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IN THE COURT OF APPEALS OF INDIANA

Frederick M. Lundquist,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 30, 2021

Court of Appeals Case No. 21A-CR-851

Appeal from the Wabash Superior Court

The Honorable Benjamin D.R. Vanderpool, Judge

Trial Court Cause No. 85D01-1804-F6-445

Tavitas, Judge.

Case Summary

[1] In this interlocutory appeal, Frederick Lundquist contends that the trial court erred when it denied his motion to suppress evidence arising from a police search of Lundquist's house, which was based on a warrant that listed the

wrong address. In accordance with our precedent as detailed below, we reject Lundquist's argument and affirm the trial court.

Issues

[2] Lundquist raises two issues:

I. Whether the trial court erred in denying Lundquist's motion to suppress under the Fourth Amendment to the United States Constitution.

II. Whether the trial court erred in denying Lundquist's motion to suppress under Article 1, Section 11 of the Indiana Constitution.

Facts

[3] Upon receipt of a complaint that alleged that Lundquist had used a .22 rifle to shoot and kill a pit bull as retribution for the pit bull having killed a goat, the Wabash County Sheriff's Department contacted the Bureau of Alcohol, Tobacco, and Firearms as well as Lundquist's parole officer. Police were advised that possession of the gun would constitute a federal offense as well as a violation of the terms of Lundquist's then-active parole.

[4] Deputy Cody Gibson of the Wabash County's Sheriff's Department sought a warrant to search Lundquist's home. Lundquist's home is separated from his mother's home by a horseshoe-style driveway on the same property; Lundquist's mother owns both homes. Lundquist's home is on the west side of the driveway and is a one-story gray residence with a front door facing

northeast; his address is 5173 E. 50 South. Lundquist's mother resides on the east side of the driveway at 5179 E. 50 South in a two-story log cabin with a front door that faces south.

[5] The warrant's description of the location to be searched was based upon the following sources: (1) Deputy Gibson's personal experience with the property; (2) a map drawn by the complaining witness;[1] (3) BMV records wherein Lundquist listed 5179 E. 50 South as his address; (4) criminal records wherein Lundquist listed 5179 E. 50 South as his address; and (5) the fact that a mailbox located in front of the property reflected the address 5179 E. 50 South.[2]

[6] Deputy Gibson drafted the warrant listing Lundquist's mother's address, but correctly described the physical characteristics of Lundquist's 5173 E. 50 South residence as "a one-story residence, grey in color, with a front door facing northeast . . . on the west side of the horseshoe driveway." Appellant's App. Vol. II p. 50. Police executed the warrant on April 24, 2018, at 5173 E. 50 South, Lundquist's actual residence. Deputies discovered a shotgun and accompanying ammunition, a .22 caliber rifle and accompanying ammunition, a plastic bucket containing marijuana, and a bowl of white powder alongside a rolled-up dollar bill.

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[1] The map was misplaced and is not a part of the record.

[2] The record reflects discrepancies with respect to the number of mailboxes, their location, and which addresses are displayed. In response to questioning about why the 5179 address was used in the warrant application, Deputy Gibson testified that ". . . the mailbox out front of [Lundquist's] residence was marked 5179 East 50 South." Tr. Vol. II p. 11.

[7] Deputy Gibson then sought a second search warrant that was not limited to Lundquist's residence, but which allowed police to search outbuildings and the garage associated with Lundquist's home, the shed, and cellphones that might contain evidence of drug possession or sale. The second warrant repeated the mistake of listing the incorrect address, but once again accurately described the physical characteristics of Lundquist's home.

