IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BYRON DEMANTLE, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11907 Trial Court No. 4BE-13-95 CR MEMORANDUM OPINION No. 6529 — October 25, 2017

Appeal from the Superior Court, Fourth Judicial District, Bethel, Charles W. Ray Jr., Judge.

Appearances: Glenda Kerry, Law Office of Glenda J. Kerry, Girdwood, for the Appellant. Terisia K. Chleborad, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

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

Judge SUDDOCK.

Byron Demantle appeals his conviction for attempting to import more than ten and one-half liters of alcohol into a local option community.[1] He raises four

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

[1] AS 04.11.499(a), (c)(3).

arguments on appeal: 1) the evidence was insufficient to support his conviction as a principal or an accomplice; 2) the trial court erred in instructing the jury that Demantle could be found guilty for soliciting his accomplice to import alcohol; 3) the State did not adequately corroborate the testimony of Demantle's accomplice; and 4) the trial court committed plain error in not instructing the jury to view his accomplice's testimony with caution.

We find no merit to Demantle's contentions and we affirm his conviction.

Facts

Because Demantle challenges the sufficiency of the evidence, we recite the evidence in the light most favorable to upholding the jury's verdict.[2]

Demantle and his girlfriend, Davida Lott, both resided in Akiak, a local option community that has banned the sale or importation of alcohol within city limits. In February 2013, Demantle and Lott traveled on Demantle's snow machine to Bethel and stayed in the house of Demantle's sister, who was out of town. On February 4, 2013, Lott purchased twenty-two bottles of R&R whiskey from a store in Anchorage and paid to have the bottles shipped to Bethel.

The shipper, Everts Air Cargo, faxed a cargo manifest for its flight to the Alaska State Troopers on February 6, 2013. The manifest showed that Lott was to receive two boxes of alcohol. The trooper who reviewed the manifest recognized Lott's name and knew that she lived in Akiak, a dry community. The trooper decided to investigate.

Two troopers waited outside the Everts office in Bethel for Lott to pick up the shipment. They observed an Everts employee load two boxes bearing the R&R logo

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[2] *Eide v. State*, 168 P.3d 499, 500 (Alaska App. 2007).

into a cab that Lott then entered. The troopers followed the cab to the home of Demantle's sister.

Demantle was present and, according to Lott's testimony, saw Lott bring the alcohol into the home. Lott testified that she stowed twenty of the bottles in a duffel bag, and that Demantle placed the other two in his backpack. Demantle and Lott then loaded the backpack, the duffel bag, and other items onto a sled attached to Demantle's Polaris snow machine. The troopers followed the couple to a dumpster and watched Demantle discard the two empty R&R boxes, which the troopers soon retrieved. When the snow machine turned onto a trail that the troopers could not follow, they contacted law enforcement in nearby communities to be on the lookout.

A Village Public Safety Officer from Kwethluk (a village between Bethel and Akiak) awaited the snow machine. Eventually, he saw the couple on a Polaris snow machine being towed by another snow machine. He stopped the machines and transported Demantle and Lott to Kwethluk's public safety office.

Shortly thereafter, two troopers arrived. Lott removed a tarp from the sled and opened the duffel containing the R&R for the troopers. She disclosed that two other bottles were in Demantle's backpack, and the troopers located those bottles.

Lott pleaded guilty to a misdemeanor charge and testified at Demantle's trial. She testified that Demantle was initially not aware that she had ordered the alcohol. She further claimed that they were going to drop most of the alcohol off at a fish camp and then continue on to Akiak. But she admitted that she had not mentioned a fish camp when she earlier told troopers that she was en route to Akiak.

The jury convicted Demantle. This appeal followed.

The evidence was sufficient to convict Demantle

Demantle was indicted for attempted felony transportation of alcohol into a community that has banned the sale or importation of alcohol.[3] A person who knowingly transports more than ten and one-half liters of distilled spirits into such a community is guilty of a class C felony.[4]

Demantle challenges the sufficiency of the evidence to convict him of this crime, either as a principal or an accomplice. When we review the sufficiency of the evidence, we consider those facts in the record most favorable to the verdict and such reasonable inferences as a jury may have drawn from those facts.[5]

Under AS 11.16.100, a person is "guilty of an offense if it is committed by the person's own conduct or by the conduct of another for which the person is legally accountable under AS 11.16.110, or by both." Alaska Statute 11.16.110 assigns legal accountability to those who promote the commission of an offense by soliciting its commission or by aiding or abetting another to plan or commit an offense. As we explained in *Andrew v. State*:

> [T]he government is not required to prove that the crime was committed either wholly through the defendant's own conduct or wholly through the conduct of others for which the defendant is vicariously liable. Rather, a person's criminal liability is evaluated based on a combination of these two. Accordingly, the government is not required to show that evidence supporting one or the other of these theories of

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[3] AS 04.11.499(a), (c)(3).

