# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>January 24, 2013 |
| v | No. 308823<br>Saginaw Circuit Court |
| LLOYD VINCENT BODIFORD,<br><br>Defendant-Appellant. | LC No. 10-034249-FH |

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Defendant Lloyd Bodiford appeals as of right his convictions, following a jury trial, of felon in possession of a firearm (felon in possession)[1] and possession of a firearm during the commission of a felony (felony-firearm).[2] The trial court sentenced Bodiford as a fourth-offense habitual offender[3] to serve consecutive terms of 30 to 120 months' imprisonment for the felon-in-possession conviction, and 60 months' imprisonment for the felony-firearm conviction. We affirm.

## I. FACTS

### A. BACKGROUND FACTS

Tiesha Cope testified that she was temporarily staying at Bodiford's residence in May 2009. Cope testified that she and Bodiford picked up Cope's brother, Devarious Menzies, at around 9:00 p.m. on the evening of May 14, 2009. Some time that evening she saw Bodiford place a gun under an air mattress on top of a chest or entertainment system in a bedroom. Cope testified that after picking up Menzies, Bodiford left for the Cadillac Club.

[1] MCL 750.224f.

[2] MCL 227b.

[3] MCL 769.12.

According to Saginaw City Police Officer Addison Burton, Bodiford told her that during the night, he got up to use the restroom, heard kicking at the door, and two men came in. Bodiford said he was ordered to the ground and held at gunpoint. Cope told Officer Burton that she entered the living room and found the men holding Bodiford at gunpoint. When Cope went into the living room, the men started shooting at her. Bodiford said he heard Cope screaming, and he was shot in the leg.

Cope testified that she was sleeping but woke to gunshots, and Cope went into the living room. Cope saw that two men wearing masks were firing weapons, and Bodiford was "tussling" with one. She testified that she was shot in the wrist, and started screaming. The men ran out when Cope screamed. Cope testified that her brother was sleeping on the couch, and that he slept through the entire altercation. Menzies testified that he has hearing problems and is not easily woken.

Cope testified that she asked Bodiford what "to do about the guns" because she knew that Bodiford was a convicted felon and could not be around them. Cope testified that on Bodiford's instructions, she picked up one gun and Bodiford picked up the other, and then she hid them in a bedroom under a folded air mattress. Menzies testified that when Cope woke him up, he saw Bodiford walking with a gun in his hand. Menzies testified that Bodiford went into one of the bedrooms with the gun and came back out without it.

Cope testified that Bodiford was also shot in the leg, and he drove himself and Cope to the hospital. Cope testified that when they passed a state trooper on the side of the road, Bodiford pulled his vehicle over and the two of them proceeded to tell the trooper what happened. Neither Cope nor Bodiford consented to a search of Bodiford's home.

## B. SUPPRESSION HEARINGS

Before trial, Bodiford moved to suppress evidence which officers found while searching the home. He argued that the officers exceeded the scope of the search warrant that they obtained. Saginaw City Police Officer Steve Lautner stated in the affidavit attached to the first warrant that he arrived at the home after Bodiford and Cope reported to state police troopers that they were shot. Officer Lautner later testified that he obtained the first search warrant because when he arrived, the officers wanted to go into the house to check for suspects or more victims, but they did not have consent to enter the home. Officer Lautner's affidavit supporting the search warrant described that the officers wanted to look for evidence of the home invasion and evidence of the shooting, including spent and live ammunition, evidence of forced entry, and "any persons who may be inside the home."

Saginaw City Police Officer Anthony Teneyuque testified that after Officer Lautner obtained the first warrant, he searched the home for signs of home invasion. He found signs of forced entry at the back door, and 9-millimeter and 32-caliber bullet casings. Officer Teneyuque testified that other officers found blood drops on the floor. Because the blood drops appeared to lead into a bedroom, he was concerned that there was an injured person inside.

Officer Teneyuque testified that when he entered the bedroom, he could see part of a baggie sticking out from behind a mirror on top of the dresser. Based on his experience, he

believed that the baggie contained narcotics, and so he stood on "tippy toes" to look at the contents of the bag. He testified that the bag appeared to contain crack cocaine. The substance in the bag field-tested positive as crack cocaine. Officer Teneyuque testified that his Sergeant immediately ordered the officers to stop searching so that they could obtain a second search warrant.

