

IN THE SUPREME COURT OF THE STATE OF NEVADA

IAN CHRISTOPHER HELD,

Appellant,

No. 83549
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THE STATE OF NEVADA,

Respondent.

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RESPONDENT'S ANSWERING BRIEF

MARC PICKER
Washoe County Alternate
Public Defender

CHRISTOPHER J. HICKS
Washoe County District Attorney

MELISSA A. ROSENTHAL
Deputy Alternate Public Defender
350 South Center Street, 6th floor
Reno, Nevada 89501

KEVIN NAUGHTON
Appellate Deputy
One South Sierra Street
Reno, Nevada 89501

ATTORNEYS FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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RESPONDENT'S ANSWERING BRIEF

I. ROUTING STATEMENT

Appellant Ian Christopher Held (“Held”) appeals from a judgment of conviction based upon a jury verdict finding him guilty of three category B felonies: Residential Burglary, Second or Subsequent Offense; Attempt Residential Burglary, Second or Subsequent Offense; and Being a Felon in Possession of a Firearm. Joint Appendix (“JA”), Volume I, pp. 5-6.

Because the Appellant was convicted of category B felonies, this appeal does not fall within the category of cases presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(2)(A). Nor does it fall within the categories of cases presumptively assigned to the Supreme Court pursuant to NRAP 17(a). Therefore, this case may either be retained by the Supreme Court or assigned to the Court of Appeals. NRAP 17(b) (“Except as

provided in Rule 17(a), the Supreme Court may assign to the Court of Appeals and case filed in the Supreme Court.”).

II. STATEMENT OF THE ISSUES

- A. Did the district court err in denying the Appellant’s motion to suppress the fruits of the search warrant that turned up stolen property in his trailer?

III. STATEMENT OF THE FACTS

On September 20, 2020, Chris Gardella was driving through the Somersett neighborhood in Reno, Nevada, when he noticed a U-Haul truck that appeared to be out of place. 8JA 432-33. Mr. Gardella was familiar with the neighborhood and his neighbors who lived in the two homes nearest where the truck was parked and believed the truck was out of place. *Id.* After driving home to retrieve a propane tank, Mr. Gardella drove past the U-Haul truck again, which was now parked in front of the neighborhood’s mailboxes, and took a photograph of it. 8JA 433. The following day, Mr. Gardella learned that the home nearest where the U-Haul truck had been parked, 1440 Whisper Rock Way, had been broken into. 8JA 436-37. Mr. Gardella contacted the officers investigating the break-in and let them take a picture of the photograph he had taken the previous day. 8JA 436-37.

The owner of that home, Allen McCulloch, testified that he received a phone call early on Monday, September 21st, from his gardener, asking if

he was home. 8JA 471-472. The gardener noticed that the window on the sliding glass door was smashed, there was glass all over the patio and inside the home, and a window was open in the back of the house. 8JA 472. Mr. McCulloch and his wife were presently residing in Gilroy, California. *Id.*

Reno Police Department Officer Ty Trail responded to 1440 Whisper Rock on a report of a burglary on September 21, 2020. 9JA 520-21. While on scene, Officer Trail met with Mr. Gardella, who showed him the picture he had taken of the U-Haul the day before. 9JA 523. Officer Trail took a picture of the photograph Mr. Gardella showed him, which depicted the U-Haul parked next to the neighborhood's mailboxes directly in front of a wall belonging to 1440 Whisper Rock Way. 9JA 524-25. The broken slider door was located right behind an opening in that wall. 9JA 525. Officer Trail contacted U-Haul and learned that the truck had been rented to Held and an associate, Annabelle Bush. 9JA 525-27. U-Haul also provided Officer Trail with an address for Held. 9JA 527-28. Officer Trail went to that address, where he took a photograph of the U-Haul truck parked in front of Held's trailer. 9JA 527-28. Officer Trail submitted the case to detectives for further follow-up. 9JA 529.

