

Court of Appeals, State of Michigan

ORDER

People of MI v Charquan Cunningham

Docket No. 348889

LC No. 18-004731-01-AR

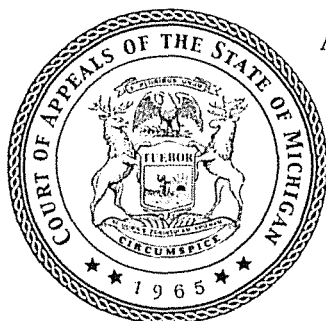
Karen M. Fort Hood
Presiding Judge

Christopher M. Murray

Thomas C. Cameron
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that in lieu of granting the delayed application, the circuit court's February 14, 2019 order is VACATED, and the matter REMANDED for further proceedings consistent with this order. As the circuit court held, the district court did err by suppressing the evidence obtained through the search of defendant's home. The photographic evidence presented by defendant did not show that the warrant affidavit contained false statements, and even if any of the contested statements were false, the remaining statements in the affidavit were sufficient to support issuance of the warrant. See *People v Mullen*, 282 Mich App 14; 763 NW2d 170 (2008); *People v Stumpf*, 196 Mich App 218; 492 NW2d 795 (1992). However, because of its erroneous decision regarding the search warrant affidavit, the district court never evaluated all of the evidence presented at the preliminary examination to determine whether a bindover was appropriate. The proper remedy was not to order a bindover, but rather, to remand the matter to the district court to make a bindover decision. See *People v Fairey*, 325 Mich App 645, 649-650; 928 NW2d 705 (2018). Accordingly, the matter is remanded to the district court, which shall evaluate all evidence properly presented at the preliminary examination, including that which was discovered as a result of the search, and decide whether a bindover is warranted.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

SEP 11 2019

Date


Chief Clerk