

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Appellee,)	Supreme Court No. 20140040
)	
vs.)	District Court No. 09-2013-CR-02203
)	
Joshua Troy Cook,)	
)	
Appellant.)	

Appeal from Order Denying Motion to Suppress Entered December 9, 2013 and
Criminal Judgment and Commitment Entered, Following Conditional Guilty Plea,
January 3, 2014 in Cass County District Court, East Central Judicial District,
Honorable Judge John Irby

BRIEF OF APPELLEE

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N.D.R.App.P. 10(b)..... ¶ 18

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[¶3] JURISDICTIONAL STATEMENT

[¶4] A timely notice of appeal has been filed. This Court has jurisdiction under N.D.R.App.P. 35(b).

[¶5] STATEMENT OF THE ISSUES

- I. [¶6] Whether a meaningful review is possible without a transcript of the suppression hearing.
- II. [¶7] Whether, in considering the record, the district court properly concluded there were exigent circumstances making the no-knock execution of the warrant reasonable.

[¶8] STATEMENT OF THE CASE

[¶9] Joshua Troy Cook, appeals the district court's final judgment entered January 3, 2014. (Appellant's App. at 28-33.) Cook entered conditional guilty pleas on Counts 1-7 on December 23, 2013, following the denial of Defendant's Motion to Suppress on December 9, 2013. (Appellant's App. at 25-26; 23-24.) The Criminal Judgment was filed on January 3, 2014. (Appellant's App. at 28-33.) Notice of Appeal was filed on February 3, 2014. (Appellant's App. at 34.)

[¶10] The State requests that the Court decline review or dismiss the appeal as the record on review is insufficient to afford meaningful and intelligent review. In the alternative, if the Court considers the record, the State asserts that the district court's denial of the motion to suppress was reasonable and there were exigent circumstances making the no-knock execution of the warrant reasonable. Therefore, the State requests the Court affirm the district court's denial of the motion to suppress and affirm the criminal judgment.

[¶11] STATEMENT OF THE FACTS

[¶12] Since no transcript has been filed, the statement of the facts has been taken from the State's Response to the Motion to Suppress filed on November 5, 2013. (Appellant's App. at 18-20.) On March 19, 2013, Joshua Cook failed to appear for the scheduled trial for charges against him involving drugs and reckless endangerment in Cass County District Court. The district court issued an arrest warrant for Cook due to his failure to appear. Since Cook's failure to appear, law enforcement had been attempting to locate Cook on the outstanding warrants. On June 27, 2013, Leah Garms, an individual identified as the girlfriend of Cook, indicated that she was prepared to "turn in" Cook. She also indicated that Cook was in the Fargo/Moorhead area and was driving a gold colored Pontiac Bonneville. Special Agent (SA) Shelby Franklin was familiar with the vehicle from previous investigations and knew the license plate to be ND JYZ 446. SA Franklin was also aware that Cook was the only person who drove the vehicle, that Cook was currently homeless and that Cook was "on the run" for his active felony warrants.

[¶13] On June 28, 2013, at approximately 7:10 a.m., SA Franklin learned that Cook was currently at the Arbuckle Lodge Motel located at 4325 23rd Avenue South, room 221, in Fargo, North Dakota. SA Franklin went to the motel at approximately 7:30 a.m. and observed Cook's vehicle parked in the lot. Constant surveillance was conducted on the motel while Task Force Officer (TFO) Matt Giddings talked with hotel staff and received a master key for room 221, which

was registered to someone other than Cook. TFO Giddings also walked by room 221 and observed the “Do Not Disturb” sign hanging on the door handle.

[¶14] At approximately 9:00 a.m., members of the Cass County Sheriff’s Office, Bureau of Criminal Investigation, and Cass County Drug Task Force entered room 221. Officers then announced their presence, and Cook was located and taken into custody. There were no other individuals in the room. While Cook was being handcuffed, SA Franklin observed, in plain view, a plastic vial containing a crystal-like substance lying on the bed next to where Cook had been. SA Franklin then observed a glass pipe with a white residue in it lying next to the microwave. Based on SA Franklin’s experience and training, he recognized this as a smoking pipe, commonly used to smoke methamphetamine.

[¶15] A subsequent search of the hotel room was completed based on the multiple items of contraband in plain view and Cook’s arrest for multiple felony controlled substance warrants. Ultimately, thirty-six items were seized, including methamphetamine, marijuana, multiple pieces of methamphetamine paraphernalia, and multiple schedule II, III, and IV controlled substance pills. Cook was arrested for outstanding warrants as well as for charges relating to the items located in the room.

