IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LOWELL T. FORD, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11981 Trial Court No. 1SI-12-206 CR MEMORANDUM OPINION No. 6645 — June 27, 2018

Appeal from the Superior Court, First Judicial District, Sitka, David V. George, Judge.

Appearances: Maureen E. Dey, Gazewood & Weiner, P.C., Fairbanks, under contract with the Office of Public Advocacy, for the Appellant. Elizabeth T. Burke, 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).

Lowell T. Ford was convicted, following a jury trial, of multiple drug and weapon felony offenses.[1] Ford raises fourteen claims on appeal. Many of these claims are inadequately briefed. For the reasons explained here, we reject Ford's fourteen claims of error as they are presented in this appeal, and we affirm the judgment of the superior court.

Background facts

On June 25, 2012, at approximately 4:00 a.m., Sergeant Walt Smith of the Sitka Police Department was on patrol in a downtown commercial area that had experienced two recent after-hours burglaries. The Sitka police had been briefed to be alert to any suspicious activity in the area.

As Smith's patrol vehicle passed through the area, Smith observed a man, later identified as Ford, duck behind a car, as if to hide. Ford then disappeared down an alleyway. Smith drove his car around the building and found Ford emerging from the alleyway. Smith observed that Ford was carrying two "odd bags," one of which appeared to be a woman's pink purse. Smith knew Ford from prior police contacts and also knew that he had a criminal history. Smith was also aware that Ford did not live in the area and Smith did not perceive any apparent reason for Ford to be in a commercial area at this time in the morning.

Based on these observations and his knowledge of Ford, Smith got out of his patrol car and hailed Ford, who was trying to walk away. Smith told Ford that he needed to speak with him, and Ford eventually stopped walking. Ford then began

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[1] Former AS 11.71.020(a)(1) (pre-2016 version); former AS 11.71.040(a)(3)(A) (pre-2016 version); AS 11.61.195(a)(1); AS 11.61.200; AS 11.61.220(a)(1)(A); and AS 11.46.315(a)(1), respectively.

fiddling with his cell phone and complaining about problems with his brother and problems with getting cell reception.

According to Smith's later testimony, a few minutes into the contact, Smith activated his personal recorder. Soon after the recorder was activated, Smith told Ford to keep his hands where he could see them. Ford then gestured with one arm toward the other bag and asked whether he could put his phone away. As Ford lifted his arm, Smith saw a shiny metal object sticking out of the pink purse. When Ford saw that Smith had seen the metal object, Ford stated "this ... this is ceremonial ..." Smith interrupted Ford, telling him "don't touch it, don't touch it." The metal object was later determined to be part of a ceremonial knife with a seven- to eight-inch blade.

Following the discovery of the ceremonial knife, Ford was arrested and charged with fifth-degree weapons misconduct for failing to immediately inform Sergeant Smith about the concealed deadly weapon that Ford was carrying in his bag.[2]

When Ford arrived at the jail, another police officer conducted a pat-down weapons search of Ford while Sergeant Smith called the after-hours on-call judge to request a departure from the misdemeanor bail schedule based on Ford's criminal history. The pat-down search revealed a lock-picking instrument and a black case with drug paraphernalia.

Based on Ford's prior felonies and Sergeant Smith's description of Ford's suspicious behavior, the on-call judge granted Smith's request for a departure from the misdemeanor bail schedule and set Ford's pre-arraignment bail at $1500. Ford was unable to meet that pre-arraignment bail, and he was then booked into the jail.

During the booking process, Ford was required to remove his clothes. While Ford was removing his clothes, he told the officer that he had just found

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[2] *See* AS 11.61.220(a)(1)(A)(i).

something in his shoe, but he did not know how it got there. The item was a small red canister that contained heroin. Later that same day, Ford appeared before a magistrate judge who set Ford's bail at $1000. Ford was unable to meet that bail amount, and he therefore remained in custody.

In the meantime, Sergeant Smith applied for, and received, a search warrant to search Ford's bags. The search of Ford's bags revealed a handgun and additional evidence of drugs. Ford was subsequently indicted on multiple felony drug and weapons offenses, including second- and fourth-degree controlled substance misconduct and second- and third-degree weapons misconduct. Ford was also charged with two misdemeanor counts of fifth-degree weapons misconduct and one count of possession of burglary tools.

