

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

AARON J. McDOWELL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11375  
Trial Court No. 3PA-09-1396 CR

MEMORANDUM OPINION

No. 6320 — April 27, 2016

Appeal from the Superior Court, Third Judicial District, Palmer,  
Gregory Heath and Eric Smith, Judges.

Appearances: Darryl L. Jones, Anchorage, for the Appellant.  
Donald Soderstrom, Assistant Attorney General, Office of  
Criminal Appeals, Anchorage, and Craig W. Richards, Attorney  
General, Juneau, for the Appellee.

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

Judge MANNHEIMER.

Aaron J. McDowell and two other men (Brian Allison and Eric Carlson) were indicted for a string of break-ins and thefts along the Glenn Highway during the summer of 2008. McDowell was ultimately convicted of attempted second-degree

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

burglary, possession of burglary tools, second-degree forgery, four counts of second-degree theft, and two counts of first-degree vehicle theft.

In this appeal, McDowell argues that much of the evidence against him was obtained as a result of an illegal investigative stop. McDowell also argues that he was brought to trial outside the time limits of Alaska's speedy trial rule, Criminal Rule 45.

For the reasons explained in this opinion, we conclude that neither of McDowell's claims has merit, and we therefore affirm his convictions.

*Underlying facts pertaining to the investigative stop*

The primary issue presented in this appeal is whether there was reasonable suspicion to support the investigative stop of McDowell's vehicle as he drove overland toward the parking lot at Long Lake. As we will explain in some detail, we conclude that the investigative stop was justified by reasonable suspicion that McDowell had recently committed the crime of burglary. In the discussion that follows, we describe the evidence in the light most favorable to the superior court's ruling.<sup>1</sup>

Through the summer of 2008, the authorities received reports of a number of break-ins and thefts along the Glenn Highway in the vicinity of Chickaloon. These thefts included one vehicle theft: a blue truck with a utility box mounted on it.

Aaron McDowell and Brian Allison had been linked to a break-in at the Eklutna Power Plant that same summer. On September 4th, the state troopers seized Allison's truck. The truck contained stolen items and burglary tools.

Ten days later, on September 14th, a local resident, Frank Kirk, made contact with the driver and the occupant of a blue truck that was being driven in a

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<sup>1</sup> See *State v. Gibson*, 267 P.3d 645, 650 (Alaska 2012); *Phillips v. State*, 271 P.3d 457, 458 (Alaska App. 2012).

suspicious manner. Earlier that day, Kirk's mother-in-law had told him about a blue truck that had parked in her driveway; when the two occupants of the truck noticed that Kirk's mother-in-law was looking at them, they drove away. Kirk then personally observed a blue truck — a truck matching his mother-in-law's description — parked in a neighbor's driveway some two miles away.

Kirk decided to speak with the two men in the truck, but while Kirk was on the phone with his mother-in-law to confirm her description of the vehicle, the truck drove away.

Kirk decided to drive around the area to see if he could locate the truck again. While he was driving, he noticed fresh tire tracks going up a driveway to an abandoned cabin on private property. Kirk drove up the driveway and saw the same blue truck parked in front of the cabin. When he approached the truck, he saw one man sitting in the driver's seat and another man carrying something from the cabin back to the truck.

Kirk asked the men who they were, and what they were doing there. The men told him that they were on a hunting trip, and they were headed toward Glennallen — which, if true, meant that the men were driving in the wrong direction. Kirk then demanded to see some identification; in response, McDowell gave Kirk his driver's license.

After Kirk returned McDowell's driver's license, the two men drove off in the blue pickup. Kirk tried to follow the truck, but he became separated from the truck in a construction zone. Kirk then called 911 to report the truck's license plate and to describe the suspicious activities of the men in the truck.

In response to Kirk's 911 report, Alaska State Trooper Russell Landers called Kirk, and Kirk agreed to meet with Landers. During this meeting, Kirk explained

everything that had happened, and then he and Landers set out together to see if they could locate the blue truck again.

They noticed fresh tire tracks in a driveway near Long Lake at Mile 88 of the highway. Kirk knew the owner of this property, and he knew that the home had burned down and the property was vacant.

As Kirk and Trooper Landers proceeded up the driveway, they saw that the gate was closed, but they could see pieces of a padlock lying in the mud. Kirk and Landers saw tire tracks on the property, but the blue truck was not there. However, Landers could hear the sounds of a vehicle on a nearby power line trail; the vehicle sounded like it was stuck.

The tire tracks at the abandoned property were distinctive, in that the treads of the front and rear tires were different from each other. (Landers took photographs of these tracks, and he compared them to the tracks found at the other abandoned cabin some dozen miles away, where Kirk said that he had confronted the two men earlier. The tracks matched.)

Trooper Landers did not want to drive his patrol car down the power line trail, so he called two fish and wildlife troopers who were in the area and who had four-wheelers. Landers arranged to meet these two other troopers at Long Lake, to see if they could make contact with the vehicle on the power line trail.

