

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

HELEN ANN OLSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13519
Trial Court No. 1PE-18-00025 CR

MEMORANDUM OPINION

No. 7073 — October 4, 2023

Appeal from the Superior Court, First Judicial District,
Petersburg, William B. Carey, Judge.

Appearances: Marjorie A. Mock, Attorney at Law, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Heather Stenson, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

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

Judge ALLARD.

Helen Ann Olson was convicted, following a jury trial, of second-degree misconduct involving a controlled substance after she received a package in the mail

containing methamphetamine.¹ Prior to trial, Olson moved to suppress the methamphetamine, arguing, *inter alia*, that law enforcement did not have reasonable suspicion to detain the package and subject it to a sniff by a drug-detection dog. The superior court denied Olson's motion, and Olson now appeals this ruling. For the reasons provided in this decision, we conclude that there was reasonable suspicion to justify subjecting the package to a dog sniff, and we therefore affirm Olson's conviction.

Facts and proceedings

In March 2018, Sergeant James Kerr of the Petersburg Police Department received a tip from an anonymous informant that a man named Carlos Sandoval had shipped a package containing methamphetamine from San Diego to Petersburg.² Kerr contacted U.S. Postal Inspector Kevin Horne in Juneau and asked him to look out for a package coming to Petersburg from San Diego that may contain methamphetamine.

Later that day, Horne contacted the Petersburg post office and told them to look out for a package coming from the San Diego area. The next day, the Petersburg postmaster informed Horne that he had received a package mailed from San Diego. The package was sent via three-day priority mail and "had tape around the edges and . . . was a pretty large box." The postmaster photocopied the package's shipping label and sent a copy to Horne. The package was addressed to Helen Olson's P.O. Box in Petersburg.³

¹ Former AS 11.71.030(a)(1)(C) (2018).

² This was the second tip from this anonymous informant. The first tip was that Sandoval would be flying back to Alaska with drugs he bought in Mexico. Law enforcement stopped Sandoval in the Juneau airport but found no drugs. The informant then updated police that Sandoval had decided to ship the drugs instead.

³ Olson shared this P.O. Box with Sandoval. However, this information was not known to Inspector Horne until after he made the decision to subject the package to a dog sniff.

The sender's information, as provided on the printed shipping label, was:

Narsiso Martinez
265 3th [sic] Ave, Apt. D
San Diego, CA 92139

After receiving the photocopy of the shipping label, Horne searched for the sender's name and the return address in two databases and a search engine. Horne found no match for the return address in either database, and his final search returned a section of highway with no apartment building. He also found that the name "Narsiso Martinez" was not associated with that particular address, nor any address in California.

After concluding that the sender's name and address were fictitious based on his research, Horne determined that there was reasonable suspicion to detain the package and subject it to a dog sniff. The package was then sent to Juneau for the dog sniff. The dog alerted to the package, and Horne subsequently applied for and received a search warrant. A search of the package revealed fifty-one grams of methamphetamine.

Horne then organized a controlled delivery of the package in Petersburg. Olson picked the package up from the Petersburg post office and took it back to the residence she shared with Sandoval. When the police subsequently searched Olson's and Sandoval's residence, they also found other drug paraphernalia, including a scale and small baggies.

Olson and Sandoval were both charged with second-degree misconduct involving a controlled substance (possession with intent to distribute).⁴ Prior to trial, Olson moved to suppress the methamphetamine discovered as a result of the dog sniff,

⁴ Former AS 11.71.030(a)(1)(C) (2018) (possessing 2.5 grams or more of a schedule IIA or IIIA controlled substance with intent to deliver) & AS 11.16.110 (legal accountability based upon the conduct of another).

arguing that the postal inspector lacked reasonable suspicion to conduct the search. The superior court held an evidentiary hearing where U.S. Postal Inspector Kevin Horne and Petersburg Police Sergeant James Kerr testified to the facts summarized above.