Detective Kenneth Fye of the Sparks Police Department was the lead detective on the case. 6JA 258-59. Between September 21 and September

28, detectives learned that Held had attempted to break into another residence on University Park Loop by throwing a rock through a window to gain entry. 2JA 64-65. Held had also stolen his neighbor's red Jeep and other property from his trailer. 2JA 65. After arresting and interviewing Held and Ms. Bush, Detective Fye applied to Reno Justice of the Peace Ryan Sullivan for a telephonic search warrant. 6JA 259-62.

Detective Fye applied for the search warrant on September 28, 2020. 6JA 260-62. When he applied for the warrant, Detective Fye was aware that a witness had seen the U-Haul truck parked near 1440 Whisper Rock but he did not know that they had taken a picture of it. 6JA 268-69. Detective Fye learned from Sergeant Welch "that the U-Haul truck was parked directly in front of the victim's house." 6JA 269. When he applied for the telephonic search warrant, Detective Fye mistakenly stated that the U-Haul truck was parked in the driveway of 1440 Whisper Rock. 2JA 64, 6JA 269-70. He believed that "[p]arked directly in front of the house could mean the street and also could mean the driveway," "but it was told to me that it was parked directly in front of the house and I interpreted that as being parked in the driveway." *Id.*

In his oral affidavit in support of the search warrant, Detective Fye also stated that Held and Ms. Bush, after being placed under arrest, "were

both cooperative when interviewed with detectives. They admitted to doing all the burglaries that I just mentioned, and stealing the vehicle.” 2JA 65.

During his interview, Held also told detectives that his neighbor’s property was still inside of his trailer. 2JA 66. Held explained to Detective Lance Tindell that at 1440 Whisper Rock Way, he “arrived in the Somerset area in a U-Haul truck... and went up to the residence.” 7JA 329. Held first said that he smashed a glass door and later that “he went back to the U-Haul truck where he grabbed a tire iron or jack and some pliers and tried to pry the door open.” 6JA 329-30. Detective Tindell “shared information that I obtained during the interview” with Detective Fye. 6JA 334.

When detectives arrived at Held’s trailer, they planned to seal it and tow it so that they could search it later. 2JA 66. However, because of the condition of the trailer, it became clear that they would not be able to tow it and decided to apply for a telephonic search warrant. *Id.* Detectives allowed Ms. Bush to go into the trailer, where she had been staying off and on for several months, to retrieve her personal property. 6JA 290-91. Upon determining that the trailer was not towable, Detective Fye prepared to call the magistrate to apply for the telephonic search warrant and other detectives stood by while Ms. Bush went in to retrieve her personal belongings. 6JA 294. Detective Jeremy Catalano testified that Ms. Bush

went into the trailer for several minutes before mentioning that there were guns inside the trailer. 6JA 350-51. After Ms. Bush mentioned that guns were in the trailer, detectives had her wait outside for their safety. *Id.*

Detective Fye applied for and obtained the telephonic search warrant. Upon searching the trailer, detectives recovered a drill belonging to Mr. McCulloch. 6JA 343.

IV. STANDARD OF REVIEW

“Suppression issues present mixed questions of law and fact... this court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo.” State v. Beckman, 129 Nev. 481, 485-486, 305 P.3d 912, 916 (2013) (cleaned up).

V. DISCUSSION

Held asserts that the district court erred by denying his request to suppress the fruits of the search of his trailer. Held claims that Detective Fye’s affidavit was intentionally or recklessly false and that he made a material omission. Held identifies three areas of concern: 1. Detective Fye’s statement that the U-Haul truck was parked in the driveway of 1440 Whisper Rock; 2. That Held and Ms. Bush “admitted to doing all the burglaries I just mentioned, and stealing the vehicle;” and 3. Failing to mention that Ms. Bush had entered the trailer after Held denied consent to search.

