

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

GEORGE STEVEN STROM III,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12308
Trial Court No. 1JU-14-1162 CR

MEMORANDUM OPINION

No. 6562 — January 3, 2018

Appeal from the Superior Court, First Judicial District, Juneau,
Louis J. Menendez, Judge.

Appearances: Josie W. Garton, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.
Elizabeth T. Burke, 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 ALLARD.

George Steven Strom III was convicted of third-degree assault under
Alaska's recidivist assault statute based on evidence that he committed a fourth-degree

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

assault against his girlfriend, Beverly Jackson, and evidence that Strom had been previously convicted of two or more assault offenses during the last 10 years.¹ Strom stipulated to his prior convictions, and his trial therefore focused on the alleged assault against Jackson.

At trial, Jackson testified that she had no memory of the assault because she was currently in a form of therapy that had taught her to block out anything that was “bad” that had happened to her. Because Jackson testified that she had no memory of the assault, the State introduced her prior inconsistent statements about the assault as substantive evidence under Alaska Evidence Rule 801(d)(1)(A).² This evidence included prior statements to two different police officers as well as Jackson’s testimony at grand jury. The State also introduced photographs of the injuries to Jackson’s lip and the testimony of Jackson’s mother who took her to the hospital, and who testified that Jackson had redness on one eye and complained of being sore.

At the close of evidence, Strom’s attorney moved for a judgment of acquittal, arguing that the State had failed to present sufficient evidence to prove beyond a reasonable doubt that Strom assaulted Jackson. In particular, the defense attorney argued that Jackson’s prior inconsistent statements were insufficient, standing alone, to support a conviction for assault. The superior court denied the motion for judgment of acquittal. Following deliberations, the jury found Strom guilty of assaulting Jackson.

On appeal, Strom argues that the superior court erred in denying his motion for judgment of acquittal, relying on our decision in *Brower v. State*.³ In *Brower*, we concluded that the uncorroborated grand jury testimony of the alleged victim —

¹ See AS 11.41.220(a)(5) (Alaska’s recidivist assault statute).

² See *Sheldon v. State*, 796 P.2d 831, 839 (Alaska App. 1990).

³ *Brower v. State*, 728 P.2d 645 (Alaska App. 1986).

testimony that the victim expressly recanted at trial — was legally insufficient to support the defendant’s conviction for sexual assault.⁴

We question whether the reasoning in *Brower* applies to this case, given that, unlike the victim in *Brower*, Jackson did not repudiate her earlier statements about the assault or claim that the assault did not happen. Instead, she simply claimed that she no longer had any memory of the events because of her recent therapy.

In any case, even assuming that the corroboration requirement under *Brower* does apply, we conclude that this corroboration requirement was met in this case. As we have previously explained, the corroborating evidence need not independently establish commission of the charged offense; it need only induce a rational belief in the veracity of the out-of-court statements.⁵ Here, the corroborating evidence included the photographs of Jackson’s injuries, the police observations of those injuries, her mother’s testimony regarding Jackson’s complaints of soreness, and the fact that Jackson called her mother for a ride to the hospital after the assault.

Given this corroborating evidence, we conclude that the trial jury had a sufficient basis for evaluating the veracity of Jackson’s prior statements, and we further conclude that, viewing the evidence in the light most favorable to upholding the verdict, there was sufficient evidence at trial from which a rational fact-finder could reasonably conclude that Strom was guilty of assaulting Jackson beyond a reasonable doubt.⁶

Accordingly, the judgment of the superior court is AFFIRMED.

⁴ *Id.* at 647-48.

⁵ *See Nunn v. State*, 845 P.2d 435, 441 (Alaska App. 1993); *Thompson v. State*, 769 P.2d 997, 1000 (Alaska App. 1989); *Clifton v. State*, 758 P.2d 1279, 1282 (Alaska App. 1988); *Bodine v. State*, 737 P.2d 1072, 1075 (Alaska App. 1987); *see also Avery v. State*, 1993 WL 13156870, at *1 (Alaska App. Sept. 29, 1993) (unpublished).

⁶ *See Sheldon*, 796 P.2d at 839.