

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

RONALD ALLEN McINTOSH,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11945  
Trial Court No. 3AN-13-4038 CR

MEMORANDUM OPINION

No. 6543 — November 15, 2017

Appeal from the Superior Court, Third Judicial District,  
Anchorage, Jack W. Smith, Judge.

Appearances: Ronald Allen McIntosh, *in propria persona*,  
Wasilla, 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.

Ronald Allen McIntosh appeals his convictions for first- and second-degree sexual assault, as well as second- and fourth-degree assault.

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

McIntosh was convicted of assaulting and sexually assaulting a woman named J.O. McIntosh's main argument on appeal is that, given J.O.'s acknowledged falsehoods in her pre-trial statements to the authorities, as well as the inconsistencies in J.O.'s account of what happened to her, no reasonable jury could have concluded that the State had proved the charges against McIntosh beyond a reasonable doubt.

In essence, McIntosh asserts that the evidence presented by the State was contradictory, implausible, and otherwise unworthy of belief. But when we review a claim that the evidence presented at a criminal trial is insufficient to support the defendant's conviction, we are required to view the evidence (and all reasonable inferences to be drawn from that evidence) in the light most favorable to upholding the verdict.<sup>1</sup> The question is whether the evidence is adequate to support a conclusion by a reasonable mind that there was no reasonable doubt as to the defendant's guilt.<sup>2</sup>

Here, as McIntosh points out, there were reasons to question J.O.'s account of the assault. But the trial evidence also contained significant corroboration of J.O.'s account — in particular, the various items of physical evidence obtained from McIntosh's residence, and the extensive bruising of J.O.'s body that was observed during her medical examination.

Under our law, it is the jury who decides whether a witness's testimony is believable and accurate. Based on the evidence presented at McIntosh's trial as a whole, we conclude that reasonable jurors could find that J.O. was telling the truth about the assault. We therefore conclude that the evidence presented at McIntosh's trial is legally sufficient to support his convictions.

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<sup>1</sup> *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

<sup>2</sup> *George v. State*, 362 P.3d 1026, 1030 (Alaska 2015); *Iyapana*, 284 P.3d at 848-49.

McIntosh also claims that the police failed to pursue evidence that had significant exculpatory value for McIntosh, in that they failed to conduct a proper forensic examination of J.O.'s mobile phone. McIntosh argues that, had the police properly examined J.O.'s mobile phone, they would have found the log of J.O.'s calls, and this call log would have shown that J.O. was not telling the truth when she initially told the police that she had just met McIntosh on the day of the assault.

But the record shows that the police soon became aware that there was a pre-existing relationship between J.O. and McIntosh — and when the police questioned J.O. further, she admitted that this was true.

This information was disclosed to the defense — and when J.O. testified at McIntosh's trial, she was impeached with her prior false statement that she had just met McIntosh that day. In other words, to the extent that J.O.'s call log would have been further evidence that she had a pre-existing relationship with McIntosh, and that she lied about this pre-existing relationship, the call log would have been cumulative of the other evidence that was introduced at McIntosh's trial on these matters.

McIntosh contends that the police *purposefully* did not retrieve J.O.'s call log because they wanted to avoid finding any information that might damage the State's case, or that might aid McIntosh's case. But the record does not support this contention.

According to the testimony at trial, the police tried to access the contents of J.O.'s phone, but the phone had an access code, and the police lacked the technology to bypass the code. When a police detective asked J.O. for her pass code — sometime in May, several weeks after the police took the phone from J.O. — J.O. told the detective that she could no longer remember the code.

The trial court made no findings on this issue — because McIntosh did not raise this issue in the trial court. But to the extent that McIntosh now claims that the

record plainly discloses misconduct on the part of the police, the record does not support McIntosh's claim.

Moreover, the record shows that even though the police were unable to access the contents of J.O.'s mobile phone, the police did preserve the phone. The phone itself (and any evidence that the phone might contain) was available for inspection and forensic examination by the defense, assuming that the defense had access to technology that would have allowed them to retrieve the phone's contents.

In short, the record does not support McIntosh's claim of plain error — his claim that the police purposely failed to gather potentially exculpatory information, or that they withheld this information from the defense. Nor has McIntosh shown that his defense was prejudiced in any way by the police's inability to access the contents of J.O.'s mobile phone.

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