The United States Supreme Court has held that “where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant’s request.” Franks v. Delaware, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676 (1978). “A Franks hearing is not required if the alleged falsehood in an affidavit supporting a search warrant is not necessary to the finding of probable cause.” Lyons v. State, 106 Nev. 438, 449, 796 P.2d 210, 216 (1990) *abrogated on other grounds by* Vanisi v. State, 117 Nev. 330, 22 P.3d 1164 (2001), *citing* LaFave Search and Seizure §4.4(c) (2d ed. 1987). “In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.” Franks, 438 U.S. at 155-56, 98 S. Ct. at 2676.

If the district court erred anywhere in this matter, it was in conducting an evidentiary hearing. Even taking Held’s allegations at face

value and removing the complained-of portions of the affidavit, a search warrant still would have issued.

In that scenario, Judge Sullivan would have learned that a U-Haul truck, rented to Held and Ms. Bush, was seen in the vicinity of a burglary, that Held was observed by law enforcement officers speeding away from the scene of an attempted burglary several days later, that Held was in possession of his neighbor's Jeep without the neighbor's permission and that the keys had been inside the neighbor's home, and that Held admitted his trailer contained property that he had stolen from his neighbor. 2JA 64-66. At the very minimum, that information would be sufficient to believe that Held had committed the crimes of burglary or possession of stolen property and that evidence of the crimes, namely the stolen property itself, was likely to be found within his trailer. That is sufficient for issuance of a search warrant. *See* U.S. Const. amend. IV (“no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”), Nev. Const. art. 1 § 18 (“no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and things to be seized.”).

Including the information that Ms. Bush had been permitted back into the trailer to collect her personal belongings does not change the probable cause determination. *See generally* U.S. v. DeLeon, 979 F.2d 761 (1992) (“Where, as here, a warrant’s validity is challenged for deliberate or reckless omissions of facts that tend to mislead, the affidavit must be considered with the omitted information included.”) (citation omitted). The fact that Ms. Bush was allowed into the trailer to obtain her personal property and that she ultimately did not get any of her personal property before mentioning a gun and exiting the trailer is immaterial. Held has failed to explain the importance of Ms. Bush’s brief foray into the trailer and does not suggest that it is relevant in any way. Because the warrant would have issued even with the challenged statements omitted and with the omission included, the district court did not need to conduct a hearing pursuant to Franks. However, because the district court did conduct a hearing, this brief will address each of Held’s complaints in turn.

A. U-Haul truck parked in the driveway

In his affidavit, Detective Fye stated that “[a] neighbor observed a U-Haul truck in the driveway [of 1440 Whisper Rock], and was able to get the license plate off the U-Haul truck.” 2JA 64. As Detective Fye later acknowledged, the neighbor, Mr. Gardella, actually saw the truck on the street in front of 1440 Whisper Rock Way. The information was relayed to

Detective Fye as “the U-Haul truck was parked directly in front of the victim’s house.” 6JA 269-70. Detective Fye interpreted this information to mean that the U-Haul was parked in the driveway. *Id.*

This is a distinction without any practical difference. The fact is, Mr. Gardella observed a U-Haul truck in an unusual location in his neighborhood and took a picture of it, capturing the license plate number. Mr. Gardella also described that the truck was parked near 1440 Whisper Rock and one other house before later moving to the side of 1440 Whisper Rock where it was parked when he took the picture. The side of the home where the picture was taken was the same area where the sliding glass door was broken. The precise location of the truck, either in the driveway, directly in front of, or immediately next to 1440 Whisper Rock Way was immaterial. What was important about that information is that the U-Haul was suspicious in that area, it was in the immediate vicinity of 1440 Whisper Rock Way, that residence was discovered to have been burglarized shortly thereafter, and the rental information for the U-Haul led back to Held and Ms. Bush. The statement that the U-Haul truck was parked “in the driveway” was not necessary to the finding of probable cause and the warrant would have issued without that information, particularly since Held admitted his participation in the Whisper Rock burglary, the

attempted burglary on University Park Loop, taking property from his neighbor's trailer, taking his neighbor's Jeep, and that his trailer contained stolen property, all before Detective Fye applied for the search warrant.

