

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

ROBERT DAVID BLODGETT,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13398
Trial Court No. 3PA-17-01970 CR

MEMORANDUM OPINION

No. 7004 — May 18, 2022

Appeal from the District Court, Third Judicial District, Palmer,
William L. Estelle, Judge.

Appearances: Bradley A. Carlson, The Law Office of Bradley A. Carlson, LLC, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Glenn J. Shidner, Assistant District Attorney, Palmer, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Judge HARBISON.

Robert David Blodgett was convicted, following a jury trial, of driving under the influence and refusal to submit to a chemical test.¹ He raises three issues on

¹ AS 28.35.030(a)(1) and AS 28.35.032(a), respectively.

appeal. First, he argues that he was seized without reasonable suspicion and arrested without probable cause, and that the district court therefore erred when it denied his motion to suppress. Second, he claims that the district court prevented him from presenting his defense by ruling that if he introduced evidence of the arresting officer's bias, the State would be permitted to introduce evidence of Blodgett's prior convictions. Third, he argues that the court erred when it allowed the State to introduce recordings of his interactions with police in which he used profanities and racial and homophobic slurs.

For the reasons explained in this opinion, we reject Blodgett's claims and affirm his convictions.

Background facts

Alaska State Trooper Shawn Norman responded to a 911 call reporting that there was an intoxicated man gathering firewood near the end of Maud Road, just outside of Palmer. The caller reported that the man had made threatening comments and appeared intoxicated, and that his vehicle was a white Ford Explorer with a black hood. Approximately fifteen minutes later, Norman spotted a vehicle matching this description driving towards him on Maud Road. After the vehicle passed, Norman started to turn around to follow the vehicle. But as Norman was turning around, the vehicle came to an abrupt stop in the middle of the road and the driver, Blodgett, exited the vehicle. Norman had not activated his emergency lights, or signaled in any way for the vehicle to stop.

Blodgett removed his jacket and sweatshirt, raised his arms in the air, and walked toward Norman's vehicle yelling profanities, including offensive racial and homophobic slurs. Norman instructed Blodgett to turn and face his vehicle, and Norman then placed Blodgett in handcuffs. Norman observed that Blodgett had bloodshot, watery eyes and smelled of alcohol.

Norman interviewed the passenger of Blodgett's vehicle, who admitted that Blodgett had been driving the vehicle and that Blodgett had consumed "a shooter." Norman brought Blodgett to the Palmer trooper station to conduct a breath test. Although Norman informed Blodgett that refusal to take the breath test was an independent crime, Blodgett refused to cooperate and repeatedly addressed the trooper using homophobic and racist slurs.

The State charged Blodgett with driving under the influence, refusal to submit to a chemical test, and disorderly conduct (under the theory that he had challenged Norman to a fight).² The jury found Blodgett guilty of driving under the influence and refusal to submit to a chemical test, but found him not guilty of disorderly conduct. Blodgett now appeals.

The district court correctly denied Blodgett's motion to suppress

Prior to trial, Blodgett asked the district court to suppress all of the evidence acquired during the incident on the grounds that Norman lacked reasonable suspicion to stop Blodgett and also lacked probable cause to arrest him. The district court denied Blodgett's motion after an evidentiary hearing.

Blodgett now challenges the district court's denial of his motion to suppress on two grounds.

First, Blodgett claims that the district court found that the 911 caller reported that Blodgett had been driving. According to Blodgett, this factual finding was clearly erroneous, and the district court thus erred in denying his motion to suppress.

We agree with Blodgett that the 911 caller did not specifically state that Blodgett had been driving. And in its written order, the district court described the caller

² AS 28.35.030(a)(1), AS 28.35.032(a), and AS 11.61.110(a)(5), respectively.

as having “reported that the driver, who was collecting firewood along the roadside, appeared intoxicated” and that “the male driver of the identified vehicle was intoxicated.” But this does not mean the court meant to assert that the 911 caller had specifically reported that Blodgett was the driver; rather, it seems likely that the court was referring to the fact that Norman’s later observations established that Blodgett was, in fact, both the driver of the vehicle and the person identified by the 911 caller.

More importantly, however, whether the 911 caller reported that Blodgett was driving was irrelevant to the underlying question presented to the district court — whether Norman had reasonable suspicion and probable cause to stop and arrest Blodgett. This is because, as we have just noted, Norman personally observed Blodgett driving the vehicle before making any attempt to stop or arrest him. Thus, even if the district court made the factual finding about which Blodgett now complains, that finding was not relevant to the court’s ultimate ruling. We therefore reject Blodgett’s argument on this point.

Blodgett’s second argument is that the district court erred in finding that Norman had probable cause to arrest Blodgett for DUI. We find no merit to this argument. The 911 caller reported that there was a “very drunk guy” on Maud Road and that his vehicle was a white Ford Explorer with a black hood. Approximately fifteen minutes later, Norman encountered a white Ford Explorer with a black hood along the same section of Maud Road. Although Norman had not activated his lights or otherwise indicated that the vehicle was required to stop, the vehicle stopped shortly after it passed Norman. Blodgett then exited the vehicle from the driver’s side, removed his jacket and sweatshirt, raised his arms in the air, and walked toward Norman’s vehicle, yelling profanities, including offensive racial and homophobic slurs. Under these circumstances, Norman had probable cause to conclude (1) that Blodgett was the man identified by the

911 caller; (2) that Blodgett was, in fact, intoxicated; and (3) that Blodgett had been driving. We therefore affirm the district court’s denial of Blodgett’s motion to suppress.

