she had suffered a head injury about five years earlier, that she had spent a night in the hospital, and that the doctors or nurses had bandaged her head. But when the judge asked Hudson whether she was ever diagnosed with traumatic brain injury as a result of this head injury, Hudson answered:

> *Hudson*: I don't know. But it seems like I'm forgetful a lot more [since then]. I went in [to the hospital] in an ambulance, and my doctor was Jordan Greer. I don't remember if he told me anything, or whatever. It was so long ago.

A few minutes later, the judge ruled that he would not submit the juror's proposed question to Hudson. The judge noted that, according to Hudson's testimony on *voir dire*, Hudson did not know the answer to the juror's question. Because Hudson conceded that she could not provide an answer to the question, the judge decided that he would not submit the juror's question to Hudson in open court:

> *The Court*: The [proposed] question is, "Did she have a TBI?" [And] the answer is, [Hudson] doesn't know. She doesn't know if she did. She doesn't know if there was any diagnosis, and there's no evidence that there was such a diagnosis. Since it's clear that she has no knowledge, personal knowledge, upon which to answer the question, the Court will not recall her to ask [the juror's proposed question].

*Why we uphold the trial judge's ruling*

Our major task in this appeal is to identify the nature of the trial judge's ruling.

In her briefs to this Court, Hudson tries to portray the judge's ruling as a declaration by the judge that the defense attorney was prohibited from introducing any evidence that Hudson had suffered a serious head injury a few years previously and that, ever since this injury, Hudson had suffered greater mental difficulties.

We reject this characterization of the judge's ruling for two reasons.

First, as we have explained, the judge made his ruling *after* the defense attorney had finished presenting his case. The defense attorney told the judge that the defense would rest after Hudson completed her testimony, and the defense attorney had already completed his examination of Hudson. It was only then that the judge solicited questions from the jurors.

Given this context, there was no reason for the trial judge to issue a ruling that limited the scope of the evidence that the defense attorney could present at trial. The defense attorney had already introduced all the evidence he wanted.

Second, and more importantly, the record does not support Hudson's assertion that the judge issued a broad ruling about the scope of admissible evidence at Hudson's trial. The transcript of the proceedings shows that the judge simply issued a ruling on the narrow issue immediately before him: the issue of whether the jury should be called back to the courtroom so that Hudson could publicly answer the juror's question about whether she had ever experienced a traumatic brain injury.

Under Alaska Evidence Rule 602, "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." As we have explained, Hudson stated (on *voir dire*) that she

had no personal knowledge as to whether she had ever been diagnosed as having suffered a traumatic brain injury. Hudson knew that she had experienced a head injury, but "traumatic brain injury" is a medical diagnosis which, as the name suggests, requires a finding that the brain itself has been injured. And under Alaska Evidence Rule 701, a lay witness such as Hudson would not be allowed to offer a medical diagnosis.

The judge therefore did not abuse his discretion when he declined to ask the juror's question about traumatic brain injury.

If the defense attorney believed, based on the discussion of this issue, that he needed to obtain and introduce more evidence to explain Hudson's apparent difficulties with memory or perception in the courtroom, the defense attorney could have asked to re-open the defense case for this purpose. The judge's ruling did not foreclose such a request or the introduction of this kind of evidence. But the defense attorney did not pursue the matter.

*Conclusion*

The trial judge never issued the broad evidentiary ruling that Hudson attacks on appeal. Rather, the record shows that the judge issued a circumscribed ruling dealing with the issue immediately in front of him: he ruled that he would not ask the juror's proposed question about whether Hudson had ever experienced a traumatic brain injury. And based on the record, we conclude that the judge's ruling was not an abuse of discretion.

Accordingly, the judgement of the district court is AFFIRMED.