In the pre-trial proceedings, Ford's defense attorneys filed multiple motions to suppress, seeking to suppress all of the evidence in Ford's case on various constitutional grounds. The superior court held multiple evidentiary hearings, and later issued written orders denying the different motions.

Ford's case then went to trial, where the jury convicted Ford of all of the charged offenses. At sentencing, Ford receive a composite term of 12 years and 3 months to serve. He now appeals his convictions and his sentence.

Ford's claims on appeal

On appeal, Ford's appellate attorney raises fourteen different claims of error. As the State correctly points out, many of these claims are inadequately briefed.[3]

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[3] *See, e.g.*, *Petersen v. Mutual Life Ins. Co. of New York*, 803 P.2d 406, 410 (Alaska 1990) (appellate court may deem a claim waived if it is given only cursory treatment on appeal).

We nevertheless address each of the claims to the extent we can, based on the briefing currently before us.

Ford's first claim of error: whether there was reasonable suspicion justifying the initial investigative stop

Under Alaska law, the police are authorized to perform an investigative stop when they have reasonable suspicion that imminent public danger exists or that serious harm to person or property has recently occurred.[4] "A reasonable suspicion is one that has some factual foundation in the totality of the circumstances observed by the officer in light of the officer's knowledge."[5]

In the proceedings below, the superior court concluded that the totality of the circumstances known to Sergeant Smith gave rise to reasonable suspicion justifying the investigative stop. As already mentioned, these circumstances included: the recent burglaries in the area; Ford's suspicious behavior when he saw the patrol car; the "odd bags" Ford was carrying; Sergeant Smith's knowledge of Ford's criminal history; and Smith's knowledge that Ford did not live nearby and had no obvious reason for being in this commercial district at this time of night.

On appeal, Ford takes issue with some of these facts, asserting that the record showed that there had been only one recent burglary about a week ago and that the other burglary had occurred almost four miles away more than a month earlier. We do not find this discrepancy material to the court's analysis.

Ford also takes issue with the superior court's credibility determinations. Ford contends that Sergeant Smith's description of events was not credible and he asserts

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[4] *Coleman v. State*, 553 P.2d 40, 43-47 (Alaska 1976).

[5] *Gutierres v. State*, 793 P.2d 1078, 1080 (Alaska App. 1990).

that he did not act "furtively" and did not duck behind the car as Smith claimed. But it is the trial court who saw and heard Smith testify, and we are required on appeal to uphold a trial court's findings of fact unless those findings are shown to be clearly erroneous.[6] Ford has made no such showing here. We therefore reject this claim on appeal.

Ford's second claim of error: whether Ford's arrest was supported by probable cause

Ford was initially arrested for violating AS 11.61.220(a)(1)(A). This statute provides, in relevant part:

> (a) A person commits the crime of misconduct involving weapons in the fifth degree if the person
> (1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,
> (A) that is concealed on the person, and, when contacted by a peace officer, the person fails to (i) immediately inform the peace officer of that possession[.]

"Contacted by a peace officer" is defined statutorily as "stopped, detained, questioned, or addressed in person by the peace officer for an official purpose."[7]

In the trial court proceedings below, Ford argued that Smith lacked probable cause to arrest him for violating this statute. Ford's primary argument was that the ceremonial knife was not "concealed" because its handle was visible to Smith after Ford moved his arm. The superior court rejected this argument, concluding that the ceremonial knife remained "concealed" for purposes of the statute, even after Ford

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[6] *Chilton v. State*, 611 P.2d 53, 55 (Alaska 1980).

[7] AS 11.61.220(i).

moved his arm, because Smith could not readily identify the shiny metal object protruding out of Ford's bag as a knife.

We find no error in this ruling. A deadly weapon is considered "concealed" for purposes of AS 11.61.220 if the weapon is "covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it[.]"[8] Under this definition, a weapon is "concealed" if it is "hidden from ordinary observation."[9] But "it need not be absolutely invisible to other persons."[10]

Here, Smith testified that he saw a shiny metal object protruding out of Ford's bag after Ford moved his arm. Smith further testified that he did not know what the object was, although he was concerned about what it might be. The superior court credited this testimony, which was directly corroborated by the contemporaneous recording. On the recording, Smith can be heard telling Ford that he does not know what the "shiny metal object" is.

Ford's case is therefore distinguishable from *State v. Turner*,[11] an out-of-state case relied on by his trial attorney in the proceedings below and cited by Ford on appeal. *Turner* involved a defendant who was stopped by a police officer at a bicycle rally because the officer saw "three to four inches" of a sword handle wedged between the defendant's back and his backpack. The officer later testified that "there was no

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[8] AS 11.61.220(e).