[8] Meanwhile, Lundquist was arrested as part of a traffic stop. During the stop, Lundquist's parole officer searched Lundquist's vehicle and discovered marijuana. On April 24, 2018, the State charged Lundquist with Count I, maintaining a common nuisance, a Level 6 felony; Count II, possession of marijuana, a Class B misdemeanor; and Count III, possession of marijuana with a prior drug conviction, a Level 6 felony.[3] In a separate count, the State alleged that Lundquist is an habitual offender.[4]

[9] Lundquist filed a motion to suppress the evidence found during the search of his home on the grounds that the warrants did not list his address, but rather listed the address of his mother. After a hearing, the trial court denied the motion to suppress. On April 26, 2021, the trial court certified the order denying the motion to suppress. We accepted jurisdiction over this

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[3] The record suggests that the charges stem from the marijuana found in the residence rather than the marijuana found in the vehicle.

[4] In a motion to dismiss filed below, Lundquist indicates that, "The federal government already once prosecuted Mr. Lundquist for illegal possession of a firearm and enhanced Mr. Lundquist's federal sentence on the basis that he also possessed marijuana at the time of his offense." Appellant's App. Vol. II p. 70.

interlocutory appeal on June 7, 2021, in accordance with Indiana Appellate Rule 14(B).

Analysis

[10] Lundquist argues that the trial court erred by denying his motion to suppress because the search of his residence violated his rights under the Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Indiana Constitution. "When a trial court denies a motion to suppress evidence, we necessarily review that decision 'deferentially, construing conflicting evidence in the light most favorable to the ruling.'" *Marshall v. State*, 117 N.E.3d 1254, 1258 (Ind. 2019) (quoting *Robinson v. State*, 5 N.E.3d 362, 365 (Ind. 2014)), *cert. denied*, 140 S. Ct. 113 (2019). We consider, however, any substantial and uncontested evidence favorable to the defendant. *Id.* We review the trial court's factual findings for clear error, and we decline invitations to reweigh evidence or judge witness credibility. *Id.* "If the trial court's decision denying 'a defendant's motion to suppress concerns the constitutionality of a search or seizure,' then it presents a legal question that we review de novo." *Id.* (quoting *Robinson*, 5 N.E.3d at 365).

[11] Under the Fourth Amendment to the U.S. Constitution, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. To preserve that right, a judicial officer may issue a warrant only "upon probable cause, supported by Oath or affirmation, and particularly describing

the place to be searched, and the persons or things to be seized." *Id.* Article 1, Section 11 of the Indiana Constitution contains language "nearly identical to its federal counterpart." *McGrath v. State*, 95 N.E.3d 522, 527 (Ind. 2018). Moreover, "our statutory law codifies these constitutional principles, setting forth the requisite information for an affidavit to establish probable cause." *Id.* (citing Ind. Code § 35-33-5-2).[5]

[12] "Despite the fact that the text of Article I, Section 11 is nearly identical to the Fourth Amendment, Indiana courts interpret and apply it 'independently from federal Fourth Amendment jurisprudence.'" *McLain v. State*, 963 N.E.2d 662, 668 (Ind. Ct. App. 2012) (quoting *Powell v. State*, 912 N.E.2d 853, 863 (Ind. Ct. App. 2009)), *trans. denied*. We insist upon the pursuit of this independent analysis, in part, because "to counterbalance federal authority and provide additional protection of rights, state constitutions—interpreted by state supreme courts—must provide protections that stand independent of federal constitutional guarantees. And that independent stance must be clear, with state supreme courts avoiding both inadequate state-law reasoning and dependence on federal law." Loretta H. Rush & Marie Forney Miller, CULTIVATING STATE CONSTITUTIONAL LAW TO FORM A MORE PERFECT

[5] Indiana Code Section 35-33-5-2 provides in pertinent part that: ". . . no warrant for search or arrest shall be issued until there is filed with the judge an affidavit: (1) particularly describing: (A) the house or place to be searched and the things to be searched for; or (B) particularly describing the person to be arrested; . . . ."

UNION-INDIANA'S STORY, 33 Notre Dame J.L. Ethics & Pub. Pol'y 377, 380 (2019).

[13] Here, neither of the parties conducts a separate analysis of the Fourth Amendment and Indiana Constitution implications of this case; both parties conflate the analysis. Lundquist, however, does cite cases concerning both the Fourth Amendment and the Indiana Constitution. Accordingly, we will separately address whether the evidence was admissible under both the Fourth Amendment and the Indiana Constitution.