The two other troopers — Trooper Burk and Trooper Lewis — arrived at the Long Lake parking lot before Landers got there. While the troopers waited, they spoke to two men in the parking lot who reported hearing “a lot of commotion” — *i.e.*, the loud noises of a vehicle stuck on the power line trail.

As Burk and Lewis continued to wait for Trooper Landers, they saw a blue truck driving out of the woods (from the power line trail) toward the Long Lake parking lot.

Burk approached the truck and said hello to the two occupants. Bolt cutters and copper wire were visible in the back of the truck. After a couple minutes of conversation, the men in the truck asked if Burk and Lewis were troopers; Burk replied that they were. Burk then asked the men for identification. The two men were McDowell and Allison.

Burk asked McDowell and Allison what they had been doing on the trail. The men replied that they had been hunting — but the men had no weapons with them, nor did Burk see any game bags. McDowell then offered a description of what he and Allison had been doing that day, but according to Burk this description “[wasn’t] making a lot of sense”.

Burk and Lewis then told the men that a suspicious vehicle had been observed in the area, that another trooper (*i.e.*, Landers) was on his way to talk to them, and that they should wait until Trooper Landers arrived.

(In the superior court, McDowell and the State stipulated that McDowell’s and Allison’s contact with the troopers ripened into an investigative stop at this point.)

A little later, when Landers and Kirk arrived at the Long Lake parking lot, Kirk identified McDowell and Allison as the men he had contacted earlier that day, and he identified the blue truck as the same truck he had seen and followed.

### *Why we uphold the legality of this stop*

In the superior court, McDowell argued that Trooper Burk’s and Trooper Lewis’s investigative stop of McDowell and Allison was not supported by reasonable suspicion.

The superior court ruled that the initial stop was justified under two rationales: first, as a “compliance check” to make sure that McDowell and Allison were

complying with any pertinent game regulations (*see* 5 AAC 92.012(b)); and second, as a typical investigative stop supported by reasonable suspicion that McDowell and Allison had engaged in a burglary earlier that day (*i.e.*, Kirk’s report that he had seen the two men carrying items of property from an abandoned cabin and putting those items into their truck).

We find it unnecessary to resolve the validity of the superior court’s first rationale (the “compliance check” for potential game violations) because we agree with the superior court’s second rationale. That is, we conclude that Burk and Lewis had reasonable suspicion that McDowell and Allison were the perpetrators of at least one recent burglary.

Although Burk and Lewis did not personally have knowledge of all the information that gave rise to this reasonable suspicion of burglary, these two troopers were acting at the behest of Trooper Landers. As the superior court found, Landers instructed Burk and Lewis to hold McDowell and Allison until he could arrive and speak to them.

Under these circumstances, the lawfulness of the investigative stop is judged, not based simply on what Burk and Lewis knew, but on Landers’s knowledge as well (including what Landers had learned from Kirk). *See Saltz v. Division of Motor Vehicles*, 126 P.3d 133, 137-38 (Alaska 2005); *State v. Prater*, 958 P.2d 1110, 1112-13 (Alaska App. 1998). And the information known to Trooper Landers (through his conversations with Kirk, and through his own investigation) was sufficient to constitute the reasonable suspicion that was needed for an investigative stop.

We also conclude, based on the record, that Frank Kirk qualified as a “citizen informant” whose reports to Trooper Landers were presumed to be credible.

For these reasons, we uphold the superior court’s denial of McDowell’s suppression motion.

*McDowell's speedy trial claim*

In the superior court, McDowell moved to dismiss the charges against him, claiming that the time for bringing him to trial under Alaska Criminal Rule 45 had expired. The superior court denied that motion, and McDowell now renews his Rule 45 claim on appeal.

McDowell's claim is not adequately briefed. He fails to address (much less demonstrate any error in) the superior court's ruling on the Rule 45 issue — in particular, the superior court's identification and analysis of the various time periods in McDowell's case, and the superior court's rulings as to whether those time periods were countable or not under Rule 45.

We also note that one of the central aspects of the superior court's ruling was the court's conclusion that the Rule 45 clock stopped running when McDowell announced his intention to change his plea (*i.e.*, to plead guilty or no contest), and that the clock started again at Day 1 after plea negotiations broke down and McDowell announced that he again wished to go to trial.

In making this ruling, the superior court was following the rule announced by this Court in *Mustafoski v. State*, 954 P.2d 1042, 1044 (Alaska App. 1998).

McDowell does not address this aspect of the superior court's ruling in his opening brief. But in his reply brief, McDowell contends for the first time that *Mustafoski* was wrongly decided, and that it should be overruled. McDowell is not allowed to raise this contention for the first time in his reply brief.<sup>2</sup>

For these reasons, we uphold the superior court's rejection of McDowell's speedy trial claim.

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<sup>2</sup> *Petersen v. Mutual Life Ins. Co. of New York*, 803 P.2d 406, 411 (Alaska 1990); *Hitt v. J.B. Coghill, Inc.*, 641 P.2d 211, 213 n. 4 (Alaska 1982).

*Conclusion*

The judgement of the superior court is AFFIRMED.