[4] AS 04.16.200(e)(2).

[5] *Morrell v. State*, 216 P.3d 574, 576 (Alaska App. 2009).

> culpability would be sufficient, standing alone, to survive a motion for a judgement of acquittal.[6]

Based upon the evidence at trial, the jury could conclude that Lott and Demantle jointly executed a plan to import alcohol into Akiak. Even if the jury believed that Lott was the primary bootlegger, the jury could still reasonably conclude that Demantle knowingly aided her. Demantle was aware that the duffel bag contained alcohol. He drove his snow machine to a dumpster to dispose of the R&R boxes. Then, he transported Lott and the contraband from Bethel toward Akiak. Accordingly, the evidence was sufficient to support Demantle's conviction, based on his own acts, the acts of Lott for which Demantle was legally responsible, or a combination thereof.

The trial court did not err in instructing the jury regarding solicitation

The jury was instructed that a person is liable as an accomplice if the person either solicits another person to commit the offense, or aids or abets the other person in planning or committing the offense. Demantle objected at trial to the solicitation portion of this instruction, contending that no evidence indicated that Demantle solicited Lott to import the alcohol. On appeal, Demantle again argues that giving this instruction was error.

We evaluate a trial court's decision to give a jury instruction for abuse of discretion.[7] Evidence at trial suggested that Demantle solicited Lott to purchase liquor, knowing that he and Lott would then return to Akiak with it. The judge did not abuse his discretion when he instructed the jury on solicitation.

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[6] *Andrew v. State*, 237 P.3d 1027, 1039 (Alaska App. 2010).

[7] *Stoneking v. State*, 800 P.2d 949, 950-51 (Alaska App. 1990).

Sufficient evidence corroborated Lott's testimony

On appeal, Demantle argues that "the evidence implicating Demantle was entirely based on the testimony of Lott," an alleged accomplice, without adequate corroboration.

Alaska Statute 12.45.020 mandates that "[a] conviction shall not be had on the testimony of an accomplice unless it is corroborated by other evidence that tends to connect the defendant with the commission of the crime[.]"[8]

From the time that Lott retrieved her alcohol at Everts Air in Bethel, almost all of the details to which she testified that tended to connect Demantle with the charged crime were confirmed by other evidence in the case. For example, troopers observed Lott transport two boxes known to contain twenty-two bottles of R&R whiskey to the home of Demantle's sister in Bethel. Demantle's sister, Angela Jackson, testified that Demantle had arranged to stay in her Bethel home at that time. The troopers observed Lott and a man, later identified as Demantle, emerge from the house, load supplies onto a snow machine sled, and then drive to a dumpster — where the man discarded two cardboard R&R boxes. Lott and Demantle were soon stopped as they proceeded toward Akiak with twenty bottles of R&R in a duffel on Demantle's sled. And when the troopers opened Demantle's backpack, it contained two bottles of R&R.

This evidence sufficiently corroborated Lott's trial testimony regarding Demantle's connection to the charged crime.

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[8] *See Itta v. State*, 191 P.3d 1013, 1015-16 (Alaska App. 2008) (explaining that corroborating evidence must create a rational belief that an accomplice's testimony accurately connected the defendant to the charged crime).

The trial court did not commit plain error in failing to instruct the jury to view Lott's testimony with caution

On the morning of trial, Lott agreed to plead guilty and to testify at Demantle's trial. But while Lott testified to her joint involvement with Demantle in obtaining and transporting the alcohol, she further testified that this was not a crime at all — because the two intended to drop the alcohol off at a fish camp, where possession of alcohol was legal, before proceeding on to Akiak. During final summation, Demantle's attorney expressly argued that the jury should believe Lott's testimony that the alcohol was destined for a legal location, a fish camp outside Akiak's bounds.

Demantle now argues that the judge committed plain error by failing to instruct the jury that the testimony of an accomplice should be viewed with caution. Plain error is error that was not the result of intelligent waiver or tactical decision not to object, was obvious, affected substantial rights, and was prejudicial.[9]

The law recognizes that an accomplice may have a powerful interest in deflecting guilt toward a purported colleague in crime.[10] But at trial, Lott did not attempt to inculpate Demantle; instead, she gave an account that essentially exculpated him. In addition, the defense attorney did not argue that Lott was probably lying, but rather that jurors should believe Lott's testimony that the couple intended to deliver the alcohol to a fish camp where importation of alcohol was legal.

Given Lott's testimony and the defense attorney's argument, the judge did not commit plain error by failing to instruct the jury to view Lott's account with caution. Indeed, if the judge had done so, Demantle might well be arguing now that the judge committed error by giving such an instruction.

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[9] *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

[10] *Price v. State*, 647 P.2d 611, 613-15 (Alaska 1982) (discussing rationale behind cautionary instruction).

Conclusion

We AFFIRM the judgment of the superior court.