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, although it may be cited for whatever persuasive value it may have. See McCoy v. State, 80 P.3d 757, 764 (Alaska App. 2002).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JACOB MICHAEL CHRISTIANSEN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12658
Trial Court No. 3PA-13-02889 CR

MEMORANDUM OPINION

No. 6835 — November 13, 2019

Appeal from the Superior Court, Third Judicial District, Palmer, Vanessa H. White, Judge.

Appearances: Sharon Barr, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Mannheimer, Senior Judge.*

Judge MANNHEIMER.

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* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

Jacob Michael Christiansen was convicted of stealing three vehicles from car dealerships in Anchorage and Wasilla. These thefts occurred at separate times in August and September 2013.

Christiansen was originally indicted on charges relating to only one of these three vehicles, but the State charged Christiansen with stealing the other two vehicles after Christiansen successfully moved to dismiss the original indictment (based on the State's presentation of extraneous prejudicial evidence to the first grand jury).

After the second grand jury issued its indictment charging Christiansen with the theft of all three vehicles, Christiansen moved to dismiss this second indictment, alleging (among other things) that it was the product of prosecutorial vindictiveness. Christiansen contended that the State added the charges relating to the second and third stolen vehicles because the State wished to punish him for exercising his right to have the original indictment dismissed.

The superior court held an evidentiary hearing to resolve Christiansen's claim of vindictive prosecution.

At this hearing, the prosecutor who presented Christiansen's case to the original grand jury testified that, while he was presenting the State's case relating to Christiansen's theft of the first vehicle, he learned that Christiansen had probably stolen two other vehicles from the car dealerships. But the prosecutor did not have all the witnesses he needed to substantiate those other thefts — in particular, witnesses from the car dealership who could confirm that these other two cars were listed in the dealership's inventory but then went missing. Consequently, the prosecutor only asked the grand jury to indict Christiansen for the first stolen vehicle — but he gave the information about the other two vehicles to the prosecutor who was handling Christiansen's case for trial.

At a post-indictment hearing, Christiansen's defense attorney told the trial prosecutor that she was considering filing a motion to dismiss this first indictment. In

response, the trial prosecutor informed the defense attorney about the potential charges relating to the two other vehicles, and the prosecutor offered to forgo any new charges if Christiansen would plead guilty to a single count of vehicle theft (for the first vehicle).

Later, the trial prosecutor learned that the defense attorney was indeed pursuing a motion to dismiss the indictment. The prosecutor reminded the defense attorney of the other potential charges, and he also reminded her of the State's offer to let Christiansen plead guilty to a single count of vehicle theft. The defense attorney told the prosecutor that she would discuss these matters with Christiansen. The defense attorney also told the prosecutor that she would not oppose his request to extend the State's deadline for responding to the defense motion to dismiss the indictment until Christiansen made a decision about the proposed plea bargain.

The following month, the defense attorney told the prosecutor that Christiansen had decided to pursue the motion to dismiss the indictment. After the superior court granted this motion, the prosecutor gathered the evidence that was needed to support the additional theft charges, and then he obtained an indictment charging Christiansen with the thefts of all three vehicles.

Based on this testimony, the superior court found that the prosecutor filed the additional charges in response to the breakdown of plea negotiations, and that the additional charges were not an improper retaliation for Christiansen's motion to dismiss the first indictment.

In reaching this conclusion, the superior court relied on our unpublished decision in *Nicoli v. State*.[1] In *Nicoli*, we explained that it is not prosecutorial vindictiveness when a prosecutor offers to forego a potential criminal charge in exchange for the

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[1] *Nicoli v. State*, unpublished, 2003 WL 23096849 (Alaska App. 2003).

defendant's guilty plea to an existing charge, and the prosecutor then files the additional charge after the defendant rejects the plea bargain.[2]

On appeal, Christiansen does not dispute that this is a correct characterization of the law. However, Christiansen challenges the superior court's finding that the prosecutor added the new charges in response to the breakdown of plea negotiations. Christiansen points out that the plea negotiations initially broke down in May 2014, but the superior court did not grant Christiansen's motion to dismiss the original indictment until July, and the State re-indicted Christiansen in August. According to Christiansen, the timing of these events demonstrates that the State's real reason for charging him with the thefts of the other two vehicles was not the breakdown of plea negotiations, but simply retaliation for Christiansen's decision to pursue his motion to dismiss the original indictment.

The superior court's finding about the prosecutor's motive for pursuing the additional charges is a finding of fact. We must affirm this finding unless we are convinced that it is clearly erroneous — *i.e.*, "unless, based on the record, we are left with a definite and firm conviction ... that a mistake has been made."[3]

We have reviewed the record in this case, and we conclude that the superior court's factual finding is amply supported by the evidence. Accordingly, the judgement of the superior court is AFFIRMED.

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[2] *Nicoli*, 2003 WL 23096849 at *1, 3–4.

[3] *Meyer v. State*, 368 P.3d 613, 615 (Alaska App. 2016), quoting *Geczy v. LaChappelle*, 636 P.2d 604, 606 n.6 (Alaska 1981).