B. Held and Ms. Bush “admitted to doing all the burglaries”

Detective Fye also stated that Held and Ms. Bush were placed under arrest and “[t]hey were both cooperative when interviewed with detectives. They admitted to doing all the burglaries that I just mentioned, and stealing the vehicle.” 2JA 65-66. Later, Detective Fye acknowledged that Ms. Bush “gave corroborating information for each of the things that I had discussed in the search warrant application,” “admitted being in the vehicle during the attempted burglary at University Park Loop,” but she had not admitted to participating in the burglaries. 6JA 271-73. Detective Fye explained that “when I said that they fully admitted to the crimes, I mean that they both gave information about all the crimes that I had explained.” 6JA 273-74. Ms. Bush had told Detective Fye information “that implied that she was in the vehicle, she helped drive away the vehicle, she was driving through the neighborhood with [Held] and was aware that he was scouting houses to burglarize.” 6JA 274. She was also “aware that [Held] had driven up in the area of Somerset” and that he had gone into his neighbor's trailer and took the neighbor's Jeep without permission. *Id.*

Detective Fye's statement was imprecise, but it was not intentionally or recklessly false. Ms. Bush had acknowledged that she was aware that Held was scouting residences to burglarize, that he had stolen items from his neighbor, and that she was in the car when he committed the attempted burglary. Additionally Held admitted his role in the 1440 Whisper Rock burglary, described how he arrived at that location in the U-Haul truck, described his role in the attempted University Park Loop burglary, and discussed taking the Jeep and other property from his neighbor. 7JA 329-33. While it would have been more accurate to say something along the lines of "Held admitted to committing the burglaries and attempted burglary and Ms. Bush admitted knowing that he committed those burglaries and being in the vehicle during the attempted burglary," Detective Fye's statement is not actually false, only imprecise. Even omitting that portion of the affidavit suggesting that Ms. Bush admitted "to doing all the burglaries," the remaining content of the affidavit is sufficient to establish probable cause to search Held's trailer for the property that he took from his neighbor because it places Held at the scene of multiple burglaries, it contains information that a U-Haul rented to Held was seen in the vicinity of a burglary, and Held admitted his participation in the burglaries and that he had stolen property inside his trailer.

C. Omission that Ms. Bush had entered the trailer

Held notes that Detective Fye failed to tell Judge Sullivan that Ms. Bush had entered the trailer after Held declined to consent to a search. Held fails to connect the dots on this argument and explain how that information would have resulted in the search warrant not being issued. “Recklessness may be inferred where the omitted information was ‘clearly critical’ to the probable cause determination.” Rivera v. U.S., 928 F.2d 592, 604 (1991) *citing* DeLoach v. Bevers, 922 F.2d 618, 622 (10th Cir. 1990); Hale v. Fish, 899 F.2d 390, 400 (5th Cir. 1990); United States v. Reivich, 793 F.2d 957, 961 (8th Cir. 1986). The evidence adduced at the hearing demonstrates that detectives allowed Ms. Bush to enter the trailer to collect her personal belongings. That information is not “clearly critical” to determine whether there is probable cause to believe that Held had committed burglary and evidence of that crime, namely stolen property, was likely to be found inside of his trailer.

Ms. Bush provided testimony that conflicted with several law enforcement officers’ testimony. Weighing the credibility of witnesses is within the discretion of the trial court. *See, e.g.*, Castle v. Simmons, 120 Nev. 98, 103, 86 P.3d 1042, 1046 (2004) *citing* Krause Inc. v. Little, 117 Nev. 929, 933, 34 P.3d 566, 569 (2001).

