

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FRANK RADZIKOWSKI,

Defendant-Appellee.

UNPUBLISHED

August 4, 1998

No. 204278

Recorder's Court

LC No. 94-010932

Before: Murphy, P.J., and Young, Jr. and M. R. Smith*, JJ.

MEMORANDUM.

Plaintiff appeals by right the trial court order dismissing charges against defendant after granting his motion to quash. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803. Defendant moved to quash, asserting that search warrants were improperly executed on his property. Police had procured search warrants by fax from the district court. Neither the original warrants nor the original facsimiles could be found. After holding several evidentiary hearings, the trial court granted defendant's motion. The court found that the affidavits and warrants presented were incomplete, piecemeal, and unreliable. The signatures were inconsistent, and the district court did not have a specific recollection of signing the warrants. The originals were not in the court file, and the documents did not contain a fax header indicating that they were sent from the district judge.

MCL 780.651; MSA 28.1259(1) authorizes the issuance of a search warrant through electronic or electromagnetic means of communication. The officer or department receiving the warrant must receive proof that the judge has signed the warrant prior to executing the warrant. An unsigned warrant is presumed to be invalid. *People v Barkley*, 225 Mich App 539, 545; 571 NW2d 561 (1997). This presumption may be overcome by evidence that the district court did intend to issue the warrant before the search. *Id.*

* Circuit judge, sitting on the Court of Appeals by assignment.

Where the original documents and facsimiles could not be found, the prosecutor sought to present other evidence to establish that a proper warrant had been issued. Whether a document has been properly authenticated is a matter with the trial court's discretion. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 366; 533 NW2d 373 (1995). The requirement of authentication is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims. MRE 901(a). If original documents have been lost or inadvertently destroyed, other evidence of the contents of a writing are admissible. MRE 1004.

The trial court did not abuse its discretion in finding that the evidence presented was insufficient to authenticate the documents. The district court could not verify all the signatures, or specifically recall signing all the documents. The documents did not contain a fax header indicating that they were transmitted by the judge. In the absence of the necessary evidence to authenticate that the warrants were signed by the district court prior to the search, the trial court did not abuse its discretion in granting the motion to quash.

Affirmed. The stay entered by this Court is vacated.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith