

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.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MICHAEL THOMAS HEDGPETH and
MARK PRESTON PURCELLA,

Appellants,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals Nos. A-12118 & A-12120
Trial Court Nos. 3AN-12-934 CR &
3AN-12-933 CR

MEMORANDUM OPINION

No. 6513 — August 16, 2017

Appeal from the Superior Court, Third Judicial District,
Anchorage, Gregory Miller, Judge.

Appearances: Justin A. Tapp, Denali Law Group, for Appellant
Hedgpeth, and Megan Webb, Assistant Public Defender, and
Quinlan Steiner, Public Defender, Anchorage, for Appellant
Purcella. Terisia K. Chleborad, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Jahna Lindemuth,
Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge ALLARD.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Following a joint trial, Michael Thomas Hedgpeth and Mark Preston Purcella were convicted of multiple counts of fourth-degree misconduct involving controlled substances based on the discovery of cocaine and a marijuana grow operation in their shared residence. The police discovered the drugs in the residence pursuant to a search warrant. Prior to trial, Hedgpeth and Purcella moved to suppress the drug evidence found in their residence, arguing that the search warrant was not supported by probable cause and that the search warrant application contained material misrepresentations and/or omissions. The superior court denied the defendants' joint motion to suppress, finding that the search warrant was valid and that the alleged misrepresentations and/or omissions were neither material nor intentional.

Hedgpeth and Purcella now appeal the superior court's denial of their motion to suppress. For the reasons explained here, we conclude that the superior court did not err when it upheld the validity of the search warrant and denied the joint motion to suppress.

Background Facts

On January 23, 2012, police were dispatched to a gas station to investigate a report of a man suffering from a gunshot to the buttocks. At the scene, officers interviewed the man, later identified as Purcella.

Purcella told the police that he had been at his house, and that he had walked outside to let his dog out when he heard a bang. He said that he did not know the address of his house and he did not know who shot him. He stated that his friend Hedgpeth had been inside the house when he (Purcella) was shot, and that Hedgpeth had not seen the shooting. Purcella further stated that Hedgpeth had not been the shooter, and that Hedgpeth had driven Purcella to the gas station after the shooting.

The police also interviewed Hedgpeth at the gas station. Officer Charles Lochart conducted the interview with Hedgpeth. During that interview, Hedgpeth initially stated that he did not know Purcella and that he had just picked Purcella up on the side of the road because he could see he was injured. Hedgpeth later told Officer Lochart that he actually knew Purcella and that Purcella had called him to pick him up at a nearby Wendy's restaurant. Soon after, Hedgpeth told Officer Lochart that he would like to invoke his Fifth Amendment right to silence.

After interviewing Hedgpeth and Purcella, the officers went to Hedgpeth and Purcella's residence to search for evidence of the shooting. The police knocked at the residence several times, but got no answer. Because Purcella said he had been shot outside the house, the officers walked around the front and back of the house, but they found no evidence that a shooting had taken place outside the house.

While at the scene, Officer Lochart interviewed David Bradford, a neighbor who lived in a trailer on the property adjacent to Hedgpeth and Purcella's house. Bradford told Lochart that he heard two gunshots about an hour before the officers arrived. Bradford said he got his pistol out after hearing the shots, but he then decided not to bring his weapon outside because he did not want to escalate the situation. After leaving his weapon inside, Bradford ducked outside, hopped onto the back of his pickup truck, and looked around. He saw Hedgpeth's blue truck parked in the driveway, but he did not hear any voices or see any people. He also did not see any signs of a disturbance. Someone later drove Hedgpeth's blue truck away from the scene.

Based on their investigation, the police believed that, contrary to Purcella's claims, the shooting had likely happened inside the residence. They also believed that, regardless of where the shooting had occurred, it was likely that evidence related to the shooting would be in the residence. Accordingly, Officer Lochart appeared before a magistrate judge and applied for a search warrant to search the house for biological

material such as blood, human tissue, and fingerprints, as well as “firearms, ammunition, gun cases and holsters.”