Officer Lautner's affidavit supporting the second search warrant indicated that while officers were executing the first search warrant, Officer Teneyuque "saw two plastic bags which contained what he believed to be crack cocaine" on a dresser in plain view, and that the substance tested positive for crack cocaine. Officer Lautner requested a second warrant, to search for "[a]ny and all controlled substances . . . [and] drug paraphernalia." Officers Teneyuque and Lautner both testified that officers were still searching for evidence of the shooting as well as evidence of controlled substances, and that believed that the second search warrant broadened the scope of the first warrant.

Officer Teneyuque testified that after officers obtained the second search warrant, he searched the second bedroom. He found blood on the floor and two unloaded handguns underneath a folded blow-up air mattress. He also found the magazine of a handgun in a utility room near the kitchen, and a 44-caliber carbine rifle in the attic crawl space. Officer Lautner testified that after officers obtained the second search warrant, he found a 32-caliber revolver in one bedroom's dresser drawer.

The trial court found that the first search warrant did not expire, and that the officers were searching under both search warrants for evidence of the home invasion and drugs. The trial court found that the second search warrant allowed the officers to search places that they might not otherwise search and, while searching for drugs, they discovered the guns. The trial court concluded that the officers' seizure of the guns was within the scope of the search warrants. The trial court ruled that the officers could testify about the drugs and guns found while searching Bodiford's home.

As noted above, the jury ultimately found Bodiford guilty of felon in possession and felony-firearm.

## II. MOTION TO SUPPRESS

### A. STANDARD OF REVIEW

"This Court reviews a trial court's findings at a suppression hearing for clear error."[4] A finding is clearly erroneous when, although there is evidence to support it, we are definitely and

[4] *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

firmly convinced that the trial court made a mistake.[5] We review de novo the trial court's ultimate decision on the motion because it involves the application of constitutional standards.[6]

## B. SEARCH WARRANTS

Both the United States and Michigan Constitutions "guarantee the right of persons to be secure against unreasonable searches and seizures."[7] Thus, if officers obtain evidence while violating the Fourth Amendment, the evidence is generally inadmissible in criminal proceedings.[8]

Police officers comply with the Fourth Amendment when they acquire a valid warrant to initiate a search.[9] The warrant must "particularly describ[e] the place to be searched, and the persons or things to be seized."[10] Further, officers must support a search warrant with probable cause.[11] Probable cause exists when "there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place."[12] "The magistrate's finding of reasonable or probable cause shall be based upon all facts related within the affidavit made before him or her."[13] The magistrate may consider an affiant's representations in the affidavit, as well as other facts and circumstances.[14]

## C. THE MAGISTRATE'S PROBABLE CAUSE DETERMINATION

Courts review a magistrate's determination that probable cause supports a search warrant to determine whether a reasonable person could "conclude[] that there was a 'substantial basis' for the finding of probable cause."[15] We must read the search warrant and the underlying

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

[6] *Williams*, 472 Mich at 313.

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

[8] *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Kazmierczak*, 461 Mich at 418.

[9] *Id.*; *People v Hellstrom*, 264 Mich App 187, 192; 690 NW2d 293 (2004).

[10] US Const, Am IV; Const 1963, Art 1, § 11; see *Kazmierczak*, 461 Mich at 417 n 3.

[11] *Id.* at 417.

[12] *Kazmierczak*, 461 Mich at 418, quoting *People v Russo*, 439 Mich 584, 604; 487 NW2d 698 (1992).

[13] MCL 780.653.

[14] *People v Darwich*, 226 Mich 635, 639; 575 NW2d 44 (1997).

