

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

TYRELL D. RENNER,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12288
Trial Court No. 3KN-14-250 CR

MEMORANDUM OPINION

No. 6521 — September 6, 2017

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

Appearances: Laurence Blakely, Assistant Public Defender, and
Quinlan Steiner, Public Defender, 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.*

Judge ALLARD.

Following a jury trial, Tyrell D. Renner was convicted of driving under the influence and misconduct involving weapons in the fourth degree.¹ On appeal, Renner

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

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

argues that his convictions should be reversed because he claims that the district court erred when it denied his motion to suppress various statements based on an alleged *Miranda* violation. Because we conclude that any error in introducing the statements at trial was harmless beyond a reasonable doubt, we affirm Renner's convictions.

Underlying facts

At about 4:00 a.m. on February 23, 2014, a motorist made a REDDI call to 911,² reporting that another car had swerved into the caller's lane near mile 11 of Kalifornsky Beach Road, almost causing a head-on collision with the caller's vehicle. The caller described the other car as "an older Buick, probably [an] 80s [model,]" that looked like it was white or gray with a vinyl top. The caller reported that the car continued swerving as it proceeded southbound.

Alaska State Trooper Jason A. Woodruff responded to the REDDI call. At mile 6.5 of Kalifornsky Beach Road, the trooper located an unoccupied white 1984 Oldsmobile Regency with a vinyl top. The vehicle appeared to be stuck in the snow and the trooper observed a rifle in the passenger seat. A license plate check revealed that the car belonged to Tyrell Renner, who lived within a half mile of where the car was found.

Trooper Woodruff noticed a single set of tracks in the snow that led away from the vehicle to a puddle, which he believed to be urine. Trooper Anthony M. Sondergaard then arrived at the scene. The two troopers followed the tracks from mile 6.5 to mile 6, where the tracks somewhat faded, but then picked up again at a driveway. The troopers followed the tracks in the driveway to the door of a cabin, later identified as Renner's cabin. The tread of the tracks appeared to be exactly the same from the car

² REDDI stands for Report Every Drunk Driver Immediately.

door to the cabin's entrance. The troopers took photographs of the tracks; these photographs were later presented to the jury at trial.

Through the windows of the cabin, the troopers could see a male, later identified as Renner, lying on a couch. He had a lighted headlamp on his head. Trooper Woodruff knocked on the door and windows and announced the troopers presence, but Renner did not wake up. Some time later, Sergeant Jeremy Grieme arrived on the scene. After discussing the situation with Sergeant Grieme, Trooper Sondergaard applied telephonically for a search warrant to enter the residence. The warrant was granted at 5:47 a.m., approximately two hours after the REDDI call.

Pursuant to the search warrant, the three troopers entered the home and awakened Renner. The troopers told Renner that they had a search warrant and they asked for his identification. They also told Renner that someone had called the police and reported that Renner almost hit them head-on, and that his car had been found in a ditch. Renner responded, "I don't believe that." While one trooper searched Renner for weapons, the other officers questioned him about his whereabouts earlier in the evening.

In response to the troopers' questions, Renner denied that he had been driving, although at one point he responded affirmatively when asked if he had come from Soldotna. When the trooper then mischaracterized his statement as an admission that he had driven from Soldotna — "And you told us you drove here from Soldotna" — Renner answered, "I didn't say that." During the interaction with the officers, Renner repeatedly denied driving, denied knowing who had driven his car, and stated that he had been home watching TV. The troopers did not inform Renner that he did not have to speak with them.

During a pat-down search of Renner, the officers found keys to the Oldsmobile in Renner's pocket. Renner did not offer an explanation for the keys. Nor did he answer any of the troopers' questions about when he started drinking. The

troopers did not observe any alcoholic beverages near the couch Renner had been sleeping on.

The troopers conducted field sobriety tests, which Renner performed poorly. Renner was then arrested for driving under the influence and read the *Miranda* warning explaining his right to be silent. A later breath test revealed a blood-alcohol level of .106 percent, which is above the legal limit of .08 percent.

During the processing of the breath test, Renner volunteered that he had had a designated driver, although he refused to give the troopers the name of the designated driver.

While being transported to Wildwood Correctional Facility, Renner appeared to be speaking on his cell phone to someone named “Doug.” The trooper involved in the transport heard Renner tell Doug to call the troopers and tell the troopers that he (Doug) was driving and that he (Doug) put the car where it was parked. The trooper never saw the cell phone, so he could not confirm whether “Doug” had called Renner or Renner had called “Doug,” or whether Renner was only pretending to make the phone call.