[9] *McKee v. State*, 488 P.2d 1039, 1042 (Alaska 1971).

[10] *Id.*

[11] *State v. Turner*, 191 P.3d 697 (Or. App. 2008).

doubt in his mind that the object was a sword or something similar."[12] Based on this testimony, the Oregon Court of Appeals concluded that the sword was not "concealed" for purposes of Oregon law because it was readily identifiable by the officer as a sword.[13] Here, in contrast to *Turner*, the superior court found that Sergeant Smith was not able to identify the "shiny metal object" protruding out of Ford's bag as a knife.

Ford also separately challenges the superior court's finding that Ford could have informed Smith of the deadly weapon concealed in his bag earlier in the police contact than Ford did.[14] On appeal, Ford contends that he *tried* to tell Smith about the ceremonial knife, but that he was "unable to get a word in edgewise about the knife until approximately 35 seconds from the time [the sergeant] started his recorder."

We agree with Ford that he had relatively little opportunity to inform Smith of the ceremonial knife once Smith activated the recorder. The record indicates that, shortly after the recorder was activated, Smith saw the metal object sticking out of Ford's bag and the following exchange then occurred:

> FORD: Okay, this ... this is ceremonial ... .
>
> SMITH: Don't touch it ... don't touch it.
>
> FORD: Oh, no, Smith, this was a Christmas present from my wife, man.
>
> SMITH: Okay. I don't know what it is, it's a metal object, it's shiny, it's sticking out, so ... .
>
> FORD: It's a knife, it's a — Christmas (indiscernible, simultaneous speech) decorative knife, that's what it is ... .

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[12] *Id.* at 698 (internal quotations and alterations omitted).

[13] *Id.*

[14] AS 11.61.220(i).

But the superior court's finding of probable cause rested, in large part, on the court's conclusion that Ford was "contacted by a peace officer" prior to the activation of the recorder and prior to this exchange. In its written order, the court concluded that the police contact began when Smith got out of his patrol car and essentially prevented Ford from walking away by hailing Ford and telling Ford that he needed to talk to him. At the evidentiary hearing, Smith estimated that he activated his recorder a few minutes into the contact with Ford. In his opening brief, Ford disputes this estimate, and he characterizes the time between "the start of the contact" and the time "[w]hen Ford began to tell [Smith] about the knife" as "less than two minutes." But Ford does not appear to dispute (in his opening brief at least) that the contact preceded the activation of the recorder and that Ford had more than 35 seconds in which to tell Smith about the knife.

Based on this sequence of events, the superior court concluded that "[a] reasonable person could conclude that Ford could reasonably have told Smith earlier in the contact that he carried a knife." We agree that this conclusion is well supported by the record. The record shows, in particular, that a reasonable person could reasonably believe that Ford could have told Smith about the deadly weapon concealed in his bag earlier in the contact instead of "rambling on" about his brother and cell phone.

We also conclude that it is unnecessary for us to resolve the exact meaning of the term "contacted by a peace officer" in the context of this case. In the proceedings below, Ford's trial attorney argued that this term should be narrowly construed and limited to situations where a person has been official seized for Fourth Amendment purposes. The attorney argued that to construe the statute more broadly than this would infringe on a person's constitutional right to walk away from unwanted police contact, as recognized by the United States Supreme Court in *Florida v. Royer*.[15] Ford briefly

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[15] *See Florida v. Royer*, 460 U.S. 491, 497-98 (1983) (holding that when an officer (continued...)

summarizes this constitutional argument in his opening brief, although he fails to acknowledge that the trial court never directly ruled on this question of law. Ford also expands on this constitutional argument in his reply brief, and he argues that he was not "seized" or "contacted" in the current case until Smith ordered him to keep his hands where Smith could see them. But Ford fails to explain why the earlier point of contact identified by the superior court — which bears many of the same hallmarks of a traditional seizure — was not sufficient to qualify as "contact[] by a peace officer" even under Ford's narrow definition of this term. That is, Ford fails to adequately explain why resolution of this constitutional question — which was not directly ruled on by the trial court in the proceedings below — is actually necessary to resolve the issues raised in Ford's appeal.

