

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

v

DANIEL DAVID CHAPIN,  
  
Defendant-Appellee.

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FOR PUBLICATION  
December 26, 2000  
10:00 a.m.

No. 226419  
Mecosta Circuit Court  
LC No. 00-013690-AR

Updated Copy  
March 2, 2001

Before: Fitzgerald, P.J., and Hood and McDonald, JJ.

FITZGERALD, P.J.

The prosecutor appeals by leave granted the order granting defendant's motion to suppress evidence. We affirm.

Defendant's ex-girlfriend and the mother of his child contacted police and disclosed that defendant was growing marijuana plants in his home. A search warrant was obtained and executed. During the execution of the search warrant, seventy-five marijuana plants were discovered. Police also recovered rolling papers, scales, a wooden pipe, a semiautomatic shotgun, and rounds of ammunition. Defendant was not at home at the time of the search. Upon completion of the search, a copy of the search warrant and a copy of the tabulation were left at the home. A copy of the affidavit in support of the search warrant was available, but not left at the home. The police indicated that the prosecutor specifically requested that they not leave a copy of the affidavit. As a result of the execution of the search warrant, defendant was charged with possession with intent to deliver or manufacture twenty marijuana plants or more but fewer

than two hundred plants, MCL 333.7401(2)(d)(ii); MSA 14.15(7401)(2)(d)(ii), and possession of a firearm by a person convicted of a felony. MCL 750.224f; MSA 28.421(6).<sup>1</sup> At the time of the preliminary examination, there was no indication that the warrant and tabulation had been filed with the court. Defendant moved for suppression of the evidence on the basis of the procedural failure of officers to leave a copy of the affidavit with the warrant and failure to file the warrant and tabulation with the court at the time of the preliminary examination. Defendant's challenge was limited to the procedural action of the police and did not take issue with the probable cause necessary to issue the warrant. The district court granted the motion to suppress, and that holding was affirmed on appeal to the circuit court. We granted the prosecutor's application for leave to appeal.

In *People v Moten*, 233 Mich 169, 170; 206 NW 506 (1925), the defendant was convicted of unlawfully having in his possession intoxicating liquor, specifically "moonshine whisky." The evidence against the defendant was obtained by an executed search warrant. The search warrant indicated the place to be searched, but merely specified that the home was owned by "John Doe," real name unknown, and provided that the home was used as a place for the unlawful sale of intoxicating liquors. The premises were owned by the defendant. On appeal, the defendant took issue with the specific grounds alleged in the search warrant itself. The affidavit in support of the search warrant provided that the affiant believed and had good cause to believe that illegal liquor was stored on the premises. *Id.* The affiant allegedly searched an individual and then gave the individual \$1 to purchase whisky. The individual went into the defendant's home with the \$1 and returned with moonshine whisky. However, the search warrant did not recite the material facts alleged in the affidavit. At the time of the search warrant, the pertinent statute

provided that "the warrant for search shall . . . recite all of the material facts alleged in the affidavit." The statute also set forth the form of the warrant. Specifically, the warrant had to reference an affidavit and repeat the allegations of the affidavit *within* the search warrant. *Id.* at 171-172.

Our Supreme Court held that suppression of the evidence was required for failure to comply with the technical requirements of the form of the warrant. Specifically, the Court held:

In our statute the mandate is positive that the warrant shall recite all material facts alleged in the affidavit, and a statutory form of search warrant is provided indicating just where to insert the recital which the law makes an essential part of a valid warrant. Unfortunately, this essential requirement was ignored. The warrant is invalid, and the evidence procured thereunder inadmissible. [*Id.* at 174.]

The Court also held that a record of the probable cause determination must be established so that the defendant can be informed of the basis for the charge. *Id.* at 171-173. See also *People v Galnt*, 235 Mich 646; 209 NW 915 (1926), and *People v Bules*, 234 Mich 335; 207 NW 818 (1926).

Since *Moten*, the statutes governing the issuance of a search warrant and the contents of the affidavit in support have been recodified. MCL 780.654; MSA 28.1259(4) provides that the warrant shall contain the grounds or the probable cause or, in lieu thereof, attach a copy of the affidavit:

A search warrant shall be directed to the sheriff or any peace officer, commanding such officer to search the house, building or other location or place, where any property or other thing for which he is required to search is believed to be concealed. Each warrant shall designate and describe the house or building or other location or place to be searched and the property or thing to be seized. *The warrant shall also state the grounds or the probable cause or reasonable cause*

*for its issuance, or in lieu thereof, a copy of the affidavit may be attached thereto.*  
[Emphasis added.]

In the present case, defendant did not take issue with the individual requirements of § 4. Rather, defendant took issue with the provisions of MCL 780.655; MSA 28.1259(5), which provide in pertinent part:

When an officer in the execution of a search warrant finds any property or seizes any of the things for which a search warrant is allowed by this act, the officer, in the presence of the person from whose possession or premises the property or thing was taken, if present, or in the presence of at least 1 other person, shall make a complete and accurate tabulation of the property and things so seized. *The officer taking property or other things under the warrant shall forthwith give to the person from whom or from whose premises the property was taken a copy of the warrant and shall give to the person a copy of the tabulation upon completion, or shall leave a copy of the warrant and tabulation at the place from which the property or thing was taken. He shall file the tabulation promptly with the court or magistrate.* The tabulation may be suppressed by order of the court until the final disposition of the case unless otherwise ordered. [Emphasis added.]

