IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LEMMIE L. SPRADLIN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12356 Trial Court No. 1HA-15-10 CR MEMORANDUM OPINION No. 6510 — August 16, 2017

Appeal from the District Court, First Judicial District, Haines, Keith B. Levy, Judge.

Appearances: Glenda J. Kerry, Law Office of Glenda J. Kerry, Girdwood, for the Appellant. Amy W. Paige, Assistant Attorney General, Criminal Division, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

In March 2015, Linda Huber moved into an apartment in the downstairs portion of Lemmie L. Spradlin's home in Haines. Huber agreed that, in lieu of rent, she

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

would work on the downstairs apartment to make it more liveable. Spradlin told Huber she did not have a spare key to the apartment and would not enter it while Huber was gone.

Huber soon became suspicious that Spradlin was entering the apartment in her absence, and she installed a new lock. Huber returned home one day to discover glue in the lock. Huber called the Haines Police Department and Officer Jeremy Groves responded. Because the glue was still wet, Officer Groves was able to open the door to Huber's apartment using her key. Officer Groves then discovered that there was also glue in the padlocks that secured Huber's trailer. Officer Groves left to locate Spradlin and to get a statement from her. Huber called her friend Patrick Philpott, who agreed to come over and help with the glued trailer locks. Philpott eventually cut the locks off with a grinder.

While Philpott was still working on the locks, Spradlin drove up in her van. According to Huber's testimony at trial, she grabbed one of the destroyed locks and went up to the driver's side window to confront Spradlin. Huber told Spradlin that she should pay for the destroyed locks. Huber then noticed that Spradlin had a spray can in her hand and she was shaking it. Huber was afraid Spradlin would spray her with whatever was in the can, so she walked to the front of the van. She asked Spradlin to get out of the van and talk to her, "woman to woman." Huber testified that Spradlin then got "this evil look on her face" and started the van. Huber thought Spradlin was going to drive away, but instead Spradlin drove toward Huber, striking her right knee. Huber was afraid she would be pulled under the van, so she climbed onto the hood. Spradlin then put the van in reverse and Huber slipped off the hood. Spradlin drove at Huber again and knocked her up against the house. Huber had to climb over the hood to get away.

Huber's friend, Philpott, did not witness the first impact, but he heard tires throwing up gravel and looked up to see Huber on the roof of the van with her legs

straight out. By the time Philpott made it to the driveway, Spradlin had driven the van into Huber a second time, pushing her up against the house.

Philpott, Huber, and Spradlin all drove to the police station in separate vans to report the incident. Huber was then taken by ambulance to the local clinic. Spradlin told the police that Huber hit the van window with something metal and then climbed onto the van's hood. Spradlin said she was afraid for her life and tried to drive away, which caused Huber to slide off the van. Spradlin said she thought about putting glue in Huber's locks but did not actually do so. She said maybe her guardian angel glued the locks. When Officer Groves fingerprinted Spradlin, he observed that she had dried glue on her fingers.

Based on this evidence, Spradlin was convicted of fourth-degree assault[1] and fifth-degree criminal mischief.[2] Spradlin now appeals.

Spradlin's claim that the district court acted impermissibly when it limited her to one character witness

During Spradlin's trial, her attorney sought to introduce three witnesses who would testify regarding Spradlin's character for peacefulness. When the district court asked why three character witnesses were necessary, the defense attorney responded:

> Well, we have three witnesses. I assume we would get to this point where the Court would decide how many could actually testify. We have three available. I'd like to offer three. I think three does not yet become cumulative. So, I mean, we're, you know, we've got everybody available so I thought I'd throw them all on the table.

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[1] AS 11.41.230(a)(2).

[2] Former AS 11.46.486(a)(2) (2014).

The district court ruled that, in light of the parties' conflicting accounts of what happened, evidence of Spradlin's character for peacefulness was relevant. But the court then said: "What I don't necessarily see is that ... more than one witness really is necessary[.]" The defense attorney replied:

> I see where the Court's coming from. I disagree. I think that three is not yet cumulative. But can I have one minute to go talk to them, decide who's going to testify?

Without further discussion of this issue, the attorney presented one character witness.

Spradlin argues that the court violated her constitutional right to present a defense by limiting her to one character witness. Under Alaska Evidence Rule 403, trial courts have discretion to exclude relevant evidence as cumulative if the evidence (1) supports an uncontested or established fact or (2) repeats a point made by previous evidence.[3]

Here, Spradlin's attorney made no effort to establish that the testimony of the three proposed character witnesses was not repetitive or, alternatively, that the testimony was sufficiently important to the jury's assessment of the evidence that the court should allow it even though it was repetitive. Given this record, we conclude that the court's decision to limit Spradlin to one character witness was not an abuse of discretion under Rule 403. We reject Spradlin's claim that the court's ruling violated Spradlin's constitutional right to present a defense for the same reason.[4]

On appeal, Spradlin suggests that she was entitled to present more than one character witness because the State presented two witnesses, Huber and Philpott, who

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[3] *Wasserman v. Bartholomew*, 923 P.2d 806, 813 (Alaska 1996).