Ford also fails to meaningfully brief the legal questions this constitutional argument raises, including the underlying question of statutory interpretation that it presents. Ford does not discuss (or even mention) the statutory definition of the term "contacted by a peace officer" under AS 11.61.220(i).[16] Nor does he explain how this definition came to be adopted by the legislature or what purpose it was intended to serve.[17]

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[15] (...continued)
approaches an individual, and identifies himself as a police officer "[t]he person approached [] need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way").

[16] *See* AS 11.61.220(i) ("contacted by a peace officer" means "stopped, detained, questioned, or addressed in person by the peace officer for an official purpose").

[17] We note that the legislative history of AS 11.61.220(a)(1)(A) is complicated and subject to multiple interpretations. Prior to 2003, AS 11.61.220(a)(1) criminalized the act of carrying a concealed deadly weapon (other than a pocket knife) on one's person unless the person was on their own land, engaged in hunting or fishing, or in possession of a valid (continued...)

Thus, given Ford's failure to obtain a ruling from the trial court on the constitutional argument he raised below, Ford's failure to adequately brief the underlying statutory interpretation question presented by this constitutional claim, and Ford's failure to show that resolution of this legal question would actually make a material difference to the superior court's probable cause determination, we conclude that we cannot — and should not — resolve this larger question of statutory interpretation here.

Ford's third claim of error: whether evidence was seized subject to an illegal continuing detention

As previously mentioned, Ford was subjected to a pat-down weapons search upon his arrival at the Sitka police department. The pat-down revealed a lock-picking instrument and a black case containing drug paraphernalia — evidence that was later used against Ford at trial. In the proceedings below, Ford moved to suppress the

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[17] (...continued)
concealed handgun permit. *See* former AS 11.61.220(a)(1)(2002); former AS 11.61.-220(d)(2002). The statute was amended in 2003 to instead require that a person who carried a concealed deadly weapon immediately inform a police officer of that concealed weapon when "contacted by a peace officer." *See* SLA 2003, ch. 62, §§ 1-4, 7. This amendment was part of House Bill 102, which eliminated the mandatory nature of Alaska's concealed handgun permitting program. *Id.* The term "contacted by a peace officer" was added to the bill by Rep. Max Gruenberg and was derived from former AS 18.65.750(d), which had governed the reporting requirements under the concealed handgun permitting program. *See* Minutes of the House State Affairs Standing Comm., House Bill 102, remarks of Rep. Max Gruenberg (Mar. 27, 2003). A memorandum drafted by Gerald Luckhaupt, Legislative Counsel for the Alaska Legislative Affairs Agency indicated that this language was "developed after much discussion in 1994 when the concealed handgun permit system was first adopted" and it "was designed to reach situations when a concealed handgun permittee is contacted by a peace officer and the peace officer is entitled to do a protective frisk of the person under the authority of *Terry v. Ohio*." *See* Memorandum from Gerald P. Luckhaupt, Legislative Counsel for the Legal and Research Serv. for the Legis. Aff. Agency to Rep. Eric Croft for Concealed Deadly Weapons and Contacted by a Peace Officer (Apr. 9, 2003).

drug evidence found in the black case, arguing that the officer violated the Fourth Amendment when he opened the case and that the officer should have secured the case and obtained a search warrant before opening it. Ford also separately argued that the pat-down search was pretextual.

The superior court rejected these arguments and upheld the search as a lawful weapons search based on officer safety. In reaching this conclusion, the court relied on the testimony of the officer who conducted the search, who testified that he conducted the search based on the nature of the offense and the reports of Ford's erratic and worrisome behavior. The officer also testified that he was concerned that the black case contained a weapon.

On appeal, Ford argues that the officer's testimony was not credible, and he points to various inconsistencies between the officer's description of the search at the evidentiary hearing and the officer's subsequent description of the search at trial. But as the State points out, these inconsistencies were not before the trial court when it ruled on Ford's motion to suppress, and Ford's trial attorney never renewed that motion after the officer provided this purportedly inconsistent testimony at trial. We therefore do not consider these purported inconsistencies on appeal.

Moreover, even if we were to assume that the officer exceeded the scope of a legitimate pat-down search for weapons, we would still need to determine whether the doctrine of inevitable discovery would apply in light of the search warrant that was later obtained by Sergeant Smith.[18] Ford's brief fails to address this issue (other than to argue that the search warrant was itself unlawful, a claim that we reject for the reasons explained in the next section). We therefore agree with the State that Ford has failed to show error on this claim.