At the time *Moten* was decided, the statute *required* that the allegations of the affidavit be repeated within the search warrant. Following the amendment of § 4, however, the statute provides that the warrant shall state the grounds or the probable or reasonable cause *or*, in lieu thereof, a copy of the affidavit may be attached thereto. Under both versions of the statute, the requirement exists that the warrant, whether in the body of the warrant itself or by affidavit attached thereto, must state the grounds or the probable cause for its issuance.

In the present case, defendant argued, and the lower courts agreed, that the statutory requirements of § 4 are incorporated within the delivery provisions of § 5. We agree.

Statutory interpretation presents a question of law that we review de novo. *People v Clay*, 239 Mich App 365, 369; 608 NW2d 76 (2000). The function of a reviewing court

resolving disputed interpretations of statutory language is to effectuate the legislative intent. *People v Valentin*, 457 Mich 1, 5; 577 NW2d 73 (1998). When the language of the statute is clear, the Legislature intended the meaning plainly expressed, and the statute must be enforced as written. *Id.* Technical words and phrases, such as those words that may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to the appropriate meaning. MCL 8.3a; MSA 2.212(1). We presume that every word has some meaning, and we must avoid any construction that would render any part of the statute surplusage or nugatory. *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999).

Here, MCL 780.654; MSA 28.1259(4) provides that the search warrant must contain the basis of probable cause within the document itself or, in lieu thereof, a copy of the affidavit may be attached thereto. The plain language of § 4 provides that if the basis for probable cause is not included in the search warrant, the affidavit *must* be attached to the search warrant. Indeed, in *People v Garvin*, 235 Mich App 90, 98-99; 597 NW2d 194 (1999), the Court stated:

[B]ecause the Legislature did not plainly express whether a copy of the affidavit necessarily becomes part of the "copy of the warrant" that must be provided or left pursuant to MCL 780.655; MSA 28.1259(5), it is not clear from the plain language of these statutory provisions whether a copy of the affidavit must be left with a copy of the warrant after the search has been completed. Nevertheless, given that the Legislature has phrased as a general requirement that a warrant state the probable cause (or other grounds) for its issuance and that the copy of the warrant provided or left by law enforcement officers should include a statement of the probable cause for its issuance, we conclude that where a supporting affidavit is used in lieu of a statement of probable cause in the warrant, as authorized by MCL 780.654; MSA 28.1259(4), then a copy of the affidavit becomes part of the "copy of the warrant" that must be provided or left pursuant to MCL 780.655; MSA 28.1259(5).

Thus, despite recodification of the statute, *Garvin* is consistent with the Supreme Court's pronouncement in *Moten*, *Bules*, and *Galnt* that the material facts in support of the issuance of a

search warrant must be included with the search warrant. The prosecutor argues that *Garvin's* requirement that a probable cause affidavit be attached to the warrant was not the law when the search in this case was executed. The prosecutor is correct that *Garvin* was released for publication the day after the search in this case. However, judicial decisions generally warrant complete retroactive effect. *People v Doyle*, 451 Mich 93, 104; 545 NW2d 627 (1996). Prospective application applies to decisions overruling case law that is clear and uncontradicted. *Id.* *Garvin* was not such a case.

Nonetheless, in *Garvin* the Court held that the failure of law enforcement officers to comply with the statutory requirement to attach a copy of the affidavit to the copy of the warrant provided or left does not require suppression of the evidence seized pursuant to the warrant because the requirement is merely procedural. See also *People v Pipok (After Remand)*, 191 Mich App 669; 479 NW2d 359 (1991). However, *Garvin's* holding is inconsistent with the Supreme Court's pronouncement in *Moten*, *Galnt*, and *Bules* that violation of the statutory requirement that the search warrant state the grounds or the probable cause for issuance of the search warrant renders the warrant invalid and requires suppression of the evidence. Because *Moten*, *Galnt*, and *Bules* remain good law, we must follow their precedent. Thus, because officials left the warrant at defendant's home without the supporting affidavit, and the warrant itself did not state the probable cause grounds, the circuit court properly suppressed the evidence.<sup>2</sup> See *People v Sobczak-Obetts*, 238 Mich App 495, 498; 606 NW2d 658 (1999).

Affirmed.

McDonald, J., concurred.

/s/ E. Thomas Fitzgerald  
/s/ Gary R. McDonald

<sup>1</sup> Defendant was also charged with being an habitual offender, second offense, MCL 769.10; MSA 28.1082, for a prior delivery/manufacture conviction under MCL 333.7401(2); MSA 14.15(7401)(2).

<sup>2</sup> We note that the district court's opinion in this case states that, before *Garvin* and the present investigation, both the Mecosta County prosecutor's office and the Central Michigan Enforcement Team had been chastised in previous cases for failing to attach the probable cause affidavit to the warrant and that those warrants were invalidated and the evidence suppressed.