In his oral application to the magistrate judge, Officer Lochart recounted the interviews with Hedgpeth, Purcella, and Bradford (the neighbor), and the results of the police investigation around the outside of the house. Based on the officer’s oral application, the magistrate judge issued the warrant, finding that there was probable cause to believe either that the shooting had happened inside the residence or that evidence related to the shooting would be found in the residence.

When the police executed the search warrant, they found blood in the basement level of the house; they also found a marijuana grow operation in plain view. Officer Lochart contacted the magistrate judge to amend the search warrant to authorize the seizure of evidence pertaining to the grow operation. While collecting this evidence, the police also discovered cocaine and a scale. The search warrant was then amended a second time to allow the police to collect this evidence.

Hedgpeth and Purcella were subsequently charged with third-degree misconduct involving a controlled substance¹ and fourth-degree misconduct involving a controlled substance.²

The motion to suppress

Prior to trial, Hedgpeth and Purcella filed a motion to suppress the drug evidence found in their residence, arguing that the search warrant was not supported by

¹ Former AS 11.71.030(a)(1)(2012), *amended by* ch. 36, § 42, SLA 2016; AS 11.16.-110(2)(B).

² Former AS 11.71.040(a) (2012); AS 11.16.110(2)(B).

probable cause and that Officer Lochart’s testimony to the magistrate judge contained intentional and/or reckless material misstatements and omissions.³

The suppression motion focused on two statements by Officer Lochart. The first challenged statement occurred during Officer Lochart’s description of the interview with Purcella. Officer Lochart initially stated that Purcella told the police that “he was shot at the residence.” However, Officer Lochart immediately clarified that Purcella said that he was shot “behind the residence.” He then added that the police investigation outside the residence had failed to reveal any signs of a shooting — which was part of the reason the police believed that the shooting actually happened inside the residence, despite Purcella’s claim to the contrary. In their joint motion to suppress, Hedgpeth and Purcella argued that Officer Lochart’s initial statement was a material misrepresentation and that the officer had intentionally misled the magistrate judge into believing that Purcella had told the police that he was shot inside the residence.

The second challenged statement related to Officer Lochart’s description of the police interview with the neighbor. In his oral application for the search warrant, Officer Lochart testified that the police:

contacted a neighbor who stated that about an hour before he had heard two gunshots, about five seconds apart, he went outside, didn’t see anybody out back, didn’t see anybody — didn’t hear any yelling or anything, saw the blue truck of the gentleman that he knows lives next door is in the driveway and then subsequently the truck left.

³ See *State v. Malkin*, 722 P.2d 943, 946 (Alaska 1986) (holding that a search warrant is invalid if the magistrate’s finding of probable cause is based on material misstatements of fact (or material omissions of fact) that the police offered in reckless disregard of the truth); *Lewis v. State*, 862 P.2d 181, 186-87 (Alaska App. 1993) (interpreting *Malkin*).

Hedgpeth and Purcella argued that this testimony misrepresented the interview with the neighbor because it falsely implied that the neighbor had immediately left his house after hearing the shots when, in reality, he had gone outside only after first retrieving and then abandoning his gun. Hedgpeth and Purcella also argued that Officer Lochart's description of the interview with the neighbor omitted the fact that the neighbor was worried about escalating the situation — an omission that they claimed was material because it suggested that the neighbor had believed (at least initially) that the shooting had occurred outside.

Hedgpeth and Purcella also argued that the search warrant application was incomplete because, although Officer Lochart testified to Purcella's original statements to the police, he did not mention Purcella's later statements to the police on the way to the hospital.

Superior Court Judge Gregory Miller held an evidentiary hearing on the joint motion to suppress in which Officer Lochart testified. With regard to the first challenged statement, Officer Lochart testified that when he said "at the residence" he meant "outside the residence" and he thought he had made that clear to the magistrate judge. Officer Lochart further testified that he had not tried to mislead the magistrate judge about the neighbor's statements and he had included all of the details he thought were material. Lastly, Officer Lochart testified that, at the time he applied for the warrant, he was aware of Purcella's original interview with the police, but he was not yet aware of Purcella's statements on the way to the hospital.

