

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 27, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP1640-CR

Cir. Ct. No. 2007CF49

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH E. RIDENER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Kenneth Ridener appeals an order¹ denying his motion to suppress evidence seized pursuant to three search warrants. The first

¹ This court granted Ridener's petition for leave to appeal a nonfinal order.

two warrants, issued in Marathon County, erroneously identified the place to be searched. The third warrant, issued in Wood County, consists of the judge's signature on the application for the warrant, with no specific direction to the officer executing the warrant regarding the objects or places to be searched and seized. Ridener contends these defects invalidate the warrants and compel suppression of the evidence. Because we conclude the defects are technical irregularities that do not invalidate the warrants, we affirm the order. *See* WIS. STAT. § 968.22.²

¶2 After the parties filed their initial briefs, we directed them to file supplemental briefs regarding recent developments in the common law. Upon our review of the briefs and record, we conclude this case is controlled by *State v. Rogers*, 2008 WI App 176, 762 N.W.2d 795. In *Rogers*, this court upheld the search of a vehicle where the warrant identified the wrong vehicle, but the application for the warrant identified the correct vehicle. Two holdings in *Rogers* are dispositive. First, a warrant containing incorrect information still passes constitutional muster if there is no reasonable probability the wrong premises would be searched. *Id.*, ¶13. Second, when reviewing that question, the court may utilize the application for the warrant and the executing officer's personal knowledge to overcome incorrect information in the warrant. *Id.*, ¶14.

¶3 Ridener argues *Rogers* does not apply because the application in *Rogers* was attached to the warrant and incorporated by reference. That argument fails for two reasons. First, *Rogers* holds that attaching and incorporating the

² All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

affidavit is sufficient to cure the defect in the warrant, not that it is necessary. *Rogers* cites *People v. Rodriguez*, 680 N.Y.S.2d 2 (N.Y. App. Div. 1998), to support its holding. *Rodriguez* does not indicate the application for the warrant was attached or incorporated by reference. Second, the facts of this case are stronger than the facts presented in *Rogers*. It is not necessary to consider the applications for the warrants in this case to conclude there is no reasonable probability the executing officer would search the wrong premises.

¶4 The first page of the first Marathon County warrant recites that Detective Cord Buckner applied to search:

1301A Townline Road, City of Wausau, County of Marathon, Wisconsin, occupied by Kenneth Ridener, and more particularly described as:

An individual apartment located within an apartment complex known as Terrace Heights. There are two entrances on the north side of the complex, both from Townline Road. The west entrance is the closest to apartment 1301A; 1301A is located on the north end of the complex and is adjacent to Townline Road. 1301A appears on the west side of the unit. There are entrances to 1301A on the west and north sides. 1301A is a lower unit with tan siding and partial brick facing.

The second page of the warrant commands the executing officer to “search the barn located on the above-referenced property” There is obviously no barn located in Ridener’s apartment. There is no reasonable probability that he would search the wrong premises based on the scrivener’s error.

¶5 The second warrant describes the place to be searched as “A Sony Ericsson [sic] ‘Walkman’ flip style cell phone” stored at the police department, but authorizes the search of a barn. Again, there is no danger that Buckner would mistakenly search a barn as a result of the defect in the warrant.

¶6 The Wood County warrant describes nine particular pieces of computer equipment in great detail, and describes the analysis that will be performed by a computer specialist. Although the warrant lacks language specifically authorizing the officer to conduct the search, there is no other reasonable interpretation of the judge's signature than that the judge approved the request to have the computers and devices analyzed by a computer specialist. The computer equipment was located in the sheriff's department, having already been seized. There is no danger that the officer executing the warrant would search the wrong premises and the failure to include a specific authorization to search constitutes a technical irregularity under these circumstances that does not affect Ridener's substantial rights. *See* WIS. STAT. § 968.22.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