[4] *See Larson v. State*, 656 P.2d 571, 574-75 (Alaska App. 1982) (holding that "Alaska Rule of Evidence 403, when properly applied, does not violate a defendant's constitutional right to confront the witnesses against him and present evidence in his own behalf").

both testified that Spradlin behaved violently and had an "evil" or "god-awful" expression on her face. But as the State points out, the trial court's task was to properly apply the rules of evidence, not to aim for numerical parity in the parties' witnesses. Moreover, the testimony of these two State witnesses was clearly not cumulative, as Philpott was the only witness who directly corroborated Huber's account of the assault.

Spradlin's claim that the district court impermissibly limited the defense attorney's cross-examination of Huber

Spradlin next claims that the district court twice violated her constitutional right to confront the witnesses against her by limiting her attorney's cross-examination of Huber. The scope of cross-examination is generally a matter within the discretion of the trial court, but limitations on cross-examination will amount to constitutional error if they "impair the accused's ability to establish bias, prejudice, or motive."[5]

Spradlin's first argument relates to the defense attorney's effort to establish Huber's tendency to exaggerate. This issue arose when Huber testified on cross-examination that she spoke to Philpott about "his frustration with [the case] being postponed on and on and on." This cross-examination followed:

> *Defense attorney*: [W]hen you say this case has been continued numerous times and you're frustrated with that, your memory's absolutely clear that it's been continued numerous times?
>
> *Huber*: It has been continued one time.
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> *Defense attorney*: You just insinuated earlier that it had been continuously put off.
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> *Huber*: Continuously put off as far as when the phone lines were down they weren't able to talk to anybody.

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[5] *Johnson v. State*, 889 P.2d 1076, 1080 (Alaska App. 1995).

> *Defense attorney*: You told the Court in a hearing a little over a month ago that the case had been postponed again and again.

At this point the prosecutor objected on relevance grounds. In a bench conference, Spradlin's attorney argued that this inquiry was relevant to impeach Huber's claim that she had a clear memory of the assault. The attorney explained: "It goes to how [Huber's] emotions are affecting her ability to perceive what's going on" and how Huber's emotions lead her to "exaggerate[] things that have happened to make it seem worse for her." The attorney said he also wanted to ask Huber about her earlier assertion that she had been to court five or six times, when in fact she had been to court only two or three times. The court disallowed this inquiry, ruling that it was only marginally relevant and that the defense attorney had made his point, because Huber had already admitted that the case had been continued only once.

We agree with the trial court's assessment of the marginal relevance of this inquiry, which risked opening the door to entirely collateral evidence regarding the reasons for, and the validity of, Huber's complaints about the pace of Spradlin's criminal proceedings. Furthermore, to the extent that Spradlin's attorney was trying to establish that Huber was characteristically untruthful based on prior specific instances of untruthfulness, that evidence was impermissible character evidence.[6] We conclude that the district court did not violate Spradlin's constitutional rights by limiting her attorney's cross-examination of Huber in this way.

Spradlin's next argument is that the court impermissibly cut short the defense attorney's questioning of Huber on the accuracy of Huber's perceptions. During cross-examination, Huber told the defense attorney that her perception of how long she had been on the hood of Spradlin's van was likely distorted because "time tends to stop"

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[6] *Id.* at 1081.

in crisis situations. The defense attorney then used this testimony to question the accuracy of Huber's perceptions of the incident more generally:

> *Defense attorney*: [Y]ou mentioned ... when you were up on the hood of the van, at least the first time, that time sort of stood still? Yes?
>
> *Huber*: Okay, yes.
>
> *Defense attorney*: And that was due to what was going on and how it was affecting you emotionally, it sort of affected your perceptions of what was happening?
>
> *Huber*: No, it did not affect my perception of what was happening.
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> *Defense attorney*: Despite the fact that you said you weren't perceiving time how it probably went?
>
> *Huber*: In anything, I think in any type of injury people don't perceive time.
>
> *Defense attorney*: So it affected your perception?
>
> *Huber*: No.
>
> *Defense attorney*: You just testified it affected your perception of time.

The prosecutor objected, arguing that the defense attorney's question had been asked and answered, and the court instructed the defense attorney to move on. The defense attorney then asked: "So your testimony is despite time standing still, that you were able to perceive everything as it happened." The prosecutor objected again, and the court sustained the objection.

This record shows that the defense attorney asked Huber twice whether the stress of her emotional state had affected the accuracy of her perceptions of the assault, and both times Huber responded that the accuracy of her perceptions had not been affected. The district court reasonably could have concluded that allowing Spradlin's

attorney to ask essentially the same question a third time would not have elicited any new information and would have been a waste of time.[7] This was an appropriate exercise of the court's authority over the conduct of the trial. We therefore reject Spradlin's claim of constitutional error.

Conclusion

We AFFIRM the judgment of the district court.

[7] *See* Alaska R. Evid. 403.