I. Federal Constitution

[14] The Fourth Amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.

Generally, a search warrant should not issue unless it particularly describes the place to be searched and the things or persons to be seized. U.S. Const. amend. IV; Ind. Code. § 35-33-5-2(a)(1). Lundquist argues that, because the warrants included the incorrect address, those warrants did not "particularly describe[e] the place to be searched." Thus, Lundquist contends, the warrants themselves were constitutionally defective pursuant to the Fourth Amendment to the United States Constitution. We disagree.

[15] Our courts have previously considered cases in which a defendant sought to suppress evidence stemming from a search conducted pursuant to a warrant with an incorrect address as well as an inaccurate physical description of the premises to be searched. In *Houser v. State*, 678 N.E.2d 95 (Ind. 1997), our Indiana Supreme Court addressed a similar issue and held:

> The State concedes that the warrant here erroneously placed Lee's Automotive at 1435 South Hoyt Avenue, when the correct address was 1435 South Kinney Avenue. However, the warrant did correctly state that officers were to search a cement block building bearing the words "Lee's Automotive." Houser's business was located on a "triangular piece of land" bordered by South Hoyt, South Kinney and West Eighth Street. Although we do not condone use of search warrants containing the wrong street address, the warrant in this case sufficiently described the property to be searched despite the mistake. *See, e.g., Willard v. State*, 272 Ind. 589, 594, 400 N.E.2d 151, 155 (1980) (incorrect license plate number of motor home to be searched did not invalidate warrant because description of vehicle was otherwise "sufficiently specific" to enable officers to identify it). By all appearances the error was an innocent one and did not affect the probable cause determination. Under these circumstances reversal is not required. *Utley v. State*, 589 N.E.2d 232, 236-37 (Ind. 1992).

678 N.E.2d at 100-01.

[16] In *Salyer v. State*, 938 N.E.2d 239, 241 (Ind. Ct. App. 2010), we noted that "incorrect address information does not necessarily invalidate a warrant." (quoting *Creekmore v. State*, 800 N.E.2d 230, 236 (Ind. Ct. App. 2003)). "Suppression of evidence collected is not required, despite a minor error in the

address, if the warrant sufficiently described the property to be searched despite the mistake." *Id*. In *Salyer*, the warrant listed the wrong address and contained an inexact description of the property to be searched. We concluded that no Fourth Amendment violation warranting suppression of the evidence resulting from the search had occurred.

[17] In *Dost v. State*, 812 N.E.2d 232, 235 (Ind. Ct. App. 2004), *trans. denied*, the physical description of the residence was "less than exact." The officers, however, "had been to the residence and knew its precise location," and so "there was no risk . . . that officers were going to be confused and enter the wrong house or undertake indiscriminate searches of other homes . . . . [T]he officers executing the warrant knew precisely which residence was intended to be searched[.]" *Id*. at 236. We concluded that, with respect to the particularity requirement of the Fourth Amendment, "'[t]he test is for practical accuracy, and common sense should prevail over hypertechnicality.'" *Id*. at 237 (quoting *State v. Dye*, 250 Kan. 287, 826 P.2d 500, 506 (1992)).

[18] Thus, in three cases, Indiana courts have concluded that there is no Fourth Amendment violation so long as warrants adequately and accurately described the physical characteristics of the properties to be searched, even where the physical descriptions contained some errors or an address was incorrect.

[19] In the case at bar, Deputy Gibson, who served the warrants, had personal knowledge of the property to be searched, and the physical description

contained in the warrants was accurate.[6] Most importantly, the house actually searched was indeed Lundquist's residence, which is the location that officers aimed to search when they sought the warrant. Lundquist fails to distinguish the cases that clearly set forth the principle that, under the Fourth Amendment to the United States Constitution, minor errors in a warrant, including an incorrect address, do not require suppression of the evidence stemming from such a warrant. We conclude that the trial court did not err in denying Lundquist's motion to suppress on Fourth Amendment grounds.