The district court did not prevent Blodgett from presenting his defense

During cross-examination, Blodgett’s defense attorney attempted to ask Norman about a prior interaction with Blodgett — specifically, about whether Norman had investigated a burglary at Blodgett’s house and whether Blodgett had subsequently filed a complaint against Norman based on his conduct during that investigation. The State objected, claiming that the prior interaction was not relevant to the disputed issues in this case. The defense attorney responded that evidence of the prior interaction would demonstrate that Norman was biased against Blodgett.

A lengthy bench conference was held outside of the presence of the jury, during which the parties discussed how the defense attorney would frame the question, and how Norman would respond. The defense attorney stated that he wanted to ask only whether Norman was aware a complaint had been filed, and that he was “not opening certain doors.” Norman then asked the court to clarify whether this proposed line of questioning would allow the State to ask Norman about other prior interactions with Blodgett. The court responded that Norman and Blodgett’s prior interactions were not relevant to the main issues in the case, but that they could potentially be relevant to whether Norman was biased against Blodgett. Ultimately, the court declined to rule on this issue in more detail, explaining that its decision would depend on what questions the defense attorney asked and how Norman answered.

After the jury returned, defense counsel did not continue the line of questioning that prompted the State’s original objection — *i.e.*, whether Norman had investigated a burglary at Blodgett’s house, and whether Blodgett had filed a complaint against Norman. Instead, the defense attorney simply asked, “Do you like Mr.

Blodgett?” Norman responded, “I don’t have an opinion of Mr. Blodgett one way or the other.” After this, the defense attorney did not ask any additional questions about the burglary investigation, Blodgett’s complaint, or Norman’s bias.

On appeal, Blodgett now argues that “[t]he trial court erred when it ruled that if Blodgett elicited testimony of his prior interactions with Trooper Norman, it would allow evidence of Blodgett’s previous convictions.” This inaccurately characterizes the district court’s ruling.

Blodgett’s prior convictions were never discussed during the bench conference, and the district court never ruled that the defense attorney’s proposed line of questioning would open the door to additional evidence. Rather, the court acknowledged that questions about Norman’s bias would potentially open the door to “a lot of things,” but that whether any particular piece of evidence would become admissible would depend on the defense attorney’s questions and Norman’s responses. Because Blodgett’s challenge is to an anticipatory ruling, we reject his claim on appeal.

But even if the court had made the ruling Blodgett now challenges, we would still reject Blodgett’s claim of error. Alaska courts have repeatedly held that a defendant fails to preserve a claim on appeal when the defendant abandons a defense or a line of questioning in response to a conditional, anticipatory, or potential ruling from the trial court.³ This procedural rule is necessary; because, in the absence of a record disclosing the precise nature of the testimony and evidence now objected to on appeal,

³ See *State v. Wickham*, 796 P.2d 1354, 1356-58 (Alaska 1990); *Sam v. State*, 842 P.2d 596, 598-99 (Alaska App. 1992); see also *Elze v. State*, 1997 WL 401579, at *4-7 (Alaska App. July 16, 1997) (unpublished); *Coleman v. State*, 2004 WL 1418700, at *4-5 (Alaska App. June 23, 2004) (unpublished).

the reviewing court can only speculate as to whether the trial court's ruling was erroneous and whether, assuming it was, that error prejudiced the defendant's case.⁴

Here, Blodgett abandoned his cross-examination of Norman's alleged bias when the court indicated that Blodgett's line of questioning would potentially open the door to additional evidence. Blodgett therefore failed to preserve his claim that the trial court improperly restricted the cross-examination.

The district court did not abuse its discretion when it admitted video and audio in which Blodgett used profanity and slurs

Prior to trial, Blodgett asked the district court to issue a protective order precluding the State from playing portions of the video and audio recordings of Blodgett's interactions with police in which he repeatedly used profanity and racial and homophobic slurs. The court denied Blodgett's request, and Blodgett now appeals. We conclude that the district court did not abuse its discretion when it denied Blodgett's request for a protective order.

The recordings, which captured Blodgett's behavior both before and after his arrest, were clearly relevant to proving various elements of the crimes with which Blodgett was charged. Furthermore, the profanities and slurs themselves were relevant to proving specific elements of the charged offenses. As the district court correctly concluded, they tended to show that Blodgett was intoxicated, an essential element of driving under the influence, and that Blodgett was challenging Norman to a fight, an essential element of disorderly conduct (under the subsection charged in this case).

Moreover, because Blodgett used profanity and offensive slurs throughout his interactions with police, it would have been nearly impossible to redact all of

⁴ *Wickham*, 796 P.2d at 1356-58.

Blodgett's offensive language while still maintaining the evidentiary value of the recordings. Nevertheless, the State redacted nearly all of the profanities from the recording in which Norman informed Blodgett that he was under arrest for driving under the influence. The State also redacted over seven minutes from the recording of the conversation in which Blodgett refused to take a breath test.

Although the jury heard some of Blodgett's offensive language, the State did not ask the jury to draw any improper inferences from these profanities and slurs. During closing argument, for example, the prosecutor was careful to note that the profanities and slurs were "not the offense," but were instead only relevant to show Blodgett's mental state during his interaction with the trooper.

Under these circumstances, we conclude that the district court did not abuse its discretion when it denied Blodgett's request to preclude the State from playing the remaining portions of the video recording that included his profane language and racist and homophobic slurs.

Conclusion

The judgment of the district court is **AFFIRMED**.