The superior court denied Olson's motion to suppress, ruling that Horne had reasonable suspicion to detain the package and subject it to a sniff by a drug-detection dog. The court determined there was reasonable suspicion based on the following facts: 1) the anonymous tip regarding Sandoval's travel to Mexico to obtain methamphetamine and his planned return to Petersburg from San Diego (and that Sandoval had, indeed, flown from San Diego to Petersburg within that time frame); 2) the informant's tip that the methamphetamine was being shipped from San Diego; 3) this particular package was sent from San Diego to Helen Olson, who shared Sandoval's P.O. Box address in Petersburg; 4) the return address was fictitious; and 5) the package was taped and configured in a way typically utilized by persons sending contraband through the mail.

The court also took into account the fact that the package was sent from California, which the court referred to as a "shipping" or "source" state for illegal drugs, and the fact that the package was sent via priority mail. But the court specifically noted that it was not relying on the information regarding the fictitious name ("Narsiso Martinez") on the return address. At the evidentiary hearing, Horne acknowledged that he had not searched in the database properly for this name, because he had not checked all of the boxes required to run a complete search of all public records. A later search with these boxes checked found three individuals associated with this name in California — although none associated with San Diego addresses. However, the court expressed that it was "distinctly unimpressed" by Horne's "negligen[t]" database search for the sender's name, and it therefore disregarded this evidence in its analysis.

Following the evidentiary hearing, Olson and Sandoval were tried jointly. At trial, Olson’s attorney argued that the methamphetamine was for Olson’s personal use, but not for distribution. The jury acquitted Sandoval and found Olson guilty of second-degree misconduct involving a controlled substance.

This appeal followed.

Why we conclude there was reasonable suspicion to detain the package and subject it to a sniff by a drug-detection dog

“Whether the circumstances of a case establish reasonable suspicion is a mixed question of fact and law.”⁵ This Court reviews factual findings for clear error and the ultimate determination of whether reasonable suspicion existed *de novo*.⁶

On appeal, Olson asserts that Inspector Horne lacked reasonable suspicion to detain the package and subject it to a sniff by a drug-detection dog, and the superior court therefore erred in denying her motion to suppress. Specifically, Olson argues that the court improperly relied on information not known to Horne before he conducted the dog sniff, and that, without this information, Horne lacked reasonable suspicion to search the package.

The State acknowledges that some of the information relied on by the superior court — *e.g.*, the fact that Olson and Sandoval shared a P.O. Box — was not known to Horne until *after* he made the decision to subject the package to a dog sniff.⁷

⁵ *McGee v. State*, 70 P.3d 429, 431 (Alaska App. 2003) (citing *Hayes v. State*, 785 P.2d 33, 36 (Alaska App. 1990)).

⁶ *Hayes*, 785 P.2d at 36.

⁷ The record is also clear that Inspector Horne was not aware of the corroborating details of the anonymous tip. Nevertheless, the State argues that these details could properly be imputed to Horne under a vertical application of the collective knowledge doctrine. *See* (continued...)

The State nevertheless argues that Horne had reasonable suspicion to subject the package to a dog sniff based on the information that was personally known to him. We agree.

The most critical piece of information known to Horne was the fact that law enforcement had directed him to be on the lookout for a package suspected of containing illegal drugs that would be arriving in Petersburg from San Diego. As we explained in *Bochkovsky v. State*, reasonable suspicion for a dog sniff “means that there must be some evidence that ‘serve[s] to differentiate the suspected package from the body of innocent packages.’”⁸ Here, the tip greatly reduced the body of innocent packages to be considered. That is, Horne was not looking to differentiate the package from *all* of the packages in the stream of commerce to Petersburg. Instead, because of the tip, he was looking to differentiate the package from a much smaller subset of packages — namely, those packages mailed from San Diego to Petersburg within the relevant time frame.

Horne further narrowed the field through his database searches, which suggested (1) that the return address on the package was fictitious;⁹ and (2) that the name

⁷ (...continued)

Hurlburt v. State, 425 P.3d 189, 196 (Alaska App. 2018) (explaining the collective knowledge doctrine); *United States v. Hensley*, 469 U.S. 221, 231-32 (1985) (finding reasonable suspicion through application of the vertical collective knowledge doctrine). We note that Olson does not argue that the tip was unreliable and should not have been relied on. Nor does Olson argue that Horne could not rely on the tip unless he personally knew that it had been corroborated. Given this, it is not clear what value imputation of the details corroborating the tip would actually add.

