

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

ALEX JESUS CARDENAS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12059  
Trial Court No. 3KN-11-1596 CR

MEMORANDUM OPINION

No. 6465 — May 17, 2017

Appeal from the Superior Court, Third Judicial District, Kenai,  
Jane F. Kauvar, Judge.

Appearances: Michael Barber, Barber Legal Services, Boston,  
Massachusetts, and Richard Allen, Public Advocate, Anchorage,  
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 ALLARD.

Following a jury trial, Alex Jesus Cardenas was convicted of second- and  
third-degree misconduct involving a controlled substance based on the heroin and

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

methamphetamine found in his car. On appeal, Cardenas argues that the underlying traffic stop was unlawful and that the superior court erred in denying his motion to suppress the drugs found in the car. Because we agree with the superior court that the traffic stop was lawful, we affirm Cardenas's convictions.

*Factual background*

On September 11, 2011, at about 10:30 p.m., Alaska State Trooper Larry Dur'an was on patrol when he saw an SUV stopped in the roadway on Self Street in Sterling, Alaska. Self Street is a two-lane gravel road with shallow ditches on either side and no shoulder. The street is lined with residences.

Trooper Dur'an had seen the SUV parked in the same spot on two earlier rotations through the area. As Dur'an approached, he saw another car try to pass the parked SUV; the car was forced to enter the oncoming traffic lane in order to get past the parked SUV. When Dur'an pulled up behind the SUV, the driver put it in motion and the car began to slowly roll forward. Believing that the driver was in violation of 13 Alaska Administrative Code 02.340(a) for impeding the normal flow of traffic, Dur'an initiated a traffic stop.

Upon contact with the driver, later identified as Cardenas, Dur'an observed signs of drug-induced impairment. Following failed field sobriety tests, Cardenas was arrested and charged with driving under the influence. A later search of the car pursuant to a warrant revealed 60 individual bags of heroin, several grams of methamphetamine, a scale, an apparent ledger, and packaging materials.

Cardenas was indicted for second-degree misconduct involving a controlled substance<sup>1</sup> for possessing heroin and third-degree misconduct involving a controlled

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<sup>1</sup> Former AS 11.71.020(a)(1), *repealed* by ch. 36, § 179, SLA 2016.

substance<sup>2</sup> for possessing methamphetamine. Prior to trial, Cardenas moved to suppress all evidence obtained from the search warrant, contending that Dur'an's traffic stop was unlawful.

The superior court denied the motion, concluding that Trooper Dur'an had probable cause to believe that Cardenas's parked car was blocking the flow of traffic in violation of 13 AAC 02.340(a). The superior court also found that the stop was not pretextual.

Cardenas was convicted at trial and later sentenced to 8 years with 3 years suspended (5 years to serve).

This appeal followed.

*Trooper Dur'an had probable cause to initiate the traffic stop*

Probable cause exists when a “detaining officer, in light of all the circumstances, ha[s] a particularized and objective basis for suspecting [a] particular person ... of criminal activity.”<sup>3</sup> Whether probable cause exists under a particular set of facts is a question of law that we review *de novo*.<sup>4</sup>

Here, the trooper had probable cause to believe that Cardenas was in violation of Alaska's traffic code — specifically, 13 AAC 02.340(a) which states that “no person may stop, park or leave standing a vehicle, whether attended or unattended, upon or within eight feet of a roadway, except where the roadway is of sufficient width

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<sup>2</sup> Former AS 11.71.030(a)(1), *amended by* ch. 36, § 42, SLA 2016.

<sup>3</sup> *Burnett v. State*, 264 P.3d 607, 609-10 (Alaska App. 2011).

<sup>4</sup> *Trumbly v. State*, 379 P.3d 996, 1000 (Alaska App. 2016).

and design to allow parking without interfering with the normal flow of traffic[.]”<sup>5</sup> The record supports the trial court’s findings that Cardenas stopped his SUV on a roadway without any shoulder for a significant period of time, and that Trooper Dur’an specifically witnessed another car enter the oncoming lane of traffic in order to pass Cardenas’s SUV.

On appeal, Cardenas argues that his conduct may have fallen into possible exceptions to 13 AAC 02.340(a). That is, he argues that it was possible that he had stopped his car in this manner in order to “avoid conflict with other traffic.” It was also possible that he had stopped only to “pick up or discharge a passenger or passengers in front of a public or private driveway.” But there was no evidence presented to the trial court that Cardenas was avoiding conflict with other traffic or that he was picking up or unloading passengers. Nor did Trooper Dur’an witness any such activity. Moreover, probable cause “hinges on probability rather than certainty [and] a showing of probable cause need not rule out other explanations that are merely possible.”<sup>6</sup> We therefore conclude that the traffic stop was lawful and that the superior court did not err in denying Cardenas’s motion to suppress.

### *Conclusion*

We AFFIRM the judgment of the superior court.

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<sup>5</sup> The regulation provides an exception for emergencies but requires the vehicle to have activated its emergency flashers, or used flares or reflective triangles to mark its place. 13 AAC 02.340(a).

<sup>6</sup> *State v. Koen*, 152 P.3d 1148, 1152 (Alaska 2007); *see also McCoy v. State*, 491 P.2d 127, 130 (Alaska 1971) (“[Possible innocent explanations] do not negate the facts and circumstances within the officers’ knowledge which supplied the probable cause ... [I]t is not necessary that at the time the arrest is made the peace officer have sufficient evidence for conviction.”).