STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2214

State of Minnesota,
Respondent,

vs.

Suzanne Marie Snaza,
Appellant.

Filed January 12, 2010
Affirmed
Schellhas, Judge

Dakota County District Court
File No. 19-K4-06-2005

Lori Swanson, Attorney General, St. Paul, MN; and

James C. Backstrom, Dakota County Attorney, Amy A. Schaffer, Assistant County Attorney, Hastings, MN (for respondent)

James W. Moen, Wentzell Law Office PLLC, St. Anthony, MN; and

Thomas M. Kelly, Kelly & Jacobson, Minneapolis, MN (for appellant)

Considered and decided by Schellhas, Presiding Judge; Minge, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Following her convictions of four counts of failure to remit sales tax, appellant argues that the district court erred by refusing to suppress all evidence obtained from four separate searches on the basis that the search warrants did not strictly comply with Minn. Stat. §§ 626.05 and .11(a) (2004). We affirm.

FACTS

On November 16 and December 4, 2004, four searches were conducted based on search warrants signed by district court judges. On June 23, 2006, the state charged appellant Suzanne Marie Snaza with four counts of failure to file an individual tax return for tax years 2001 – 2004 in violation of Minn. Stat. § 289A.63, subd. 1(a) (2004), and four counts of failure to remit sales tax for the years 2001 – 2004 in violation of Minn. Stat. § 289A.63, subd. 1(b) (2004).[1] Appellant moved to suppress the evidence obtained during the searches, arguing that the warrants were invalid because they lacked a command to a specific person as required by Minn. Stat. §§ 626.05, subd. 1, and 626.11(a). The district court denied the motion, and appellant subsequently filed a "renewed" motion to suppress, based on two cases decided by the supreme court in 2007: *State v. Jackson*, 742 N.W.2d 163 (Minn. 2007), and *State v. Jordan*, 742 N.W.2d 149 (Minn. 2007). The court again denied the motion to suppress.

[1] The language of section 289A.63, subdivision 1 is identical for all years at issue; we cite to the 2004 version for ease of reference.

At trial, the district court severed the income-tax and sales-tax counts and continued the income-tax counts, pending resolution of "an important and serious appellate issue," which appears to refer to the suppression issue now before this court. The district court held a stipulated-facts trial on the sales-tax counts and convicted appellant of all four counts. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by denying her motion to suppress and admitting evidence obtained as a result of searches that were based on defective search warrants. "When reviewing pretrial orders on motions to suppress evidence, we independently review the facts to determine whether, as a matter of law, the [district] court erred in its ruling." *State v. Jackson*, 742 N.W.2d 163, 168 (Minn. 2007).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures and provide that search warrants shall be issued only (1) upon probable cause, (2) supported by oath or affirmation, and (3) particularly describing the place to be searched and the person or things to be seized. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *see also Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961) (applying Fourth Amendment to states by way of Fourteenth Amendment's due-process clause).

In its memorandum, the district court concluded that "there is a clear distinction between constitutional and statutory requirements for search warrants," and that the errors made in the warrants "amount to the sort of typographical errors made possible by

word processing." Further, the court concluded that appellant had "not shown any Fourth Amendment or Section 10 rights that have been violated by the errors." We agree.

Minnesota law defines a search warrant as (1) "an order in writing," (2) "in the name of the state," (3) "signed by a court," (4) "directed to a peace officer," (5) "commanding the peace officer to make a search as authorized by law and hold any item seized, subject to the order of a court." Minn. Stat. § 626.05, subd. 1. The issuance of a valid search warrant requires probable cause and that the warrant (1) be signed by a judge, (2) name the judge's judicial office, (3) be issued to a peace officer, and (4) "direct the officer to search the person or place named for the property or things specified, and to retain the property or things in the officer's custody subject to order of the court issuing the warrant." Minn. Stat. § 626.11(a).

