

SUPREME COURT OF ALASKA

Hess v. State

435 P.3d 876 (Alaska 2018) · No. S-16466 · Decided December 21, 2018

SUMMARY

The Alaska Supreme Court held that improper prosecutorial comments attacking the defense attorney and the defense theory during closing argument constituted plain error. Because the case depended substantially on conflicting witness testimony and the comments were repeated without a curative instruction, the court found a reasonable probability that the error affected the verdict. The court reversed Christopher Hess’s assault convictions and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carney, Justice; Stowers, Chief Justice; Winfree, Justice; Maassen, Justice; Bolger, Justice
JURISDICTION	Alaska
DECIDED	December 21, 2018
DOCKET	S-16466
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hess was convicted by a jury of second- and third-degree assault. The court of appeals affirmed, concluding that improper prosecutorial statements during closing argument did not constitute plain error. The Alaska Supreme Court granted Hess's petition for hearing and reversed.
STANDARD OF REVIEW	Plain-error review under Alaska's four-part test: error not waived or tactically forfeited, obviousness, effect on substantial rights or fundamental fairness, and prejudice.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Christopher Seegana Hess v. State of Alaska

TOPICS

- prosecutorial misconduct
- preservation of error
- appellate procedure
- criminal procedure
- harmless error

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

legal ethics

QUESTIONS PRESENTED

1. Whether the prosecutor's improper closing-argument statements attacking the defense and defense counsel constituted plain error despite Hess's failure to object at trial.
2. Whether the improper prosecutorial comments affected Hess's substantial rights and prejudiced the fundamental fairness and outcome of the trial.

HOLDINGS

1. Alaska plain-error review requires four findings: an error not resulting from an intelligent waiver or tactical decision not to object, obvious error, an error affecting substantial rights by pertaining to the fundamental fairness of the proceeding, and prejudice.
2. The prosecutor's repeated attacks on defense counsel and accusations that the defense was vilifying the victim were improper and constituted obvious error.
3. The prosecutor's improper closing-argument statements were prejudicial plain error because they affected substantial rights and there was a reasonable probability that they affected the outcome of the trial.

KEY QUOTATIONS

"All four factors must be met to determine whether plain error occurred:" (-7 to -8, 7323)

"The comments in the closing arguments here attacking the defense attorneys and accusing Hess's counsel of vilifying the victim clearly violate these standards and were obvious error." (-9 to -10, 7323)

"The prejudicial comment is before the jury before the objection can be made, and the curative effect of an admonition of the court to disregard the comment is of debatable value." (-12, 7323)

FACTUAL BACKGROUND

Police responded to a reported assault at Patricia Hess's apartment and found Patricia upset, apparently intoxicated, with bruising on her throat and wet clothing. Patricia told police that her son, Christopher Hess, had strangled her during an argument, although at trial she remembered little of the incident and testified that she had been drinking, was taking multiple medications, and experienced dissociation when stressed. Hess denied remembering the assault, and defense witnesses challenged Patricia's credibility. During closing argument, the prosecutor repeatedly accused the defense of vilifying Patricia and attacked the defense attorney's strategy and credibility.

PROCEDURAL HISTORY

The superior court tried Hess on charges of second-degree assault for strangulation and third-degree assault for recklessly placing his mother in fear of serious physical injury with a dangerous instrument. The jury convicted him on both counts. Although Hess did not object at trial, the court of appeals considered his claim that the

prosecutor's closing argument was improper and affirmed. The Alaska Supreme Court granted review, applied Alaska's four-part plain-error test, found plain error, reversed the convictions, and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The convictions were reversed and the case was remanded to the superior court for a new trial.

CASES CITED

- Adams v. State, 261 P.3d 758 (Alaska 2011)
- Hess v. State, 382 P.3d 1183 (Alaska App. 2016)
- Rogers v. State, 280 P.3d 582 (Alaska App. 2012)
- United States v. Olano, 507 U.S. 725 (1993)
- Patterson v. State, 747 P.2d 535 (Alaska App. 1987)
- Goldsbury v. State, 342 P.3d 834 (Alaska 2015)
- Bruno v. Rushen, 721 F.2d 1193 (9th Cir. 1983)
- Van Hatten v. State, 666 P.2d 1047 (Alaska App. 1983)
- Dorman v. State, 622 P.2d 448 (Alaska 1981)