

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 7, 2013

v

RICHARD ALLEN NEILL,

Defendant-Appellant.

No. 310561
Emmet Circuit Court
LC No. 10-003317-FH

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Defendant Richard Neill appeals by leave granted his conviction, following a conditional guilty plea, of maintaining a drug house.¹ The trial court sentenced Neill to serve one year of imprisonment and five years of probation. We affirm the trial court's decision to deny Neill's motion to suppress the evidence found in Neill's house pursuant to an unsigned search warrant.

I. FACTS

On June 17, 2010, Detective David Schultz presented an affidavit of probable cause to search Neill's house to Magistrate Larry Burgess. According to Detective Schultz, Magistrate Burgess reviewed the paperwork carefully, swore him, affirmed his oath, and then gave him a pen to sign the affidavit. Magistrate Burgess has issued other search warrants to Detective Schultz. When he denies a search warrant, he immediately hands the probable cause affidavit back to Detective Schultz with an explanation. Detective Schultz saw Magistrate Burgess sign paperwork, and then followed him to the copy room, where the magistrate made copies.

Magistrate Burgess testified at the suppression hearing that the probable cause affidavit contained his signature, and that he would not have signed it without first determining that probable cause existed to issue the search warrant. He testified that he logs every search warrant that the court issues and that he logged the search warrant in the warrant book as issued. Magistrate Burgess testified that he forgot to sign the warrant, but that he did not realize it until he attempted to file the return search warrant that he received back from Detective Schultz.

¹ MCL 333.7405(1)(d).

Detective Schultz testified that he reviewed the search warrant with other officers when he briefed them, but that the other officers did not see the search warrant before the search. He testified that the search warrant was on a table in the house while they searched it. Detective Schultz testified that he did not notice that Magistrate Burgess had not signed the warrant until officers secured the house and he began to go over the search warrant with Neill's sister. He testified that at that point, officers were already searching the house.

II. VALIDITY OF THE WARRANT

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's findings of fact supporting a motion to suppress.² A decision is clearly erroneous if evidence supports the decision, but we are convinced that the trial court made a mistake.³ We review de novo the trial court's ultimate decision on the motion.⁴

B. LEGAL STANDARDS

Both the United States and Michigan constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures."⁵ To comply with this requirement, police officers generally must have a warrant to conduct a search.⁶ A magistrate may only issue a search warrant if there is probable cause to issue the warrant: that is, "a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place."⁷ Probable cause may exist on the basis of facts contained in an affidavit.⁸

The trial court must presume that a search warrant is invalid if the accompanying affidavit is unsigned, but the prosecution may rebut that presumption by showing that the affiant swore the affidavit to a Magistrate under oath.⁹ Similarly, the trial court must presume that an unsigned warrant is invalid, but the prosecution may rebut the presumption by showing

² *People v Mitchell*, 428 Mich 364, 369; 408 NW2d 798 (1987); *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

³ *People v Mullen*, 282 Mich App 14, 22; 762 NW2d 170 (2008).

⁴ *Williams*, 472 Mich at 313.

⁵ *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000); see US Const, Am IV; also see Const 1963, art 1, § 11.

⁶ *Id.*

⁷ *Id.* at 417-418, quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992).

⁸ *Mitchell*, 428 Mich at 369; *People v Waclawski*, 286 Mich App 634, 698; 780 NW2d 321 (2009).

⁹ *Mitchell*, 428 Mich at 369.

“evidence that, in fact, the magistrate or judge did make a determination that the search was warranted and did intend to issue the warrant before the search.”¹⁰

C. APPLYING THE STANDARDS

We conclude that the trial court properly declined Neill’s motion to suppress the evidence found pursuant to the search because the search warrant was validly issued. Neill argues that a search pursuant to an unsigned warrant is unconstitutional because the warrant is not valid. Neill relies on this Court’s decisions in *Hentkowski*¹¹ and *Locklear*.¹² But these decisions are not binding precedent of this Court.¹³ In binding precedent, this Court has expressly rejected the conclusions in *Hentkowski* and *Locklear*,¹⁴ and held that an unsigned warrant is presumed to be invalid, but that the prosecution can rebut that presumption:

[T]he fact that a search warrant has not been signed by a magistrate or judge presents a presumption that the warrant is invalid. However, this presumption may be rebutted with evidence that, in fact, the magistrate or judge did make a determination that the search was warranted and did intend to issue the warrant before the search.^{15]}

A warrant’s validity rests on the magistrate’s probable cause determination, after which signing the warrant is a “purely ministerial task.”¹⁶ Indeed, after determining that probable cause exists to support a search warrant, a magistrate does not have the discretion to decline to issue a warrant.¹⁷

Neill also argues that *Barkley* is factually distinguishable from this case. In *Barkley*, the magistrate signed two copies of the search warrant, but failed to sign a third copy.¹⁸ But that was not the basis of our decision. This Court held that a search warrant is valid if the magistrate: (1) determined that probable cause supported the search, and (2) intended to issue the warrant.¹⁹ We considered the fact that the magistrate signed other copies of the search warrant to be evidence that “amply rebutted” the presumption that the unsigned warrant was invalid: it was not

¹⁰ *People v Barkley*, 225 Mich App 539, 545; 571 NW2d 561 (1997).

¹¹ *People v Hentkowski*, 154 Mich App 171; 397 NW2d 255 (1986).

¹² *People v Locklear*, 177 Mich App 331; 441 NW2d 73 (1989).

¹³ MCR 7.215(J)(1); see *People v Cooke*, 194 Mich App 534, 537; 487 NW2d 497 (1992).

¹⁴ *Barkley*, 225 Mich App at 542-545.

¹⁵ *Id.* at 545.

¹⁶ *Id.* at 545 n 4, quoting *United States v Turner*, 558 F2d 46, 50 (CA 2, 1977).

¹⁷ MCL 780.651(1); *Mitchell*, 428 Mich at 368.

¹⁸ *Barkley*, 225 Mich App at 541.

¹⁹ *Id.* at 546.

dispositive to the holding in the case.²⁰ Thus, the question is not whether Magistrate Burgess signed *any* copy of a search warrant, it is whether he determined that probable cause supported the search and intended to issue a search warrant.

We conclude that the trial court's findings that Magistrate Burgess determined the search was valid and that he intended to issue the warrant were not clearly erroneous. Ample evidence supported the trial court's finding that Magistrate Burgess determined probable cause warranted the search. Both Magistrate Burgess and Detective Schultz signed the probable cause affidavit. Both testified that the magistrate would not have let the detective sign the affidavit if he did not believe that probable cause supported it. And Magistrate Burgess testified that he would not have signed the affidavit himself before determining that probable cause warranted the search.

The evidence also supported the trial court's finding that Magistrate Burgess intended to issue the warrant. Magistrate Burgess testified that he logged search warrant as issued, which he would not have done if he did not intend to issue the warrant. We are not convinced that the trial court made a mistake when it made these findings. We conclude that the trial court properly denied Neill's motion to suppress the evidence because the search warrant was valid under binding Michigan caselaw.

Neill also argues that the "good faith" exception to the exclusionary rule does not apply in this case because it does not excuse the absence of a search warrant. But because this exception would only apply if we determined that the warrant was invalid,²¹ we need not address this argument.

We affirm.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello

²⁰ *Id.*

²¹ See *People v Goldston*, 470 Mich 523, 525-526, 530-531; 682 NW2d 479 (2004).