Here, the district court concluded that the search warrants in question fail to meet the elements of a search warrant under section 626.05, subdivision 1, and are inadequate under section 626.11(a). We agree. The warrants do not "command[] the peace officer to make a search," as required by section 626.05, subdivision 1,and they do not "direct the officer to search," as required by section 626.11(a). Instead, the warrants conclude with the following paragraphs, followed by district court judges' signatures:

Search Warrant signed November 16, 2004, at 10:20 a.m.

> WHEREFORE, AFFIANT REQUEST [sic] A SEARCH WARRANT BE ISSUED, COMMANDING LIETENANT [sic] JOE KEGLEY AND DETECTIVE JIM RGNONTI, PEACE OFFICERS OF THE STATE OF MINNESOTA, AND OTHER OFFICERS AND AGENTS AT THEIR DIRECTION AND COMMAND, INCLUDING SPECIAL AGENTS OF THE MINNESOTA

DEPARTMENT OF REVENUE . . . (IN DAYTIME ONLY) . . . TO SEARCH THE HEREINBEFORE DESCRIBED (PREMISES) (PERSON) (MOTOR VEHICLE) FOR THE DESCRIBED PROPERTY AND THINGS AND TO SEIZE SAID PROPERTY AND THINGS AND KEEP SAID PROPERTY AND THINGS IN CUSTODY UNTIL THE SAME BE DEALT WITH ACCORDING TO LAW.

Search Warrant signed November 16, 2004, at 10:21 a.m.

WHEREFORE, AFFIANT REQUEST [sic] A SEARCH WARRANT BE ISSUED, COMMANDING SERGEANT JIM ROGERS AND DETECTIVE DAVE SJOGREN, PEACE OFFICERS OF THE STATE OF MINNESOTA, AND OTHER OFFICERS AND AGENTS AT THEIR DIRECTION AND COMMAND, INCLUDING SPECIAL AGENTS OF THE MINNESOTA DEPARTMENT OF REVENUE . . . (IN DAYTIME ONLY) . . . TO SEARCH THE HEREINBEFORE DESCRIBED (PREMISES) (PERSON) (MOTOR VEHICLE) FOR THE DESCRIBED PROPERTY AND THINGS AND TO SEIZE SAID PROPERTY AND THINGS AND KEEP SAID PROPERTY AND THINGS IN CUSTODY UNTIL THE SAME BE DEALT WITH ACCORDING TO LAW.

Search Warrant signed November 16, 2004

WHEREFORE, AFFIANT REQUEST [sic] A SEARCH WARRANT BE ISSUED, COMMANDING SERGEANT GARY SWANSON AND MARC LOMBARDI, PEACE OFFICERS OF THE STATE OF MINNESOTA, AND OTHER OFFICERS AND AGENTS AT THEIR DIRECTION AND COMMAND, INCLUDING SPECIAL AGENTS OF THE MINNESOTA DEPARTMENT OF REVENUE . . . (IN DAYTIME ONLY) . . . TO SEARCH THE HEREINBEFORE DESCRIBED (PREMISES) (PERSON) (MOTOR VEHICLE) FOR THE DESCRIBED PROPERTY AND THINGS AND TO SEIZE SAID PROPERTY AND THINGS AND KEEP SAID PROPERTY AND THINGS IN CUSTODY UNTIL THE SAME BE DEALT WITH ACCORDING TO LAW.

Search Warrant signed December 3, 2004

> WHEREFORE, AFFIANT REQUESTS A SEARCH WARRANT BE ISSUED, COMMANDING JAMES RAMSTAD, A PEACE OFFICER OF THE STATE OF MINNESOTA, TO DELIVER THE HEREINBEFORE DESCRIBED COMPUTER HARD DRIVES AND REMOVABLE MEDIA TO THE MINNESOTA DEPARTMENT OF REVENUE, CRIMINAL INVESTIGATION DIVISION, ST. PAUL, MINNESOTA, FOR ANALYSIS AND EXAMINATION, AND THEREAFTER, RETAIN THE COMPUTER HARD DRIVES AND REMOVABLE MEDIA IN CUSTODY SUBJECT TO A COURT ORDER AND ACCORDING TO LAW.

