

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

RYAN C.L. WITTE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12639
Trial Court No. 3KN-15-710 CR

MEMORANDUM OPINION

No. 6494 — July 19, 2017

Appeal from the District Court, Third Judicial District, Kenai,
Sharon A.S. Illsley, Judge.

Appearances: Justin A. Tapp, Denali Law Group, Anchorage,
for the Appellant. Darin R. Markwardt, Assistant District
Attorney, Kenai, and Jahna Lindemuth, Attorney General,
Juneau, for the Appellee.

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

PER CURIAM.

A jury convicted Ryan C.L. Witte of driving under the influence (DUI) and
two counts of fourth-degree misconduct involving weapons (for possessing weapons

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

while he was intoxicated).¹ On appeal, Witte contends that the district court erred when it found that the arresting officer had probable cause to arrest him and denied Witte's motion to suppress the results of a blood test. We find no error and affirm.

Soldotna police officer Stephen Clary testified at an evidentiary hearing on Witte's motion to suppress. Officer Clary testified that he went to the Soldotna McDonald's after he received a report that a pickup truck had struck the building. Upon his arrival, Officer Clary saw Witte standing next to his pickup truck. Witte told the officer that after he ate a hamburger, he dozed off in his truck. As he slept, the truck rolled backwards and struck the building.

Witte fumbled with his wallet as he searched for his driver's license, not realizing that he was dropping money on the ground. Officer Clary observed that Witte had bloodshot eyes and slightly slurred speech. Witte performed poorly on several field sobriety tests.

In addition to Officer Clary's testimony, the State presented video and audio recordings of the officer's interaction with Witte.

Based on Officer Clary's testimony and the police video and audio, the district court denied Witte's motion to suppress the results of his blood test. The court found Officer Clary to be credible and found that the police video and audio of the encounter supported the officer's testimony. The court therefore concluded that Officer Clary's observations established probable cause to arrest Witte for DUI.

On appeal, Witte argues that there were innocent explanations for many of Clary's observations.

Probable cause to arrest exists when "facts and circumstances known to the [arresting] officer would support a reasonable belief that an offense has been or is being

¹ AS 28.35.030(a)(1) and AS 11.61.210(a)(1), respectively.

committed[.]”² Officer Clary’s observations established probable cause to arrest Witte for DUI.³ These observations included: evidence that Witte had collided with a building, poor performance on multiple field sobriety tests as well as non-standardized tests, bloodshot eyes, slightly slurred speech, and dexterity problems as he retrieved his wallet. While there may have been innocent explanations for much of Witte’s behavior, this does not defeat probable cause. A police officer is not required to eliminate the possibility of innocent explanations for behavior in assessing probable cause to arrest.⁴

We AFFIRM the judgment of the district court.

² *State v. Joubert*, 20 P.3d 1115, 1118-19 (Alaska 2001).

³ *See, e.g., Pitka v. State*, 378 P.3d 398, 400-01 (Alaska App. 2016) (finding probable cause where the police officer observed a defendant park illegally, make an apparent drug transaction and then drive erratically); *State v. Grier*, 791 P.2d 627, 631-32 (Alaska App. 1990) (upholding arrest based on officer’s observations that the defendant smelled of alcohol, failed the horizontal gaze nystagmus test, and was confused and unstable); *Skuse v. State*, 714 P.2d 368, 373 (Alaska App. 1986) (finding probable cause based on evidence of erratic driving, difficulty furnishing identification, and an odor of alcohol).

⁴ *See McCoy v. State*, 491 P.2d 127, 130 (Alaska 1971) (noting that potential innocent explanations do not negate knowledge that establishes probable cause to arrest a suspect).