

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

DEAN A. WILSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-11809, A-11800,
& A-11810

Trial Court Nos. 3KN-13-99 CR,
3KN-10-38 CR, & 3KN-11-1558 CR

MEMORANDUM OPINION

No. 6514 – August 16, 2017

Appeal from the District Court, Third Judicial District, Kenai,
Matthew Christian, Magistrate Judge.

Appearances: Michael Barber, under contract with the Public
Defender Agency, and Quinlan Steiner, Public Defender,
Anchorage, for the Appellant. Samuel D. Scott, Assistant
District Attorney, Kenai, and Jahna Lindemuth, Attorney
General, Juneau, for the Appellee.

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

Judge SUDDOCK.

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

Dean A. Wilson was arrested for driving with a revoked license.¹ He subsequently filed a motion to suppress, arguing that the evidence against him was the fruit of an illegal investigative stop. Based upon the testimony of the two Alaska State Troopers who contacted Wilson, the district court denied Wilson's suppression motion. The district court ruled that the testimony of the two troopers established that their contact with Wilson had not amounted to an investigative stop.

As we explained in our previous decision in this case,² the testimony of the two troopers differed significantly regarding the circumstances of the encounter, so we remanded this case to the district court for further findings of fact. On remand, the district court concluded that the testimony offered by Trooper Ethan Norwood was the more accurate account of the encounter.

The judge found that when Wilson's vehicle approached the two troopers, the two trooper vehicles were parked along Treasure Chest Avenue in Kenai in a manner that possibly blocked ingress and egress along the road. Seeing Wilson's vehicle approaching, Trooper Norwood moved his vehicle around the corner to make the road passable.

After re-parking, Trooper Norwood exited his vehicle and began walking toward Wilson's vehicle in order to speak with the driver (Wilson). Seeing the officer approach, Wilson slowed and rolled down his window. Trooper Norwood then noticed Wilson was not wearing his seatbelt. Trooper Norwood asked to see Wilson's driver's license — at which point, Wilson confessed that his license was revoked. Both troopers testified that at no point did they make any verbal or physical gestures that the defendant should stop his vehicle.

¹ AS 28.15.291(a)(1).

² *Wilson v. State*, 2016 WL 3369199, at *1 (Alaska App. June 15, 2016) (unpublished).

In *Majaev v. State*, the Alaska Supreme Court held that the defendant was seized when the officer motioned with his hand for the driver to back up and speak with him.³ The court based its decision on the language of AS 28.35.182(b), which requires that a person stop “as soon as practical and in a reasonably safe manner under the circumstances when requested or signaled to do so by a police officer.” The supreme court held that the officer’s hand motion constituted a signal to stop, as defined under AS 28.35.182(d)(2).⁴

Wilson argues that Trooper Norwood’s approach toward Wilson’s vehicle was either a signal or a request under AS 28.35.182(b). However, an officer’s mere approach on foot toward a moving vehicle, without any verbal or physical indication that the vehicle should stop, does not constitute a signal or request under our statute.

Given these facts, the district court properly ruled that Trooper Norwood’s encounter with Wilson did not amount to a seizure for Fourth Amendment purposes.⁵

Accordingly, the judgment of the district court is AFFIRMED.

³ 223 P.3d 629, 634 (Alaska 2010).

⁴ *Id.* at 633.

⁵ See Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* (5th ed. 2012), § 9.4(a).