

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

STATE OF ALASKA,

Petitioner,

v.

NATALIE CHARLOTTE PEARL
SAVAGE,

Respondent.

Court of Appeals No. A-13778
Trial Court No. 4FA-19-03111 CR

MEMORANDUM OPINION

No. 6936 — April 14, 2021

Petition for Review from the Superior Court, Fourth Judicial District, Fairbanks, Ben A. Seekins, Judge.

Appearances: Renner J. St. John, Assistant District Attorney, Fairbanks, and Clyde “Ed” Sniffen Jr., Acting Attorney General, Juneau, for the Petitioner. Jessica Winn, Assistant Public Defender, Fairbanks, and Samantha Cherot, Public Defender, Anchorage, for the Respondent.

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Judge WOLLENBERG.

In October 2019, shortly before midnight, a Fairbanks police officer stopped Natalie Charlotte Pearl Savage for driving forty-three miles per hour in a thirty-mile-per-hour zone. During the traffic stop, the officer observed that Savage had

“slightly” red, bloodshot, and watery eyes, which the officer described as prominent red veins that did not completely engulf the eyeball, but which, in his experience, he had often seen in intoxicated drivers. When the officer asked for Savage’s registration and insurance documents, she had difficulty locating her insurance card, and the officer had to ask for it a second time. Savage admitted consuming one or two alcoholic beverages approximately twenty minutes before driving. The officer then asked Savage to perform field sobriety tests. When Savage stepped out of her car to perform the tests, the officer detected a strong odor of alcohol on her person. Based on these observations, as well as Savage’s poor performance on the field sobriety tests, the officer arrested Savage for driving under the influence.

Savage filed a motion to suppress the evidence obtained after the officer asked her to exit the car to perform field sobriety tests. Although Savage did not dispute the validity of the initial stop, she argued that the officer lacked reasonable suspicion to shift focus from the speeding infraction to an investigation of her possible impairment.¹ Following an evidentiary hearing, the trial court concluded that the officer’s observations did not amount to reasonable suspicion, and the court therefore granted Savage’s motion to suppress.

The State now petitions for review of the trial court’s order suppressing evidence.² When we review a trial court’s decision on a motion to suppress evidence,

¹ See *Brown v. State*, 182 P.3d 624, 625 (Alaska App. 2008) (recognizing that a police officer’s conduct during a traffic stop must be reasonably related — in duration, manner, and scope — to the circumstances justifying the stop).

² Although the trial court’s decision seemingly leaves the State without sufficient evidence to prosecute this case, the charge in this case has not been formally dismissed and is therefore not a final judgment for the purposes of Appellate Rule 202(b). As a result, the State has petitioned for our review under Appellate Rule 402. Had the case been dismissed,
(continued...)

we defer to the trial court’s factual findings unless they are clearly erroneous, viewing those findings in the light most favorable to upholding the trial court’s ruling.³ But we independently determine whether the trial court’s factual findings support its legal conclusion.⁴

It is evident from our review of this case that the trial court took great care in making and explaining its factual findings. For the most part, the court accepted the officer’s testimony about his observations. But with respect to Savage’s initial inability to locate her insurance document, the court found that the officer’s testimony lacked the necessary details to place this observation into meaningful context. The court noted that the officer did not describe how many documents Savage was sifting through, whether the insurance document was easy to differentiate — either by color, size, or other characteristic — from the remainder of Savage’s paperwork, or whether the officer’s contemporaneous questioning of Savage diverted her attention at a crucial moment in her search. Without any such details, the court found that it could not ascribe any significance to the fact that Savage had initially overlooked her insurance document.

We defer to the trial court’s finding that the officer’s description of Savage’s initial failure to retrieve her insurance document lacked necessary context.⁵ But

² (...continued)

it would have come before us as an appeal from a final judgment rather than as a petition for review. *See* AS 22.07.020(d); Alaska R. App. P. 202(b); *State v. Walker*, 887 P.2d 971, 976 (Alaska App. 1994) (recognizing that the State may appeal any adverse final judgment of a trial court in a criminal action unless trial or retrial would be barred by the prohibition on double jeopardy).

³ *State v. Miller*, 207 P.3d 541, 543 (Alaska 2009).

