

NOTICE

*This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).*

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOSEPH K. KENNEDY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12809  
Trial Court No. 3PA-16-00371 CR

SUMMARY DISPOSITION

No. 0065 — September 4, 2019

Appeal from the District Court, Third Judicial District, Palmer,  
John W. Wolfe, Judge.

Appearances: Megan R. Webb, Assistant Public Defender, and  
Quinlan Steiner, Public Defender, Anchorage, for the Appellant.  
Kimberly Del Frate, Assistant District Attorney, Palmer, and  
Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court  
Justice, and Andrews, Senior Superior Court Judge.\*

Joseph K. Kennedy was convicted of driving under the influence after an Alaska State Trooper stopped him for having flashing lights on the front of his vehicle and determined that Kennedy was intoxicated.<sup>1</sup> On appeal, he argues that the trooper

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

<sup>1</sup> AS 28.35.030(a).

lacked reasonable suspicion to stop his vehicle for an equipment violation and that the evidence of his intoxication should therefore have been suppressed. We disagree.

Trooper Shawn Norman testified at an evidentiary hearing that he was parked on the Palmer-Wasilla Highway when he saw a vehicle drive with headlights that “gave . . . an appearance of flashing.” When Trooper Norman started to follow the vehicle, however, it appeared that the lights were not flashing but instead were “flicker[ing]” — that is, they were not going completely on and off but instead were rapidly alternating between dim and bright. Trooper Norman explained that he pulled Kennedy over for violating 13 AAC 04.145(b)(2), which prohibits driving while displaying a “flashing or rotating light.”

On appeal, Kennedy argues that because his headlights were only flickering, rather than flashing, he was not violating 13 AAC 04.145(b)(2), and that the trooper therefore lacked reasonable suspicion to believe that he was committing a traffic violation.

But even if we were to interpret 13 AAC 04.145(b)(2) narrowly, as Kennedy suggests, we would still conclude that Trooper Norman had reasonable suspicion to stop Kennedy. This is because under a separate regulatory provision, 13 AAC 04.015(a), headlights “must be maintained in good working order.”<sup>2</sup> Headlights that are rapidly alternating between dim and bright may not be “in good working order.” Trooper Norman therefore had reasonable suspicion to stop Kennedy for a traffic violation, either because his headlights were flashing, in violation of 13 AAC 04.145(b)(2), or because they were flickering, and therefore not “in good working order,” in violation of 13 AAC 04.015(a).

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<sup>2</sup> See *Pruitt v. State*, 829 P.2d 1197, 1199 n.1 (Alaska App. 1992) (explaining that an appellate court may affirm a trial court decision on alternative grounds).

The judgment of the district court is AFFIRMED.