

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

LEON DUANE BRADFORD,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11847
Trial Court No. 3PA-11-2060 CR

MEMORANDUM OPINION

No. 6518 — August 23, 2017

Appeal from the Superior Court, Third Judicial District, Palmer,
Beverly Cutler, Judge.

Appearances: Elizabeth D. Friedman, Assistant Public
Advocate, 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 SUDDOCK.

After Alaska State Trooper Joel Miner arrested Leon Duane Bradford for
driving with a revoked driver's license, Trooper Miner telephoned Bradford's probation

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

officer. The probation officer authorized Trooper Miner to search Bradford's van, and Trooper Miner then discovered heroin and marijuana in the van.

Bradford moved to suppress this evidence, arguing that because the trooper called the probation officer and prompted the probation officer to authorize the search, the trooper — rather than the probation officer — was the search's instigator. Bradford argued that this robbed the search of its validity as a probation search.

The superior court denied Bradford's suppression motion. Following a bench trial, Bradford was convicted of fourth-degree misconduct involving a controlled substance for possessing heroin.¹ This appeal followed.

Because we agree with the superior court that the search of Bradford's van was a lawful probation search, we affirm Bradford's conviction.

The stop and search

On the morning of August 11, 2011, Trooper Miner investigated a citizen's report of a reckless driver. The citizen reported that the driver had entered Matanuska Lake Park. Trooper Miner drove to the park and located a parked van that fit the description given by the citizen reporter. The van was unoccupied, but the trooper determined through a records search that it was registered to Bradford. He also learned that Bradford's license was revoked and that Bradford was on felony probation for several offenses, including fourth-degree misconduct involving a controlled substance (methamphetamine and heroin).

Trooper Miner called Bradford's probation officer, Brian Clausson, and obtained Bradford's address and phone number. Officer Clausson directed Trooper Miner to arrest Bradford for probation violations if Bradford was indeed the driver.

¹ Former AS 11.71.040(a)(3)(A) (2010).

Trooper Miner and his fellow trooper thought Bradford might be hiding in the woods watching them, so they activated their sirens and left the park as if they had been called to another scene. Then they waited. In less than an hour, Bradford entered his van and left the park, only to be stopped by the two troopers.

Trooper Miner observed distinctive “track marks” on Bradford’s arms, which he believed were from recent hypodermic needle use. Bradford admitted to using heroin several times during the recent past. Trooper Miner arrested Bradford for the crime of driving with license revoked (DWLR).

Trooper Miner then called Officer Clausson a second time. Trooper Miner informed Officer Clausson of Bradford’s arrest for DWLR. Trooper Miner also told Officer Clausson that Bradford had “track marks” on his arms and that Bradford had admitted to recent heroin use. Trooper Miner explained that if Officer Clausson wanted to arrest Bradford for probation violations, he should file the paperwork to accomplish that quickly, as Bradford was readily bailable for the driving offense.

Less than two minutes later, Trooper Miner called Probation Officer Clausson back. Trooper Miner explained that he had forgotten to inquire whether Officer Clausson wanted the troopers to take any further action before they left Bradford’s van by the roadway. The probation officer then authorized the troopers to search the van pursuant to Bradford’s search condition. During their search of Bradford’s van, the troopers found .57 grams of heroin, 47.35 grams of marijuana, and drug paraphernalia.

Bradford was indicted for fourth-degree misconduct involving a controlled substance for possessing heroin.² He was convicted of this crime following a bench trial.

² Former AS 11.71.040(a)(3)(A) (2010).

Bradford's motion to suppress evidence

Bradford moved to suppress the evidence found during the search of his van. He argued that the search was illegal because Trooper Miner, rather than the probation officer, initiated the search, and that Trooper Miner's telephone call to Officer Clausson seeking search authority was a "pretext for evading the warrant requirement." The State opposed the motion, arguing that the search was valid because the probation officer directed Trooper Miner to conduct the search.