⁴ *Id.*

⁵ *Cf. id.* at 545 (recognizing the importance of considering “factual context”).

even without considering Savage’s difficulties in locating her insurance document, we conclude that the officer’s remaining observations were sufficient to establish reasonable suspicion to investigate whether Savage was impaired.

In determining whether the officer articulated “something more than an inchoate and unparticularized suspicion or hunch”⁶ sufficient to support reasonable suspicion, the court was required to consider “the totality of the circumstances known to the officer.”⁷ Here, Savage does not dispute that she was validly stopped for speeding. And during the course of the stop, which occurred just prior to midnight, the officer noticed additional indicia of criminality — namely, Savage’s bloodshot, watery eyes, and her admission to drinking one or two alcoholic beverages approximately twenty minutes before driving.

The court discounted the significance of the officer’s observations about Savage’s eyes — which the officer acknowledged were only “slightly” bloodshot and watery — because the officer’s concern was based on his own experience, rather than any formal training correlating slightly bloodshot eyes with intoxication. The court likewise noted that the amount of alcohol Savage admitted to drinking, if accurate, would not have resulted in a blood alcohol level above 0.08 percent.⁸

But while the trial court raised legitimate concerns about the sufficiency of each of these facts to support reasonable suspicion in and of itself, the court was required

⁶ *McQuade v. State*, 130 P.3d 973, 976-77 (Alaska App. 2006) (quoting *In the Matter of J.A.*, 962 P.2d 173, 176 (Alaska 1998)).

⁷ *Miller*, 207 P.3d at 544.

⁸ *But see Bochkovsky v. State*, 356 P.3d 302, 308 (Alaska App. 2015) (“[R]easonable suspicion does not require an officer to rule out all possibility of innocent behavior. The test serves as an objective standard for decisions that must be made quickly based on ‘slight proof.’” (quoting *Gibson v. State*, 708 P.2d 708, 709-10 (Alaska App.1985))).

to consider the facts collectively and in light of the officer’s experience.⁹ As both this Court and the Alaska Supreme Court have recognized, driving under the influence is a “serious criminal offense”¹⁰ — one that “poses a significant danger to the life and safety of others.”¹¹ Under the circumstances of this case, given the seriousness of the potential offense and the minimally intrusive nature of the request to perform field sobriety tests, we conclude that the officer’s extension of the stop to conduct an investigation into the possibility that Savage was driving under the influence was supported by reasonable suspicion.¹² And once Savage stepped out of her vehicle, the officer’s suspicion was enhanced even further by the strong odor of alcohol on Savage’s person.

⁹ See *Miller*, 207 P.3d at 544 (requiring the trial court to consider, in assessing reasonable suspicion, the totality of the circumstances known to the officer “in light of the officer’s experience”). Here, the trial court noted that the officer in Savage’s case was “extremely experienced in the DUI arena.”

¹⁰ *Lamb v. Anderson*, 147 P.3d 736, 744 n.51 (Alaska 2006).

¹¹ *Foley v. State*, 9 P.3d 1038, 1041 (Alaska App. 2000); see also, e.g., *Ebona v. State*, 577 P.2d 698, 701 (Alaska 1978) (recognizing that impaired drivers pose significant dangers to persons and property).

¹² See *Romo v. Anchorage*, 697 P.2d 1065, 1069 (Alaska App. 1985) (holding that an officer had reasonable suspicion to justify a request that the defendant perform field sobriety tests, despite not observing any poor driving, when the officer smelled alcohol on the defendant and the defendant admitted that he had been drinking); see also *Brooks v. Anchorage*, 1999 WL 34002423, at *1-2 (Alaska App. Nov. 10, 1999) (unpublished) (holding that, after conducting a lawful traffic stop for expired tags, the officer acted reasonably in ordering the driver to exit the vehicle, given the driver’s bloodshot, watery eyes, the driver’s “noticeable effort” to avoid passing the police car prior to the stop, and the late weekend hour; directing the driver to exit the vehicle was “minimally intrusive” when weighed against the seriousness of driving under the influence).

For these reasons, the State's petition for review is GRANTED. The decision of the district court granting the motion to suppress evidence is REVERSED.