These paragraphs are inadequate only in that they appear to *request* that a search warrant be issued commanding officers to conduct a search, instead of *commanding* the specified individual to execute the search warrants. As explained by the district court in its memorandum, "[w]hat appears to have happened is that . . . language from an application for a search warrant was substituted" for the usual command language at the end of the search warrant form. Appellant offers no explanation or argument as to how the lack of words like, "THIS COURT COMMANDS," undermines the purpose of the statute, except to repeatedly state that the warrant unconstitutionally lacked a command to a specific peace officer. As detailed below, we conclude that the statutory noncompliance does not necessitate the suppression of evidence obtained during execution of the search warrants.

Constitutional Violations

Evidence must be suppressed if a violation is constitutional. *Jackson*, 742 N.W.2d at 178–79. But "the touchstone of the Fourth Amendment is reasonableness," *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S. Ct. 417, 421 (1996) (quotation omitted), and appellant makes no argument that the searches were generally unreasonable or that any of the express warrant requirements in the federal and state constitutions were not met. Rather, discussing arguments made against general warrants or writs of assistance during colonial times, as discussed in *Buonocore v. Harris*, 65 F.3d 347, 354–56 (4th Cir. 1995), appellant argues that the history of the Fourth Amendment shows that a warrant is unconstitutional unless it is directed to a specific law-enforcement official.

In *Buonocore*, which involved a civil-rights action, the federal court of appeals held that "the Fourth Amendment prohibits government agents from allowing a search warrant to be used to facilitate a private individual's independent search of another's home for items unrelated to those specified in the warrant." 65 F.3d at 356. We do not question the holding in *Buonocore*, but the holding does not support appellant's argument in this case that the search warrants executed were not reasonable under the federal and state constitutions. Here, each of the search warrants begins with language specifically directing the warrant to persons, who are also named in the final paragraph of the warrant. For example, the search warrant signed in December 2004 begins with the following language:

SEARCH WARRANT

STATE OF MINNESOTA, COUNTY OF RAMSEY, DISTRICT COURT

TO: JAMES RAMSTAD, A PEACE OFFICER OF THE STATE OF MINNESOTA, AND ANY OTHER OFFICERS AS HE DEEMS NECESSARY ASSISTED BY SPECIAL AGENT MATTHEW SCHOMMER, MINNESOTA DEPARTMENT OF REVENUE, CRIMINAL INVESTIGATIONS.

The other three warrants begin with the same language, but name different counties and officers. The warrants are directed to specific law-enforcement officials, who conducted the searches for the items specified in the warrants. The searches were reasonable under the federal and state constitutions.

Non-constitutional, Statutory Violations

The exclusionary rule may also be invoked for non-constitutional, statutory violations in the warrant process. *See State v. Jordan*, 742 N.W.2d 149, 153 (Minn. 2007) (addressing when suppression is required). "[T]he test for whether suppression is required is whether the violation of the statute was a serious one that subverted the purpose of the statute." *Id*. at 153. "Procedural defects which are minor and relatively insignificant need not require suppression. On the other hand, serious violations which subvert the purpose of established procedures will justify suppression." *State v. Cook*, 498 N.W.2d 17, 20 (Minn. 1993).

The district court determined that this case involves only a technical statutory violation analogous to that in *State v. Lunsford*, 507 N.W.2d 239 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993), and does not call for suppression. In *Lunsford*, an

officer from a jurisdiction in Dakota County obtained a search warrant from a judge in Ramsey County. 507 N.W.2d at 241. The version of the statute in effect at the time required search warrants to be issued "to a peace officer in the judge's county." *Id.* at 242 (emphasis omitted) (quoting Minn. Stat. § 626.11 (1990)). We acknowledged in *Lunsford* that the statute was violated because the officer and judge served different counties, but we concluded that the violation did not mandate suppression because "[t]he exclusionary rule does not apply to technical violations of the statutes governing search warrants, where no constitutional violation is involved." *Id.* at 243.