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[18] *Starkey v. State*, 272 P.3d 347, 350 (Alaska App. 2012).

We also agree with the State that Ford has failed to show error with regard to the court's ruling on the inventory search that occurred after Ford was unable to post the $1500 bail set by the on-call judge. (The inventory search produced the red canister of heroin found in Ford's shoe.) Ford's opening brief devotes only a page to this issue. In this section, he asserts in a conclusory manner that Smith's request for a departure from the misdemeanor bail schedule "was a pretext to keep Ford in custody and see what an inventory search of all Ford's possessions, including his bags, would turn up." Ford also asserts, again in a conclusory manner, that the "setting of $1500 bail was substantively and procedurally incorrect."

The State argues that this claim has been waived for inadequate briefing. We agree. In the proceedings below, the superior court ruled that Criminal Rule 41 (not Criminal Rule 5) governs a police officer's request for a departure from a misdemeanor bail schedule.[19] The superior court also concluded that Ford's rights under Rule 5 were not violated because Ford was timely taken before a judicial officer later that same day, and a new bail (which Ford was also unable to meet) was set at that first appearance in accordance with all of the procedural requirements under Rule 5. Ford's briefing does not address or even cite Criminal Rule 41, nor does it discuss the superior court's ruling or its underlying legal reasoning for that ruling. We therefore reject this claim of error as inadequately briefed.

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[19] Under Alaska Criminal Rule 41(d), the presiding judge of each judicial district has the authority to adopt a misdemeanor bail schedule for that district. But, as the superior court correctly pointed out, Criminal Rule 41(d)(2) also requires that any standing order establishing a misdemeanor bail schedule "must provide that the arresting police agency may apply to a judicial officer for a different bail." We note that Criminal Rule 41 does not provide any guidance on what procedures should be followed if the police agency seeks an upward departure from the set bail schedule. However, it does provide some guidance on the procedures that should be followed if a defendant seeks a *downward* departure based ont the defendant's inability to meet the scheduled amount. *See* Alaska R. Crim. P. 41(d)(2).

Ford's fourth claim of error: evidence was seized pursuant to an invalid search warrant

In the proceedings below, Ford argued that Sergeant Smith made intentional material misrepresentations in the search warrant application and that the weapons and drugs seized pursuant to that search warrant should therefore be suppressed. Ford argued specifically that Smith intentionally misrepresented the length of his contact with Ford, and Smith also intentionally omitted the fact that Ford did ultimately tell Smith about the ceremonial knife.

The trial court rejected these arguments following an evidentiary hearing. The court found first that that there was "[no] reason to believe [Smith's] estimate of the contact was untrue." The court further found that, even if the estimate was inaccurate, there was no indication that Smith's estimate was made with the intent to mislead the magistrate judge or with reckless disregard as to the truth. The court made similar findings with regard to the other alleged misrepresentations. Lastly, the court concluded that none of the alleged misrepresentations or omissions affected the magistrate judge's probable cause determination.

On appeal, Ford simply repeats his claim that Smith made material misrepresentations and he does not directly address or discuss the superior court's findings. Because the court's findings primarily involve credibility determinations that have not been shown to be clearly erroneous, we reject this claim of error.

Ford's fifth claim of error: "the illegally seized evidence should have been suppressed"

In this part of his brief, Ford argues that all of his motions to suppress should have been granted. This claim appears to be simply a recapitulation of Ford's earlier arguments regarding the purported unlawfulness of the stop, the purported

unlawfulness of the arrest, the purported unlawfulness of the pat-down search, the purported unlawfulness of the inventory search, and the purported invalidity of the search warrant. We have already addressed Ford's arguments on these issues (to the extent they have been preserved) in the earlier sections of this opinion. To the extent that Ford is making some other independent claim for suppression in this section, that claim is inadequately briefed and therefore waived.[20]

Ford's sixth claim of error: the trial court erred in failing to find that Ford was prejudiced by the late disclosure of the audio recording of the officer's request for increased bail

The day before a scheduled evidentiary hearing, Ford's trial attorney received a late-disclosed audio recording of Sergeant Smith's telephone call to the after-hours on-call judge. (Ford's attorney had previously been told that no such recording existed.) Ford's trial attorney later argued that the prosecutor and/or the police department had intentionally withheld critical information and that this late-disclosure prejudiced his ability to cross-examine Sergeant Smith at the subsequent evidentiary hearing. The superior court rejected this argument, finding that the late disclosure was neither intentional nor willful and that it had occurred because the arresting officer had a good-faith belief that his telephone conversation with the judge had not been recorded. The court also found that Ford had failed to show that he was prejudiced by the late disclosure or that his cross-examination of the officer was materially affected by the delay.

