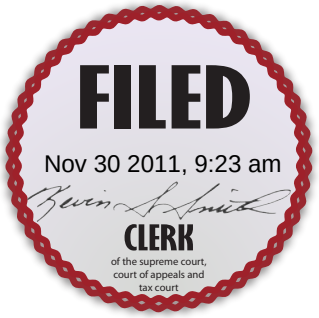

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IN THE
COURT OF APPEALS OF INDIANA

RONNIE SANCHEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-1101-CR-26
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Jerome F. Jacobi, Judge
Cause No. 10D02-0907-FA-265

November 30, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant–Defendant, Ronnie Sanchez (Sanchez), appeals the trial court's denial of his motion to suppress.

We affirm.

ISSUE

Sanchez raises one issue on appeal, which we restate as follows: Whether the trial court abused its discretion when it denied his motion to suppress evidence because the State had failed to comply with the statutory requirements to obtain a search warrant.

FACTS AND PROCEDURAL HISTORY

Sergeant Myron Wilkerson (Officer Wilkerson) of the Indiana State Police drafted a probable cause affidavit and search warrant for the property at 1604 8th Street in Jeffersonville. Both the probable cause affidavit and the search warrant were signed by Judge Joseph P. Weber (Judge Weber) of Clark County Superior Court III in Jeffersonville and dated July 20, 2009. Lieutenant Robert Mcghee (Detective Mcghee) of the Jeffersonville Police Department, along with other police officers, executed the search warrant the same day. Sanchez was arrested in the course of the search. The return of search warrant bore Detective Mcghee's signature and was dated July 20, 2009. It also listed the items seized from the property, including cocaine, marijuana, firearms, currency, and forged documents.

On July 27, 2009, the State filed an Information charging Sanchez with possession of cocaine, a Class A felony, Ind. Code § 35-48-4-6; possession of cocaine, a Class C

felony, I.C. § 35-48-4-6; and four counts of forgery, Class C felonies, I.C. § 35-43-5-2. The matter was assigned to Judge Jerry F. Jacobi in Clark County Superior Court II. On July 31, 2009, the trial court ordered the State to provide various discovery items to Sanchez. On August 3, 2009, the State provided, in part, copies of the probable cause affidavit, search warrant, and return of search warrant. On August 11, 2010, Sanchez filed a motion to suppress evidence based, in part, on the State's failure to comply with the statutory requirements to obtain a warrant.

On November 8 and 23, 2010, the trial court held hearings on Sanchez's motion to suppress. At the November 8, 2010 hearing, Officer Wilkerson testified that he filled out the probable cause affidavit and search warrant. However, Officer Wilkerson could not recall how he obtained the search warrant from Judge Weber, or details on where and when the search warrant was signed. Nor could Officer Wilkerson recall whether a copy of the probable cause affidavit was given to Judge Weber. Officer Wilkerson explained that at the time he was "doing five to seven search warrants a week" and therefore could not recall the details surrounding each search warrant. (Transcript p. 9). Instead, Officer Wilkerson provided testimony on what his standard operating procedures were when obtaining search warrants. He explained that when he obtained a search warrant in person, as opposed to by facsimile, he would prepare three copies of the probable cause affidavit and search warrant, have the trial judge sign them all, and leave one with the trial judge "because in the past years [I] was bad about getting them back to the [c]ourt." (Tr. p. 12-13). Officer Wilkerson thought that because the search warrant did not contain

facsimile markings, he must have obtained the warrant in person from Judge Weber, either at Judge Weber's home or at the Clark County Courthouse. Further, because no cause number appeared on the probable cause affidavit or on the search warrant, Officer Wilkerson surmised that he had probably "done it" at the trial judge's home. (Tr. p. 17). In response to questions from the trial court, Officer Wilkerson explained that he typically signs probable cause affidavits in the presence of the trial judge, and that he had not encountered a judge who did not want a copy. Officer Wilkerson could not recall whether the probable cause affidavit was in fact filed with the trial court, either before or after the search warrant was served, but testified that he tried to make it a habit to leave a copy of the probable cause affidavit with the trial judge.

Following Officer Wilkerson's testimony, the trial court discussed practices regarding the warrant with the State and Sanchez's attorney. The State explained that

> "Superior [Court III] [has a] drawer or two for [p]robable [c]ause [a]ffidavits and/or [r]eturn [of] [s]earch [w]arrants with no miscellaneous cause numbers, no minute […] entries on the [chronological case summary], merely bring it to the window and we will shove it into one of our files. As far as just a drawer, and nothing is ever done with them […]."

(Tr. p. 31). The trial court then explained its understanding of the procedure as follows:

> "[L]et me tell you what's supposed to happen. Judge at home is supposed to […] take these documents to the [c]ourt on the next business day and to assign a miscellaneous cause number that comes from the [c]lerk's office and a [j]udge can either keep it in their desk drawer until it's been, […] the return [of search warrant] has been filed or if the practice dictates, they give it to the head [c]ourt [r]eporter who keeps it under lock and key, […], so as not to prove of record, until, unless and until they get the head's up from the police, either we made the search and we didn't find anything or we made the search and we are filing the return [of search warrant] to protect against, the […] confidentiality of an ongoing police investigation. And

> […], so that when the police file their [r]eturn [of search warrant], if they file one, they know what [miscellaneous] cause number [to] place […]."

(Tr. pp. 35-36).