[¶16] **LAW AND ARGUMENT**

- I. [¶17] **Because Cook failed to file a transcript of the suppression hearing, no meaningful review is possible and his requested relief should be denied.**

[¶18] This case comes before the Court without any transcript for matters relevant to this appeal. Cook, as the appellant, has the burden to file a complete transcript with this Court on appeal. N.D.R.App.P. 10(b). The appellant assumes the consequences and risks for failure to file a complete transcript. Rosendahl v. Rosendahl, 470 N.W.2d 230 (N.D. 1991). The transcript is to allow the Court a meaningful review of the facts. State v. Jackson, 704 N.W.2d 573 (N.D. 2005). Without a transcript, this Court has only the briefs of the parties and record available to review the relevant trial court findings. Hieb v. Jelinek, 49 N.W.2d 88 (N.D. 1993). According to this Court, the matter will not be considered if a meaningful and intelligent review of the alleged error is not possible. Amsbaugh v. Amsbaugh, 2004 ND 11, 673 N.W.2d 601; City of Fargo v. Bommersbach, 511 N.W.2d 563, 566 (N.D. 1994).

[¶19] Cook has asked the Court for review of an evidentiary issue, however, he has done so “under circumstances making meaningful review of his issues impossible” as a transcript has not been filed. State v. Cook, 2014 ND 18, ¶ 6, 843 N.W.2d 1. Although a request for a transcript was filed, after the Appellant’s brief was filed, the transcript has not been prepared or filed with the Court due to non-payment by Appellant. (Appellee’s App. at 1.) Since the transcript from the November 27, 2013 hearing on the motion to suppress has not been filed, the testimony of the officers is not available for review. There is no way to review what happened at the motion hearing without the transcripts.

[¶20] The district court did enter a written Order Denying Defendant's Motion to Suppress. (Appellant's App. at 23-24.) However, the order alone is insufficient to afford this Court a meaningful and intelligent review. The State requests that the Court decline review or dismiss the appeal.

II. [¶21] Even if the record is considered, the district court properly concluded the no-knock entry was justified because there were exigent circumstances.

[¶22] If this Court finds that the existing record is sufficient to provide for a meaningful and intelligent review of the Order Denying Defendant's Motion to Suppress, the Order is supported by sufficient competent evidence.

[¶23] A trial court's disposition of a motion to suppress evidence will not be reversed if, after conflicts in the testimony are resolved in favor of affirming the decision, there is sufficient competent evidence fairly capable of supporting the findings and the decision is not contrary to the manifest weight of the evidence. State v. Bjornson, 532 N.W.2d 315, 317 (N.D. 1995). This standard recognizes the ability of the trial court to observe witnesses and assess their credibility, and accordingly, the trial court's decision is entitled to great deference. State v. Brown, 509 N.W.2d 69, 71 (N.D. 1993).

[¶24] Generally, law enforcement must knock and announce their presence when executing a warrant; however, there are exceptions to the rule. Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914 (1995). The district court correctly explained the exigent circumstances exception: "[a] reasonable suspicion that knocking under certain circumstances would be dangerous, or would inhibit the

investigation of the crime is all that is required for the requirement to yield.” (Appellant’s App. at 23-24); (Hudson v. Michigan, 547 U.S. 586, 596, 126 S. Ct. 2159 (2006)).

[¶25] The district court properly concluded that exigent circumstances existed. The district court noted the following factors in determining that the decision not to knock and announce was reasonable: Cook had several outstanding felony arrest warrants for failure to appear for drug offenses; law enforcement had been attempting to track Cook down for over three months; law enforcement knew Cook had attempted to run an officer over in an attempt to escape from police; and Cook had a history of avoiding the police. (Appellant’s App. at 23-24.)

[¶26] In light of the factors considered by the court, the district court reasonably found that “[o]fficers had a legitimate reason in not wanting to warn [Cook], as he had been on the run for an extended period of time, and police were legitimately concerned about their safety.” (Appellant’s App. at 23-24.) In short, sufficient competent evidence supported the conclusion that there were exigent circumstances that made the no-knock entry reasonable, therefore, the order of the court should be upheld.

[¶27] **CONCLUSION**

[¶28] The State respectfully asks the Court to conclude that the record on review is insufficient to afford meaningful and intelligent review based on Cook’s failure to file the relevant transcript. For that reason, the State requests that the

Court decline review or dismiss the appeal. Alternatively, if the Court considers the record, the State requests that this Court uphold the district court's order denying the motion to suppress as the order was supported by sufficient competent evidence.

Respectfully submitted this 30th day of April, 2014.

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[¶29] CERTIFICATE OF SERVICE

[¶30] A true and correct copy of the foregoing document was sent by e-mail on the 30th day of April, 2014, to: jesse.matson@matson-law.com and eserve@matson-law.com.

Kara Schmitz Olson

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota)
)
 Appellee,)
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 vs.)
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 Joshua Troy Cook,)
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 Appellant.)

**CERTIFICATE OF
ELECTRONIC SERVICE**

Supreme Court No. 20140040
Cass County District Court No. 09-2013-CR-02203

[¶1] I, Lisa Fischer, hereby certify that on May 5, 2014, the following documents:

CORRECTED APPELLEE'S BRIEF

[¶2] Was served electronically on the following:

jesse.matson-law.com and eserve@matsonlaw.com

Dated this 7th day of May, 2014.

Lisa Fischer
Senior Legal Secretary