On appeal, Ford argues that the late-disclosure was intentional. But the only support he provides for this claim is his conclusory assertion that "it defies belief

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[20] *See Petersen*, 803 P.2d at 410; *see also Berezyuk v. State*, 282 P.3d 386, 399 (Alaska App. 2012).

to accept that a veteran officer of the Sitka Police Department was unaware that the communication system at the police department was recording his phone call to [the judge]." Ford also argues that he *was* prejudiced by the late disclosure. But he provides no support for this claim and fails to point to any material prejudice that he suffered from the late disclosure of this evidence. Because Ford has failed to show any error with regard to the court's findings, we reject this claim on appeal.

Ford's seventh claim of error: the trial court erred in failing to give a Thorne instruction with regard to the purportedly "destroyed" video recording from the officer's patrol car

According to the pretrial discovery, Sergeant Smith's vehicle was equipped with a video monitoring system that constantly maintained a three-minute buffer of video. However, this buffered video would be automatically deleted whenever the patrol car was turned off. The buffered video was therefore deleted when Smith turned off his car and got out of his car to conduct the investigative stop of Ford.

Ford later argued that Smith's failure to save this buffered video constituted a failure to preserve relevant evidence that could have been exculpatory to Ford. (Ford argued that the video could have shown that he did not duck behind a car when he saw Smith's patrol car, as Smith claimed.) Ford therefore requested a *Thorne* instruction with regard to this lost evidence.[21]

The superior court denied this request, concluding that Smith's actions were more akin to a failure to collect evidence, rather than a failure to preserve evidence because the collection of evidence in this circumstance required Smith to take an affirmative act prior to turning off his car. The superior court also emphasized the absence of any policy or regulation requiring a police officer to take this type of

[21] *See Thorne v. Dept. of Public Safety*, 774 P.2d 1326, 1331-32 (Alaska 1989).

affirmative steps to collect this kind of buffered video recording. Because Ford does not meaningfully challenge this reasoning on appeal, we reject this claim of error for inadequate briefing.[22]

Ford's eighth claim of error: the trial court erred in admitting evidence without a proper foundation

At trial, Ford objected to the admission of certain evidence on chain-of-custody grounds. The superior court overruled these objections. On appeal, Ford argues these objections should have been sustained. But Ford does not identify which evidence was erroneously admitted; nor does he explain how he was prejudiced by the admission of this evidence. We therefore reject this claim of error for inadequate briefing.[23]

Ford's ninth claim of error: the trial court erred in not allowing impeachment evidence into the record

In the proceedings below, Ford used the search warrant application to cross-examine of one of the State's witnesses. But when Ford offered this document into evidence, the State objected to the document as hearsay. The trial judge sustained the State's objection.

On appeal, as he did in the trial court, Ford cursorily asserts that the search warrant application was admissible as a business record. But Ford offers no analysis of the hearsay rule and its exceptions, nor does he provide any authority holding that a

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[22] *Berezyuk*, 282 P.3d at 399.

[23] *Berezyuk*, 282 P.3d at 399.

search warrant application is an admissible business record. We therefore conclude that Ford's briefing is insufficient to preserve this claim of error.[24]

Ford's tenth claim of error: the trial court erred in allowing expert testimony not conforming to Evidence Rule 703

At trial, Ford objected to the testimony of the State's forensic analyst on the ground that there was insufficient evidence to establish that the analyst's testing of the drugs seized from Ford was performed in a reliable manner. This objection was based on the expert's explanation (during voir dire) that some of the laboratory's reference samples had been contaminated. As the expert also explained, however, this contamination did not affect the subject samples — that is, the drugs seized from Ford. Moreover, the contaminated reference samples were directly accounted for during the testing of those subject samples. Based on this explanation, the trial judge overruled Ford's objection. However, the judge allowed Ford to pursue this matter during his cross-examination of the expert.