On November 23, 2010, the trial court held a second hearing on the motion to suppress. A court clerk from Clark County Superior Court III testified that she began work for that court on August 17, 2009, a little less than a month prior to the date of the search warrant and probable cause affidavit. Upon searching for the search warrant in the court's files, the court clerk found a series of documents beginning with the return of search warrant, the search warrant, and the probable cause affidavit, all stapled together in that order. These documents did not have a cause number or other filing mark. The court clerk did not know when the documents were filed with the court, nor could she testify as to the system for handling the filing of probable cause affidavits in effect at Superior Court III at the time the applicable search warrant was issued. The court clerk did explain that under procedures currently in place a miscellaneous cause number is assigned and a dated file stamp affixed when the trial judge signs the search warrant; if the trial judge signs the warrant at home, the cause number is assigned and file stamp affixed when the trial judge brings a copy of the search warrant to the trial court the next business day.

On November 23, 2010, the trial court denied Sanchez's motion to suppress. On December 14, 2010, Sanchez filed a motion to certify the trial court's denial for interlocutory appeal. On December 29, 2010, the trial court certified its Order for interlocutory appeal, and we granted the appeal on March 18, 2011.

Additional facts will be provided as necessary.

DISCUSSION AND DECISION

We review the denial of a motion to suppress for an abuse of discretion. *Johnson v. State*, 952 N.E.2d 305, 307 (Ind. Ct. App. 2011). A trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. *Id*. In conducting our review, we do not reweigh the evidence, and we consider conflicting evidence in the light most favorable to the trial court. *Id*. Uncontested evidence is viewed in favor of the defendant. *Id*.

Sanchez's sole contention on appeal revolves around the trial court's rejection of his argument that the probable cause affidavit was not "filed" with the trial judge as required by I.C. § 35-33-5-2(a). This statute provides, in pertinent part, that "no warrant for search or arrest shall be issued" until a probable cause affidavit "is filed with the judge." *Id*. Both this court and the supreme court have had several occasions to review the requirements of I.C. § 35-33-5-2(a), and in particular its requirement that the probable cause affidavit be filed with the trial judge. *See Johnson*, 952 N.E.2d at 308-10.

Current Indiana precedent distinguishes "filing" (delivery) from merely "exhibiting" (showing) the probable cause affidavit to the trial judge, with the former fulfilling the requirements of I.C. § 35-33-5-2(a). *Id*. at 308. Several factors have been identified in determining whether the probable cause affidavit has been delivered or simply shown to the trial judge. These include whether the probable cause affidavit was actually delivered to a trial judge or a member of the trial judge's staff. *Id*. The language

of the probable cause affidavit is also material, with language contained in the warrant itself relevant to determine whether it was filed or exhibited. *Id*. at 309. Whether law enforcement officials retained the only copy of the probable cause affidavit is relevant, though not necessarily determinative. *Id*. Existence of the probable cause affidavit in court files is also relevant. *Id.* Finally, timeliness is a significant factor with cases finding that filing of the probable cause affidavit one day late constituted filing, but filing 15 days or later or not at all was insufficient. *Id*.

Here, we are called upon to determine which of two competing inferences should prevail. Sanchez argues that the probable cause affidavit was not filed with the court. He bases this inference upon the following facts. (1) Officer Wilkerson was unable to recall whether he filed the probable cause affidavit; (2) the language of the search warrant states that evidence was "presented" to the trial judge rather than a probable cause affidavit "filed" with the trial judge; (3) no cause number appears on the search warrant, nor does the chronological case summary contain an entry recording the filing of the search warrant with the trial court; and (4) although the search warrant and probable cause affidavit were found in Superior Court III's court files, the clerk was unable to say when the probable cause affidavit was filed.

On the other hand, the State argues that although Officer Wilkerson could not recall the specific details surrounding issuance of the warrant, he testified to procedures customarily followed when he prepared probable cause affidavits and draft search warrants. Such standard procedures included producing three copies of the probable

cause affidavit and search warrant, leaving a copy with the trial judge whenever he obtained signature in person, whether at the courthouse or at the trial judge's home. Also, the State points to the fact that the search warrant bears Judge Weber's signature, and that the probable cause affidavit and search warrant were located in the court's files stapled to the return of search warrant. Finally, the State contends that the issuance of a cause number is not determinative of whether the search warrant was filed. The State argues that the foregoing leads to an inference that the probable cause affidavit was filed with the trial judge.

We find the State's argument persuasive. The evidence before the trial court supports the inference that the probable cause affidavit was filed with Judge Weber. Both the probable cause affidavit and search warrant are signed by Judge Weber and dated January 20, 2009. The return of search warrant is dated the same day. Although the language of the search warrant refers to evidence under oath presented to Judge Weber, we find this relevant, but not determinative. Officer Wilkerson testified that his practice is to make three copies, with each signed and one given to the trial judge. Indeed, Officer Wilkerson testified that he had not yet encountered a trial judge who refused to receive a copy. We find that the presence of the probable cause affidavit in the court files is also significant. Furthermore, the State produced the probable cause affidavit, search warrant, and return of search warrant to Sanchez within thirteen days following execution of the search warrant.

Although Sanchez rests his argument on Officer Wilkerson and the court clerk's inability to recall the details surrounding the filing of the probable cause affidavit, as well as the lack of a cause number, Sanchez has failed to produce affirmative evidence showing that the probable cause affidavit was not filed. Thus, we find that the trial court did not abuse its discretion in concluding that the probable cause affidavit was in fact properly filed with the trial judge.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not abuse its discretion in denying Sanchez's motion to suppress evidence discovered following a search warrant because the probable cause affidavit was properly filed with the trial court.

Affirmed.

NAJAM, J. and MAY, J. concur