Superior Court Judge Beverly Cutler held an evidentiary hearing on the suppression motion. Trooper Miner testified that when he called the probation officer immediately before departing the scene, he consciously refrained from asking the probation officer to delegate search authority to him. The trooper testified that he instead asked, "[I]s there anything [that] you want us to do?" The trooper explained that he had been trained to proceed in this fashion, because a direct request by a police officer for search authority might trigger questions about the legality of the probation search.

Probation Officer Clausson testified that, after he was briefed by Trooper Miner during the first and second telephone calls, he independently decided during the third call that a search of the vehicle was appropriate under the circumstances. He accordingly "requested that [Trooper Miner] act as my agent and conduct a probation search of Mr. Bradford's van."

Judge Cutler found that, during Trooper Miner's third phone call to Officer Clausson, Trooper Miner "in good faith [dropped] a hint to the probation officer that maybe he would be wanting to search." Judge Cutler found that even though Trooper Miner dropped this hint, it was Officer Clausson, rather than Trooper Miner, who instigated the search. Judge Cutler accordingly denied Bradford's motion to suppress.

The search of Bradford's van was a valid probation search

On appeal, Bradford argues that the search of his van violated the Fourth Amendment because the trooper — rather than the probation officer — initiated the search. Bradford argues that Judge Cutler erred by finding that Trooper Miner did not instigate the search and by concluding that the search did not violate Bradford's Fourth Amendment rights.

We review the trial court's factual findings on a motion to suppress for clear error and view the evidence in the light most favorable to upholding the trial court's ruling.³ We independently determine whether the trial court's factual findings support its legal conclusions.⁴

A search by a probation officer of a probationer's residence or vehicle is a recognized exception to the warrant requirement as long as: (1) "the search has been authorized by the conditions of probation or release," (2) "the search is conducted by or at the direction of probation authorities," and (3) "the search bears a direct relationship to the nature of the crime for which the [probationer] was convicted."⁵

Bradford does not point us to any specific factual finding by Judge Cutler that he deems to be clearly erroneous. Instead, he argues that, as a matter of law, the fact that Trooper Miner called Probation Officer Clausson to obtain search authority means that Trooper Miner, rather than Officer Clausson, instigated the search for purposes of Fourth Amendment analysis.

A probation search is invalid when it appears that the probation officer acted as "the agent, tool, or device of the police," or if the search was "merely a cover

³ *State v. Gibson*, 267 P.3d 645, 650 (Alaska 2012).

⁴ *Id.*

⁵ *Milton v. State*, 879 P.2d 1031, 1034 (Alaska App. 1994) (citations omitted).

for illegal police activity.”⁶ But when our cases ask whether the search was “initiated,” “instigated,” or “directed” by the police rather than the probation officer, these terms signify something more than but-for causation. In other words, the mere fact that a police contact leads a probation officer to take action does not render the probation officer the agent or pawn of the police, so long as the probation officer exercises independent discretion.

Here, Trooper Miner told the probation officer that Bradford had needle marks on his arm, that Bradford had confessed to recent use of heroin, and that he was driving without a license. Therefore, the probation officer had valid reasons to be concerned that Bradford was violating several conditions of probation. Trooper Miner provided Probation Officer Clausson with sufficient facts and circumstances to enable Officer Clausson to exercise independent discretion and request the search for valid probation supervision purposes.

Judge Cutler’s finding that Probation Officer Clausson independently evaluated the data furnished to him and then exercised his discretion to authorize a search of the van is supported by the record and is not clearly erroneous. Based on these facts, we agree with Judge Cutler’s ruling that the search occurred pursuant to the probation search exception to the Fourth Amendment.

Conclusion

We AFFIRM the judgment of the superior court.

⁶ *Lane v. State*, 1999 WL 494996, at *2 (Alaska App. July 14, 1999) (unpublished) (citing Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* (3d ed.1996), § 10.10(e), Vol. 4, p. 794 (internal quotations omitted)).