Citing *State v. Andries*, 297 N.W.2d 124, 125 (Minn. 1980), appellant argues that the lack of command language at the end of the warrants is serious, rather than technical, because the supreme court referred to the "tasks of determining probable cause and ordering the issuance of the warrant" as "substantive." In *Andries*, a deputy telephoned a judge to obtain authorization for a search and read his affidavit to the judge. 297 N.W.2d at 125. The judge determined there was probable cause for the search and then "delegated to the deputy the task of signing the judge's name to the warrant." *Id.* The sole issue on appeal from the defendant's conviction of possession of marijuana with intent to sell was

> whether the search warrant resulting in the discovery of the evidence which incriminated her violated either the Fourth Amendment or state law because it was authorized over the telephone by a judge who fully complied with the requirements of the relevant statutes except that he did not personally sign the warrant but instead delegated that ministerial act to the applicant.

Id. The defendant argued that the warrant violated Minn. Stat. §§ 626.05 and .11 (1978), which specified that the issuing judge sign the warrant. *Id.* Deciding the case before its adoption of specific rules regarding telephone warrants, the supreme court held that the warrant was properly issued and affirmed the judgment of conviction. *Id.* The court concluded that "the requirement that the issuing judge sign the warrant is a purely ministerial task that, at least in circumstances such as this, may be delegated to the applicant, so long as the issuing judge performs the substantive tasks of determining probable cause and ordering the issuance of the warrant." *Id.*

In *Cook*, decided after the supreme court adopted procedures for telephone warrants, the court held that for a telephone warrant to be valid, among other requirements, a record must be made of the entire call, the officer must prepare a written "duplicate original" warrant prior to the conversation, the officer must read the duplicate original verbatim to the judge, and the judge must simultaneously enter the information on a similar form called the "original warrant." 498 N.W.2d at 19–20. The *Cook* court concluded that evidence should have been suppressed because "there was total noncompliance with the procedures which should have been followed": the conversation was not recorded, neither party to the conversation made any notes, and the officer did not speak from notes prepared in advance of the call. *Id.* at 21–22.

Appellant relies heavily on several foreign decisions in which evidence was suppressed due to deficient warrants. Appellant's reliance is misplaced because each of the cases is distinguishable; the deficiencies related to substantive or constitutional aspects of the warrants. *See United States v. Evans*, 469 F. Supp. 2d 893, 898, 901 (D.

Mont. 2007) (suppressing evidence based on inadvertently unsigned warrant even though magistrate signed related application and affidavit); *People v. Mabry*, 710 N.E.2d 454, 458–59 (Ill. App. Ct. 1999) (suppressing evidence because command section of warrant did not specify property to be searched); *State v. Brown*, 840 N.E.2d 411, 423 (Ind. Ct. App. 2006) (suppressing evidence because applying officer was not sworn when she testified as to probable cause in support of warrant); *McAdoo v. State*, 253 P. 307, 308–09 (Okla. Crim. App. 1927) (suppressing evidence because warrant lacked language expressly required under state constitution); *State v. Tye*, 636 N.W.2d 473, 475 (Wis. 2001) (suppressing evidence because affidavit of probable cause was not signed and filed until after issuance of warrant).

In this case, there was substantial compliance with sections 626.05 and .11. These sections ensure that the constitutional requirements are met that a warrant: (1) be issued from a magistrate to a specific peace officer; (2) include a finding of probable cause based on facts supported by oath or affirmation; and (3) include a specific description of the property to be searched and seized. Additionally, the warrants included specific names of officers who should carry out the search. The warrants were signed by judges who performed the substantive tasks of determining probable cause and ordered the issuance of the warrants, despite the absence of "command language" in the last paragraph of the warrants. The language missing from the warrants did not affect the substance or meaning of the warrants. As the district court concluded, the inadequacies have no constitutional dimension and do not offend the purpose of sections 626.05 and

.11. The district court properly concluded that the exclusionary rule does not apply to compel suppression of the evidence obtained during execution of the search warrants.

Affirmed.