II. State Constitution

[20] Article 1, Section 11 of the Indiana Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

"The Indiana provision in some cases confers greater protections to individual rights than the Fourth Amendment affords." *Shotts v. State*, 925 N.E.2d 719,

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[6] In his reply brief, Lundquist insists that the marijuana comprising the basis for the charges was not located until the second search, pursuant to the second warrant. Appellant's Reply Br. pp. 11-15. Thus, Lundquist contends, the mistaken address takes on additional importance because the officers should have already realized what the true address was. We are perplexed by this argument. In the affidavit of probable cause attached to the application for the second warrant, Officer Gibson describes the search already executed pursuant to the first warrant, including the recovery of the marijuana. Appellant's App. Vol. II p. 38. Lundquist submitted these documents to this Court and is aware of their contents. *See* Appellant's Reply Br. p. 17.

726 (Ind. 2010) (citing *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006)); *Litchfield v. State*, 824 N.E.2d 356, 358-59 (Ind. 2005); *Mitchell v. State*, 745 N.E.2d 775, 786 (Ind. 2001); Randall T. Shepard*, Second Wind for the Indiana Bill of Rights,* 22 IND. L. REV. 575 (1989)).

[21] The *Houser* court did not conduct a separate analysis under the Indiana Constitution. Indeed, the *Houser* opinion does not mention Article 1, Section 11. *Dost* references our State Constitution only insofar as to point out that the appellant in that case failed to offer an analysis separate from the Fourth Amendment to the Federal Constitution. 812 N.E.2d at 238 n.2 ("Although Dost references Article 1, Section 11 of the Indiana Constitution in his brief, he fails to present a state constitutional analysis separate from that of the federal constitution. Consequently, he has waived his claim based upon the Indiana Constitution. *See O'Connor v. State*, 789 N.E.2d 504, 511 (Ind. Ct. App. 2003), *trans. denied*[.]").

[22] *Salyer* makes passing references to our State Constitution. 938 N.E.2d at 241 ("Generally, a search warrant should not issue unless it particularly describes the place to be searched and things or person to be seized. U.S. Const. amend. IV; Ind. Const. Art. 1, § 11[.]"). The panel in *Salyer*, however, did not conduct a separate analysis under the Indiana Constitution. Relying on *Houser* and *Dost*, neither of which was concerned with Article 1, Section 11, the *Salyer* court concluded ". . . that Officer Keen's execution of the search warrant was reasonable and did not violate either the Fourth Amendment or Article I, Section 11 of the Indiana Constitution." *Id.* at 243.

[23] We find, however, that Lundquist *has* provided authority supporting a separate analysis under the state constitution. Lundquist directs us to a series of prohibition-era[7] opinions issued by both this Court and our Supreme Court.[8] In *Flum v. State*, our Supreme Court held that:

> The description of the premises to be searched in an affidavit for a search warrant under our Constitution must be so specific as to leave no discretion to the officer as to what place he is to search, but fully directs him as to the particular premises and property upon which he is to execute his warrant.

193 Ind. 585, 141 N.E. 353, 354 (1923). In *Flum*, the warrant described an area of land that contained some twenty-five houses, and our Supreme Court, noting that warrants must comply with the strict formalities of law, found the warrant void, and opined: "The search warrant must speak with clearness and be as specific as the Constitution itself." *Id*.

[24] Similarly, in *Hess v. State*, 198 Ind. 1, 151 N.E. 405 (1926), Hess was convicted of maintaining a public nuisance after police searched Hess' home, pursuant to a warrant, and discovered "a pint bottle with a small amount of white mule whisky in it." 198 Ind. 1, 151 N.E. at 406. Hess sought to suppress the milk

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[7] Between 1920 and 1933 the production, transportation, and sale of alcohol was constitutionally prohibited. *See* U.S. Const. amend. XVIII, *repealed by* U.S. Const. amend. XXI.