On appeal, Ford argues that his objection should have been sustained. But he fails to provide any discussion of the superior court's ruling and he fails to provide any reason to doubt the superior court's conclusions. We therefore reject this claim as inadequately briefed.[25]

Ford's eleventh claim of error: the trial court erred in denying Ford's motions for judgments of acquittal

Ford argues that the trial court erred when it denied his trial attorney's motions for judgments of acquittal. But Ford's brief fails to actually discuss the trial

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[24] *Id.*

[25] *Id.*

court's rulings on these motions. Instead, Ford simply summarizes his trial attorney's arguments for judgments of acquittal, which were primarily arguments for why the court should reconsider its earlier rulings rather than arguments that the evidence, if properly admitted, was insufficient.[26] Because Ford fails to raise any independent insufficiency arguments on appeal, we consider such claims waived for inadequate briefing.

Ford's twelfth claim of error: the trial court erred in failing to dismiss the indictment for material misstatements to the grand jury

In this section of his brief, Ford asserts that Sergeant Smith made material misstatements to the grand jury and the superior court should have dismissed the indictment on this ground. But Ford provides no citation to the record showing where he moved to dismiss the indictment on this ground, nor does he show that the trial court ever ruled on such a motion. We therefore reject this claim for lack of preservation and/or inadequate briefing on appeal.[27]

Ford's thirteenth claim of error: the trial court erred in its jury instructions

In this section, Ford cursorily asserts that jury instructions 18, 19, and 20 were erroneous and prejudicial. Ford does not identify where in the record he objected to these instructions nor does he adequately explain why any of these instructions were erroneous. We note that instructions 18 and 19 are essentially identical to the statutory

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[26] *See Marino v. State*, 934 P.2d 1321, 1330 n.3 (Alaska App. 1997).

[27] *See, e.g.*, *Pierce v. State*, 261 P.3d 428, 430-31 (Alaska App. 2011); *Bryant v. State*, 115 P.3d 1249, 1258 (Alaska App. 2005) ("Normally, an appellant may only appeal issues on which he has obtained an adverse ruling from the trial court."); *Mahan v. State*, 51 P.3d 962, 966 (Alaska App. 2002) ("To preserve an issue for appeal, an appellant must obtain an adverse ruling.").

definitions of "knowingly" and "recklessly" codified in AS 11.81.900(a)(2) and (a)(3). Instruction 20 is similarly unremarkable. It instructed the jury that a weapon that is concealed in the person's clothing, purse, or similar handheld container is still considered to be "on [the] person" for purposes of AS 11.61.220(a)(1)(A). Because we perceive no obvious error in the challenged instructions, we reject this claim on appeal.

Ford separately argues that the superior court should have given the jury the instruction on "immediately" proposed by Ford's trial attorney. Although the record shows that such an instruction was offered, Ford fails to show where the parties actually discussed the proposed instruction or why the court ultimately rejected the instruction. Ford also fails to explain why the jury needed a specialized instruction for "immediately" or how he was prejudiced by the absence of such an instruction. We therefore reject this claim of error as inadequately briefed.

Ford's fourteenth claim of error: excessive sentence

At the time of sentencing, Ford was a third-felony offender with a significant criminal history. As a third-felony offender, Ford faced a presumptive range of 15 to 20 years on his most serious charge — the second-degree misconduct involving a controlled substance.[28] Based on statutory mitigating factors, the trial court imposed a sentence *below* the presumptive range on that charge, imposing only 10 years to serve on that conviction. The court also ran that sentence concurrently to the sentence for Ford's other drug conviction.

With regard to the weapons offenses, the court imposed 6 years to serve for the second-degree weapons misconduct conviction, running 4 of those years concurrently with the other sentences. The trial court also imposed concurrent sentences for the felon

[28] *See* former AS 12.55.125(c)(4)(pre-2016).

in possession conviction (3 years) and the two misdemeanor weapons convictions (90 days each). Lastly, the court imposed 3 months — to be served consecutively to the other sentences — for Ford's possession of burglary tools conviction.

Ford's composite sentence was therefore 12 years and 3 months to serve. On appeal, Ford challenges this composite sentence as excessive.

When we review an excessive sentence claim, we independently examine the record to determine whether the sentence is clearly mistaken.[29] The "clearly mistaken" standard contemplates that different reasonable judges, confronted with identical facts, will differ on what constitutes an appropriate sentence, and that a reviewing court will not modify a sentence that falls within a permissible range of reasonable sentences.[30] We have independently reviewed the sentencing record in this case. Given the facts of this case and Ford's prior criminal history, we conclude that the composite sentence imposed here is not clearly mistaken.

Conclusion

The judgment of the superior court is AFFIRMED.

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[29] *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

[30] *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997).