⁸ *Bochkovsky v. State*, 356 P.3d 302, 306 (Alaska App. 2015) (quoting *McGee*, 70 P.3d at 433 (Mannheimer, J., concurring)).

⁹ *See Cortez v. State*, 2002 WL 31307848, at *2-4 & n.15 (Alaska App. Oct. 16, 2002) (unpublished) (holding that a fictitious return address was properly considered as part of the totality of the circumstances that established reasonable suspicion); *Gibson v. State*, 708 P.2d 708, 710 (Alaska App. 1985) (same); *Bochkovsky*, 356 P.3d at 307-08 (explaining that
(continued...))

listed on the return address might have been fictitious or at least had no apparent connection to San Diego.¹⁰

On appeal, Olson argues that this Court should discount Inspector Horne’s investigation of the sender’s name because the trial court considered Horne’s database searches “negligen[t].” We agree that Horne’s database searches could have been more thorough and that this lack of thoroughness makes Horne’s results weigh less heavily, but we disagree that they should be discounted altogether. As the superior court itself recognized, “The fact remains that the address was not an actual, deliverable address in San Diego. And there was no one named Narciso [sic] Martinez associated with that address or anywhere else in San Diego” (emphasis omitted). Horne’s admittedly limited search correctly identified that fact. We accordingly consider the results of the database search, although we weigh the results less heavily than we would have if the search had been more comprehensive.

We also weigh less heavily the physical attributes of the package that were found to be suspicious — *i.e.*, the fact that the package was “large,” taped along the seams, and sent via priority mail. We note that these attributes, standing alone, would be insufficient to establish reasonable suspicion.¹¹ We also note that the State failed to

⁹ (...continued)
fictitious information on a shipping label supports a finding of reasonable suspicion because it is “a characteristic not shared by most innocent packages”).

¹⁰ See *Bochkovsky*, 356 P.3d at 307-08 (upholding finding of reasonable suspicion based in part on a fictitious recipient’s name); *Cooley v. State*, 2009 WL 2568552, at *1-3 (Alaska App. Aug. 19, 2009) (unpublished) (upholding a finding of reasonable suspicion based in part on a fictitious recipient and a shipping address associated with another name).

¹¹ See *Bochkovsky*, 356 P.3d at 307-08 (noting that the use of an expedited mailing service was not in itself enough to differentiate a package from the mass of innocent packages, but holding that it could be considered as part of the totality of the circumstances
(continued...))

properly elicit testimony at the evidentiary hearing regarding the significance of these physical attributes.¹²

Ultimately, the purpose of a dog sniff is to minimize the time that a package spends outside of the stream of commerce and to use relatively minimally intrusive means to determine whether probable cause for a warrant exists. As we observed in *Bochkovsky*, “Requiring a comprehensive investigation as a predicate for reasonable suspicion would subvert the purpose of that test, which is to permit investigatory detentions on less than probable cause to determine the need for further investigation.”¹³

Accordingly, while we agree with Olson that the superior court erred in attributing knowledge to Inspector Horne that was not known to him at the time he ordered the dog sniff, we conclude that the totality of information that was personally known to Horne was nevertheless sufficient to distinguish this package from the “body of innocent packages”¹⁴ arriving at Petersburg, thereby establishing reasonable suspicion for the dog sniff.

Conclusion

The judgment of the superior court is AFFIRMED.

¹¹ (...continued)
amounting to reasonable suspicion).

¹² *Cf. Cooley*, 2009 WL 2568552, at *1 (noting testimony that “people shipping drugs heavily tape the box in an attempt to eliminate odors and to make sure the contents stay secure”). There was also no testimony at the evidentiary hearing about California’s status as a “source state” for illegal drugs.

¹³ *Bochkovsky*, 356 P.3d at 308 & n.32 (citations omitted).

¹⁴ *See Bochkovsky*, 356 P.3d at 306 (internal citations omitted).