[8] We consider similar cases from the same era to which Lundquist does not cite. We recognize that these cases are nearly a century old; however, we are aware of no principle counseling that older precedent is somehow less persuasive, particularly when the matter is of constitutional dimension, and particularly when our courts have not had recent occasion to consider the matter independently from the Federal Constitution.

bottle and its contents on the grounds that the search warrant was ambiguous.[9] Our Supreme Court found as follows:

> *The sole purpose of describing the place to be searched is to certainly and definitely point out the same to the officer who is to execute the warrant.* In the instant case the affidavit and search warrant directed the officers to a certain building, at least the ground floor of which was designated by No. 214 on a certain street in a certain city of this state, and authorized them to search only "the house, room, and premises of Frank Hess and Clara Hess." That part of the description last quoted should be construed as meaning the house, etc., occupied by Frank Hess and Clara Hess. The fact that the affidavit and the instrument to be executed also designated the place as No. 214 1/2, a number of which there seems to be no proof, cannot affect the validity of the affidavit or of the warrant, when it is shown that both the first and second story of the premises searched, and designated by street No. 214, were connected by a stairway, and occupied by Frank Hess and his wife, Clara Hess.
>
> A description which points out or identifies the place to be searched with such reasonable certainty as will obviate any mistake in locating it is all the Constitution or statute requires.

Id. at 406-07 (internal citations and quotations omitted) (emphasis added).

[25] The authority cited by Lundquist holds that the Indiana Constitution requires a warrant to describe locations to be searched with such particularity as to eliminate any discretion on the part of the officers serving the warrant. *See*

[9] The warrant listed both 214 Wabash Avenue and 214 ½ Wabash Avenue.

French v. State, 91 Ind. App. 90, 169 N.E. 338, 339 (1929) (". . . a one story frame dwelling house occupied by Claude French being the second house north of 20th street on the east side of Central Avenue, is so definite that it points to a definitely ascertainable place as to exclude all others. No discretion was left to the officers. The description did not permit the search of two places.") (internal quotations omitted).

[26] Accordingly, we must determine whether the description of the place to be searched in the present matter was sufficiently particular so as to divest the executing officers of discretion with respect to which place to search.[10] Recall that Deputy Gibson, relying on his personal knowledge of the residence, drafted a search warrant that described the place to be searched as "a one-story residence, gray in color, with a front door facing northeast and an attached garage southeast of the residence. This property is located south of County Road 50 South in Wabash County, IN on the west side of the horseshoe driveway." Appellant's App. Vol. II p. 35. There is only one residence on the west side of the horseshoe driveway—5173 E. 50 South. Moreover, Lundquist's mother's residence, which is located on the east side of the driveway, is a two-story log cabin with a front door that faces south.

[10] We are aware of federal precedent applying similar language about the discretion of an executing officer to *the things to be seized*, likely tracing back to *Marron v. United States*, another prohibition-era case. 275 U.S. 192, 196, 48 S. Ct. 74, 76 (1927) ("As to what is to be taken, nothing is left to the discretion of the officer executing the warrant."). We are not aware, however, of similar language being applied in the Fourth Amendment context to the particularity requirement with respect to *the place to be searched*.

[27] No reasonable officer would read the list of descriptors listed in the warrant, including the inaccurate address, and conclude that he had discretion to search the home of Lundquist's mother. The warrants particularly describe the residence on the left below; the warrants do not describe the residence on the right.

Ex. pp. 46, 66.

[28] Under the facts of this case, we find that the warrants were sufficiently particular.[11] Accordingly, we conclude that the trial court did not err in denying Lundquist's motion to suppress on Indiana Constitution grounds.

Conclusion

[29] The trial court did not err by denying Lundquist's motion to suppress. We affirm.

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[11] We recognize that the result in this case is the same under both federal and state constitutional analyses. We are careful to note, however, that coinciding results should not be confused for the idea that the two separate analyses are duplicative. We expressly leave for another day the question of whether separate analyses of the particularity requirements found in both the federal and state constitutions will *always* yield identical results.

[30] Affirmed.

Bradford, C.J., and Crone, J., concur.