[15] *Russo*, 439 Mich at 603.

affidavit "in a common-sense and realistic manner," and must afford deference to the magistrate's decision.[16]

## D. APPLYING THE STANDARDS

Bodiford first argues that officers could not reasonably rely on the first search warrant because Officer Lautner's statement that he wanted to enter the home to search for victims was so unreasonable that it tainted any valid reasons that supported the warrant. We disagree. An officer may not "rely[] on a warrant based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'"[17] But this exception to the general rule that the trial court must exclude evidence found because of an invalid warrant only applies if the warrant is invalid.[18]

We conclude that Bodiford has failed to show that the first warrant was invalid, because a reasonably cautious person would have concluded that there was a substantial basis to find probable cause. Officer Loutner's affidavit stated that while two state troopers were conducting a traffic stop, Bodiford and Cope stopped in another vehicle and reported that they were shot during a home invasion, and the troopers observed that they were in fact shot. A reasonable person would conclude from the affidavit that it was substantially likely that the officers would find evidence concerning the home invasion crime in Bodiford's home.

Nor was the second warrant invalid. The affidavit stated that officers found a substance in plain view while executing the first warrant, and that substance tested positive for crack cocaine. A reasonable person would conclude from the affidavit that it was substantially likely that contraband would be found in the home.

Next, Bodiford argues the officers exceeded the scope of the second warrant when the officers seized the guns as potential evidence while they were searching for drugs under the second warrant. Bodiford appears to premise his argument on the basis that when the magistrate issued the second warrant, it negated the first warrant. But Bodiford fails to provide any law to support an argument that, when the magistrate issued the second search warrant, it negated the first warrant as a matter of law. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority."[19] We conclude that Bodiford has abandoned his argument that the second warrant somehow invalidated the first warrant.

Further, the trial court found that the first search warrant did not expire and was still operative, and that the officers were searching for evidence of the home invasion and drugs

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[16] *Id*. at 604.

[17] *United States v Leon*, 468 US 897, 923; 104 S Ct 3405; 82 L Ed 2d 677 (1984); see *People v Goldston*, 470 Mich 523, 543; 682 NW2d 479 (2004).

[18] *Leon*, 468 US at 905; *Goldston*, 470 Mich at 543.

[19] *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

under both warrants. We conclude that the trial court's finding was not clearly erroneous. The officers testified at the suppression hearing that they had not finished their investigation of the home invasion when the magistrate issued the second warrant, and that they reasonably believed the handguns were linked to the shootings during the home invasion. Indeed, the officers later matched some spent shell casings in the living room to the 32-caliber handgun that the officers recovered.

Thus, we conclude that the trial court did not err when it denied Bodiford's motion to suppress the handguns because: (1) the warrants were supported by probable cause, and (2) the trial court's finding that both warrants were in effect when the officers recovered the handguns was not clearly erroneous.

## III. JURY INSTRUCTIONS

### A. STANDARD OF REVIEW AND WAIVER

To preserve an issue for appellate review, the defendant must make a timely objection before the trial court.[20] Generally, this Court reviews unpreserved claims of instructional error for plain error affecting the defendant's substantial rights.[21]

However, a defendant may also waive his challenge to jury instructions.[22] A waiver is an intentional relinquishment or abandonment of a known right.[23] If defense counsel affirmatively approves the trial court's jury instructions on the record, defense counsel's approval extinguishes any error.[24]

### B. APPLICATION

Bodiford argues that the trial court erroneously instructed the jury on "possession," and that this error deprived him of due process. However, the trial court read the instructions to the jury at the outset of trial, without objection. The trial court provided defense counsel with a written set of proposed instructions, including the instruction which Bodiford now asserts is erroneous. After an opportunity to review those written, proposed instructions, counsel affirmatively agreed to them. Defense counsel also expressly stated that he was satisfied with the trial court's jury instructions after the trial court instructed the jury. We conclude that

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[20] *People v Pipes*, 475 Mich 267, 277; 715 NW2d 290 (2006).

[21] *People v Hill*, 257 Mich App 126, 151-152; 667 NW2d 78 (2003).

[22] *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

[23] *Id*. at 215; see *United States v Olano*, 507 US 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

[24] *Carter*, 462 Mich at 215-216.

Bodiford has waived any error in the jury instructions, and thus there is no error for us to review.[25]

We affirm.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Douglas B. Shapiro

[25] See *Id*. at 219; *People v Kowalski*, 489 Mich 488, 504; 803 NW2d 200 (2011).