[Cite as *State v. Harrington*, 2015-Ohio-2492.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 14AP-571 (C.P.C. No. 13CR-2383)
v.	:	(REGULAR CALENDAR)
Gregory K. Harrington,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 23, 2015

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*, for appellee.

Siewert & Gjostein Co. LPA, and *Michael H. Siewert*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellee, Gregory K. Harrington, appeals the July 16, 2014 judgment of the Franklin County Court of Common Pleas convicting him, pursuant to a no-contest plea, and imposing sentence. Because the trial court properly denied appellant's motion to suppress evidence obtained pursuant to a search warrant, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On February 11, 2013, upon reviewing an affidavit filed by a City of Whitehall police officer, a Franklin County Municipal Court judge signed a search warrant authorizing a search of a property on Wadsworth Drive in Columbus, Ohio. On May 3, 2013, a Franklin County Grand Jury indicted appellant on two criminal charges arising out of the search: one count of possession of cocaine in violation of R.C. 2925.11, a felony

of the first degree, with a one-year firearm specification, and one count of having weapons while under disability in violation of R.C. 2923.13, a felony of the third degree.

{¶ 3} On May 14, 2014, appellant filed a motion to suppress evidence obtained as a result of the February 11, 2013 search warrant. On the same day, the trial court held a hearing on the motion and denied the motion to suppress. Immediately thereafter, appellant entered a plea of no contest to the charges as listed in the indictment. At the hearing, the assistant prosecutor stated that police executed the February 11, 2013 search warrant on February 12 to search appellant's residence, wherein police found over 27 grams of cocaine and an operable firearm in appellant's possession. At the time of the search, appellant was allegedly under a disability resulting from a prior conviction for possession of cocaine. Appellant raised no objection to the prosecutor's recitation of facts.

{¶ 4} Pursuant to his no-contest plea, on July 16, 2014, the trial court held a sentencing hearing and imposed upon appellant the following sentence: a term of four years on the count of possession of cocaine, in addition to a one-year term for the firearm specification, and a term of one year on the count of having weapons while under disability. The trial court ordered the terms for possession of cocaine and having weapons while under disability to be served concurrently to one another but consecutively to the one-year term for the firearm specification. On the same date, the trial court filed a judgment entry reflecting appellant's conviction and sentence.

II. Assignment of Error

{¶ 5} Appellant appeals assigning the following error for our review:

> THE TRIAL COURT ERRED IN DENYING DEFENDANT/APPELLANT'S MOTION TO SUPPRESS.

{¶ 6} "Appellate review of a trial court's decision regarding a motion to suppress evidence involves mixed questions of law and fact." *State v. Holland*, 10th Dist. No. 13AP-790, 2014-Ohio-1964, ¶ 8. When considering a motion to suppress, the trial court, as trier of fact, is in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 23 (10th Dist.). Thus, an appellate court engages in a two-step analysis: (1) whether competent, credible evidence supports the trial court's findings; and (2) whether the facts satisfy the applicable legal standard, without giving any deference to the conclusion of the trial court.

Holland at ¶ 8, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In this case, the trial court did not make any findings of fact. Thus, we apply a de novo standard in determining whether the trial court properly denied appellant's motion to suppress. *State v. Johnson*, 10th Dist. No. 13AP-637, 2014-Ohio-671, ¶ 6, citing *Burnside* at ¶ 8; *Gravely* at ¶ 23.

{¶ 7} The Fourth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Ohio Constitution contains a nearly identical provision. Ohio Constitution, Article I, Section 14. Search warrants are issued pursuant to the authority found in R.C. 2933.21 through 2933.25 and Crim.R. 41. *See State v. Williams*, 57 Ohio St.3d 24 (1991); *State v. Commins*, 12th Dist. No. CA2009-06-004, 2009-Ohio-6415, ¶ 19. R.C. 2933.25 provides an example to which warrants are expected to substantially conform. Included in the example form is the signature of the issuing judge. "A search warrant is void *ab initio* if not signed by a judge prior to the search." *Williams* at paragraph one of the syllabus. *See also State v. Spaw*, 18 Ohio App.3d 77 (3d Dist.1984).

{¶ 8} Appellant asserts that the warrant used to search his home violates his constitutional rights because the issuing authority for the warrant was a police officer of the city of Whitehall instead of a Franklin County Municipal Court judge.[1] In support of his assertion, appellant contends that the judge whose signature appears on the face of the warrant acted as a notary since the judge's signature appears after that of the police officer and underneath the words "[s]worn to before me and subscribed in my presence" and a handwritten date and time. As a result, appellant concludes that the warrant is void pursuant to *Williams* and *State v. Carpenter*, 12th Dist. No. CA2005-11-494, 2007-Ohio-5790.

{¶ 9} In *Carpenter*, the defendant argued that the warrant was invalid because a judge's signature did not appear on the face of the warrant. The court of appeals found that, although a judge's signature did not appear on the signature line of the search

[1] We note that appellant, both at the suppression hearing and in the present appeal, does not challenge the contents or the form of the affidavits used in this case, and admits that such affidavits were sufficient to provide probable cause for the issuance of a search warrant. *See* May 14, 2014 Tr. 5.

warrant, a judge signed below the affidavit and "[i]mmediately adjacent to the judge's signature were handwritten notations of: '12-2-04' '3:43 pm' 'can execute day or night' 'can execute no knock.' " *Id.* at ¶ 8. Although the court found that it was clear that "the judge who signed the acknowledgement for the affidavit intended to authorize the search warrant because the judge apparently made those notations regarding 'no knock' and 'can execute day or night,' " the court concluded, pursuant to *Williams*, that the warrant was void ab initio. *Id.* at ¶10.

{¶ 10} Here, unlike in *Williams* and *Carpenter*, the warrant does not lack the signature of a judge altogether. Although the signature of the police officer and the additional text preceding the judge's signature are clearly superfluous, we are unaware of, and appellant fails to point to, any cases concluding that such clerical errors render a warrant constitutionally infirm where the warrant is signed by a judge. Furthermore, the text of the warrant itself refers to the judge as the issuing authority. Specifically, the warrant states that "[i]n lieu of returning recovered property/evidence authorized by this warrant to the *issuing judge*, the property will be retained by the Whitehall Police Department." (Emphasis added.) Thus, we find that the warrant was validly issued by the signing judge despite the clerical errors present in the form of the warrant. *See State v. Honzu*, 10th Dist. No. 94APA07-1011 (June 1, 1995) (finding that warrant with two signatures from a judge on different dates was not invalid as "clerical errors, inadvertently made without prejudice to the defendant, will not invalidate an otherwise valid search warrant."). *Compare Commins* at ¶ 23 (finding that search warrant signed by appointed magistrate instead of judge was void).

{¶ 11} Accordingly, we overrule appellant's assignment of error.

III. Disposition

{¶ 12} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and SADLER, JJ., concur.

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