On the morning of trial, Renner’s defense attorney made an untimely oral motion to suppress all of the statements that Renner had made to the troopers in his cabin, arguing that these statements had been obtained in violation of Renner’s rights under *Miranda v. Arizona*.³ The trial judge denied the oral motion to suppress, finding that Renner had not been subjected to custodial interrogation for purposes of *Miranda* during his initial interaction with the troopers.

At trial, Renner conceded that he was drunk when he was contacted by the troopers, but he denied that he had been driving his car. Renner also argued that the

³ 384 U.S. 436 (1966).

State had not proved beyond a reasonable doubt that the car described in the REDDI call was his car, because the description did not exactly match his car.

Following deliberations, the jury convicted Renner of driving under the influence⁴ and misconduct involving weapons (based on the rifle found in the car and Renner's intoxication).⁵ The district court sentenced Renner to a composite sentence of 150 days with 130 days suspended (20 days to serve).

Renner's Miranda claim on appeal

On appeal, Renner renews his claim that he was subjected to custodial interrogation for purposes of *Miranda* when the three troopers entered his house in the middle of the night with a search warrant and immediately began questioning him about his activities that night.

The State argues first that Renner forfeited his right to raise this suppression claim because he waited until trial to make his oral motion to suppress and he never provided any reason for the untimeliness of the motion. Although we agree with the State that Renner's oral motion to suppress was untimely under Alaska Criminal Rule 12(e), we nevertheless consider this claim properly preserved for appeal because the trial court ruled on its merits, despite its untimeliness.⁶

The State also argues that this case is indistinguishable from *Grossman v. State*, a recent unpublished case where we upheld the trial court's conclusion that the

⁴ AS 28.35.030(a)(1).

⁵ AS 11.61.210(a)(1).

⁶ *See Wagner v. State*, 390 P.3d 1179, 1183 (Alaska App. 2017) (“[W]hen the trial court overlooks the untimeliness and reaches the merits of the defendant's challenge[,] then an appellate court should not reject the claim on forfeiture grounds.”).

police questioning of the defendant in his home did not qualify as custodial interrogation and therefore did not require *Miranda* warning.⁷

In response, Renner focuses on the aspects of the interaction that were significantly more coercive than *Grossman* or the average investigative stop, including the forced entry into the house in the middle of the night with a search warrant and the presence of multiple uniformed officers.⁸

We agree with Renner that his case is distinguishable from *Grossman*, given the timing and manner of the police entry into his house. We conclude, however, that we need not definitively resolve the question of whether Renner was subjected to custodial interrogation in this case because the record demonstrates that the admission of the statements obtained through this questioning was harmless beyond a reasonable doubt.⁹

The State's case against Renner rested primarily on evidence from the REDDI call, the discovery of Renner's car a short distance from the REDDI caller's location, the tracks from the car leading to Renner's front door, and the absence of anyone else who could have made those tracks and driven the car. Although the prosecutor at trial referred to Renner's initial statements to the police denying that he had driven the car, the prosecutor focused most of his attention on Renner's later volunteered statements about "Doug" and the "designated driver" that Renner refused to identify —

⁷ See *Grossman v. State*, 2015 WL 4064635 (Alaska App. July 1, 2015) (unpublished).

⁸ See *Moss v. State*, 823 P.2d 671, 674 (Alaska App. 1991) ("The amount of force which the police used to enter the residence and maintain control of the residence is a factor which supports a finding that a reasonable person in Moss's position would have felt that he was in police custody."). See also *Orozco v. Texas*, 394 U.S. 324, 326-27 (1969); *Bond v. State*, 788 A.2d 705, 713 (Md. App. 2002).

⁹ See *Adams v. State*, 261 P.3d 758, 773 (Alaska 2011).

arguing that these statements indicated consciousness of guilt and that they were Renner's attempts to construct a false alibi. Significantly, none of the statements that Renner made under the initial questioning included any admission of driving, nor were they inconsistent with Renner's defense at trial. Thus, given the evidence against Renner at trial, we conclude that there is no reasonable possibility that the admission of these statements had any affect on the jury's verdicts in this case.¹⁰

Conclusion

The judgment of the district court is AFFIRMED.

¹⁰ See *Anderson v. State*, 337 P.3d 534, 540 (Alaska App. 2014). See also *Jordan v. State*, 367 P.3d 41, 53 (Alaska App. 2016); *Jackson v. State*, 342 P.3d 1254, 1260 (Alaska App. 2014).