Following the evidentiary hearing, the superior court issued a well-reasoned and comprehensive order denying the joint motion to suppress. In its order, the court found Officer Lochart's testimony at the evidentiary hearing to be credible and the court further found that there was no evidence that Officer Lochart had deliberately tried to

mislead the magistrate judge.⁴ The court disagreed with Hedgpeth and Purcella's claim that Officer Lochart had misrepresented Purcella's statement to the police that the shooting had occurred outside the residence, ruling that any potential ambiguity about what was meant by "at the residence" was immediately clarified by the officer. The court similarly concluded that the omitted statements from the neighbor's interview were not material omissions, because the primary significance of the neighbor's interview was to confirm that the shooting had occurred nearby and that the neighbor had not seen any evidence of the shooting outside the residence. Lastly, the court rejected Hedgpeth and Purcella's claim that the search warrant was not supported by probable cause, concluding that the finding of probable cause was properly based on (1) Hedgpeth's conflicting stories about the circumstances and location of the shooting, (2) the police investigation of the outside of the house where the shooting had allegedly occurred, which revealed no evidence of the shooting, and (3) the neighbor's statements, which corroborated that a shooting had occurred nearby and that there was no evidence of the shooting to be found outside the house.

Hedgpeth and Purcella were subsequently tried in a joint trial. At trial, the jury acquitted Hedgpeth and Purcella of third-degree misconduct involving a controlled substance but convicted them of various counts of fourth-degree misconduct involving a controlled substance.

This appeal followed.

⁴ See *Malkin*, 722 P.2d at 946 & n.6 (holding that a search warrant is invalid if the police intentionally misstated the facts with the intent of misleading the judicial officer into issuing the warrant, regardless of a lack of materiality); *Lewis*, 862 P.2d at 186-87 (interpreting *Malkin*).

Hedgpeth and Purcella's arguments on appeal

On appeal, both Hedgpeth and Purcella argue that the superior court erred in denying their joint motion to suppress, although they make slightly different arguments for why this ruling was error.

Purcella's appeal primarily focuses on Officer Lochart's failure to include the detail about the neighbor first getting his gun before going outside. In his appellate briefing, Purcella argues that the superior court erred in failing to recognize that this omission was material because "in eliminating this particular information, Lochart changed the timeline of events in such a manner that gave more significance to Bradford's statement that he did not see anybody [when he went outside to investigate the shooting]."

We find no merit to this argument. Having reviewed the record in this case, we agree with the superior court that inclusion of this statement would not have materially altered the magistrate judge's determination of probable cause. As Purcella's own briefing acknowledges, there is no reason to believe that the process of retrieving the gun and then leaving it behind took "a significant amount of time." Moreover, as the superior court properly recognized, the critical part of the neighbor's interview was that he heard the gun shot and that he saw no evidence of a shooting outside the residence when he went out to investigate.

Unlike Purcella's appeal, Hedgpeth's appeal focuses on Officer Lochart's alleged misrepresentation in initially stating that Purcella told the police that the shooting occurred "at the residence." Hedgpeth argues that without this "misstatement," there was insufficient probable cause to establish "that evidence of the crime will be found inside the house when the shooting clearly took place outside the residence according to the victim's own statement."

We find no merit to this argument because we agree with the superior court that any potential ambiguity in the phrase “at the residence” was immediately corrected by Officer Lochart’s clarification that Purcella had said “behind the residence.”

We likewise find no merit to Hedgpeth’s and Purcella’s general challenges to the validity of the warrant. “Probable cause to issue a search warrant exists when reliable information is set forth in sufficient detail to warrant a reasonably prudent person in believing that” evidence of criminal activity will be found at the location to be searched.⁵ Here, Officer Lochart’s oral testimony provided reliable information in sufficient detail to establish probable cause to believe that evidence of criminal activity (that is, evidence related to the shooting of Purcella by a purportedly unidentified perpetrator) would be found inside the residence. Accordingly, we affirm the superior court’s denial of the joint motion to suppress.

Conclusion

The judgment of the superior court is AFFIRMED.

⁵ See *Lustig v. State*, 36 P.3d 731, 733 (Alaska App. 2001).