Ms. Bush testified that she was under the influence of drugs at the time she was interviewed by detectives and when she returned to the trailer. 6JA 256. Ms. Bush claimed that two detectives, Lance Tindell and another detective whose name she could not remember, instructed her to enter the trailer to search for stolen property and to locate a gun near Held's bed because Held had told detectives that there was a gun inside. 6JA 251-54. Ms. Bush acknowledged that she had told detectives that she wanted to get some of her personal belongings from inside the trailer before she was allowed in. 6JA 251.

Detective Tindell testified that he did not interview Ms. Bush and did not talk to her at all at the police station. 6JA 329. He also did not direct her to go into the trailer for the purpose of finding stolen property. *Id.* Detective Tindell spoke to Ms. Bush briefly when they were at the trailer but did not talk to her about guns or sorting through stolen property. 6JA 334. Detective Tindell interviewed Held and recalled that he denied that there were guns in the trailer. 6JA 333.

Detective Catalano recalled that while she was inside, Ms. Bush "made some kind of a mention about guns being inside the trailer." 6JA 351. As a result, "we had her come out of the trailer" for officer safety reasons. *Id.* Detective Catalano testified that "I didn't know there was guns

in there, so we had her come outside the trailer.” *Id.* Detective Catalano explained that Ms. Bush went into the trailer to retrieve her personal property. 6JA 358. He did not instruct Ms. Bush, and he did not hear anyone else tell her, to sort through stolen property. 6JA 358-59.

Detective Fye testified that he did not believe there were firearms inside the trailer when they arrived prior to conducting the search. 6JA 296-97. He also testified that they would not allow a witness to enter into the trailer if he knew there were firearms inside. 6JA 297. And, he testified that he did not instruct Ms. Bush to enter the trailer to retrieve a firearm. *Id.*

The district court found Ms. Bush “to be less credible than the law enforcement officers, not in the way she spoke and carried herself, but she admitted that at the moment of investigation and police intervention she was under the influence, which renders her recollection to be suspicious in the first instance.” 6JA 385. The court also noted that Ms. Bush “had a motivation grounded in her relationship with Mr. Held that might inspire her testimony.” *Id.*

Combined with the testimony of the detectives that they did not instruct Ms. Bush to go into the trailer to recover stolen property or firearms (along with the commonsense conclusion that it would not be a

good idea to let a drug-influenced witness handle a gun, stolen or otherwise), the evidence clearly demonstrates that Ms. Bush was not acting as an agent of the State when she entered the trailer, but instead was allowed to collect her personal belongings as a matter of courtesy before the trailer was going to be towed. Ms. Bush did not report that she identified any stolen property inside, there is no allegation that she planted the stolen property inside the trailer, and there is no indication that any of Ms. Bush's observations inside of the trailer made it into Detective Fye's affidavit.¹ The information was simply irrelevant to Detective Fye's search warrant application. Had that information been included, it would not have influenced the magistrate's conclusion in any way and the warrant would still have issued.

VI. CONCLUSION

In this case, the district court was not required to conduct a Franks hearing. The probable cause affidavit offered by Detective Fye was sufficient, even without the challenged information, to provide probable cause for the search of Held's trailer. Nevertheless, the district court conducted the evidentiary hearing and found that Detective Fye had not

¹ Notably, Detective Fye's affidavit did not mention that officers believed Held's trailer contained any firearms, something they undoubtedly would have been interested in recovering, and it did not allege that Held had committed the crime of being a felon in possession of a firearm. 2JA 60-69.

made intentionally or recklessly false statements in order to obtain a search warrant and that his omission of the fact that Ms. Bush had entered the trailer was immaterial. Those findings are supported by the record and based on the court's assessment of the credibility of the witnesses. Held failed to demonstrate that Detective Fye's statements were materially false or misleading and that probable cause would not have been found without their inclusion in the affidavit. As a result, Held has failed to show that the district court erred in denying his motion to suppress and the district court's ruling should be affirmed.

DATED: May 5, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Kevin Naughton
Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: May 5, 2022.

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: Kevin Naughton
Appellate Deputy
Nevada State Bar No. 12834
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on May 5, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Melissa Rosenthal. Esq.

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA