

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000375-MR

STEVEN SIGLER

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE KAREN LYNN WILSON, JUDGE  
ACTION NO. 08-CR-00309

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, DIXON, AND WINE, JUDGES.

CLAYTON, JUDGE: Steven Sigler appeals the order of the Henderson Circuit Court denying his motion to suppress evidence gathered pursuant to a search warrant. He specifically argues that the affidavit in support of the search warrant was insufficient because the search warrant did not describe the evidence with

sufficient particularity. For the foregoing reasons, we affirm the order of the trial court.

## FACTUAL AND PROCEDURAL BACKGROUND

On November 18, 2008, the Henderson County Grand Jury indicted Sigler on charges of trafficking in a controlled substance in the first degree, illegal possession of drug paraphernalia, fleeing or evading police in the second degree, operating a motor vehicle while under the influence, and persistent felony offender.

Following his indictment, Sigler asserted that the affidavit supporting the search warrant lacked probable cause and specificity as to what was expected to be found during the search. A suppression hearing was held on December 30, 2008. At the suppression hearing, Deputy Jay Workins of the Henderson County Sheriff's Office testified for the Commonwealth. He recounted that on October 13, 2008, he was driving his marked cruiser to his home around 7:30 p.m. on Highway 1078. At the intersection of 1078 and Baskett Ridge Road, he saw a car swerve and drive into a ditch. After witnessing the near accident, Workins followed the car. Although it was dark, he did not turn on his siren or lights.

Sigler, the driver of the car, pulled into an apartment complex with Workins right behind him. Then, Sigler got out of the car with a black safe in his hands. Workins identified himself as a police officer and told Sigler to stop. Rather than stop, Sigler ran toward an apartment, entered it, and tried to lock the screen door. Next, Sigler, all the while holding the black safe, ran through the apartment to the back door and attempted to unlock the back door. Workins

pursued him through the apartment. When Workins took out his taser, Sigler surrendered. When Workins interviewed the residents in the apartment, they claimed that they did not know Sigler.

Workins then placed Sigler in the police cruiser and read him his Miranda rights. According to Workins' testimony, Sigler was very nervous, sweating, rolling his eyes, grinding his teeth, and biting his lips. From his training, Workins recognized these symptoms as being related to drug use. In fact, Sigler informed Workins that he had been awake for several days on methamphetamine. Workins arrested Sigler for DUI. When he questioned Sigler about the safe, Sigler said it was not his safe. But, located on a key chain in Sigler's pocket was the key to the safe. Subsequently, Workins filled out an affidavit for a warrant to search the safe, which was granted. Upon opening the safe, Sigler discovered methamphetamine and drug paraphernalia. Subsequently, Sigler had been indicted.

Following Workins' testimony and at the end of the suppression hearing, the court denied the motion to suppress from the bench. On January 5, 2009, it also entered findings of fact, conclusions of law and an order overruling the motion to suppress. The court concluded that the affidavit was sufficient to support a finding of probable cause and that the warrant was not fatally deficient for failure to describe the item to be seized with sufficient particularity. The court noted that because Workins did not know what the locked safe contained, he listed multiple possibilities for its contents. It held that the warrant was valid based on

Workins' observations and the totality of circumstances. The final judgment was entered on February 20, 2009. Sigler entered a conditional guilty plea in Henderson Circuit Court to illegal possession of a controlled substance in the first degree, illegal possession of drug paraphernalia (subsequent offender), fleeing or evading in the second degree, operating a motor vehicle under the influence, and persistent felony offender in the second degree. Sigler was sentenced to seven years' imprisonment. At that time, he reserved the right to appeal the suppression issue. This appeal follows.

#### STANDARD OF REVIEW

In Kentucky for cases involving suppression, we use the standard of review set out by the United States Supreme Court in *Ornelas v. U. S.*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). Under that approach, the decision of the circuit court on a motion to suppress, which is based on an alleged illegal search, is subject to a two-part analysis. First, factual findings of the court concerning historical facts are conclusive if they are not clearly erroneous and are supported by substantial evidence. *Id.* at 699. *See also Com. v. Neal*, 84 S.W.3d 920, 923 (Ky. App. 2002). Second, because the ultimate issue of the existence of reasonable suspicion or probable cause is a mixed question of law and fact, it is subject to *de novo* review. *Id.* *See also Adcock v. Com.*, 967 S.W.2d 6, 8 (Ky. 1998). In conducting the analysis, the reviewing court must give due weight to inferences drawn from the facts by the trial court and law enforcement officers and

to the circuit court's findings on the officers' credibility. *Id.* Using this standard of review, we will now address the issue before us.

## ANALYSIS

Sigler contends that the trial court erred when it denied his motion to suppress evidence seized from the safe because the officer's affidavit for the search warrant did not describe the evidence with sufficient particularity. He does not contest the trial court's factual findings but seeks a *de novo* review of its conclusion that Workins' search warrant affidavit showed probable cause and was not facially deficient because the evidence was not described with sufficient particularity. The Commonwealth counters that the trial court correctly denied the motion to suppress because an examination of relevant law shows that Sigler's position is incorrect. The trial court found that the affidavit was sufficient because it made clear that it was based on Workins' own observations and, based on the totality of the circumstances, he had reason to believe that evidence of crime would be found inside the safe.

We start by acknowledging that under the relevant law, citizens are protected by the Fourth Amendment of the U.S. Constitution and Section Ten of the Kentucky Constitution from unreasonable searches and seizures. Moreover, Kentucky courts interpret Section Ten of the Kentucky Constitution as consonant with the Fourth Amendment and, thus, it provides the same scope of protections as its federal counterpart. *See Crayton v. Com.*, 846 S.W.2d 684 (Ky. 1992).

Initially, a valid search warrant must be supported by probable cause.

As stated in *Com. v. Smith*, 898 S.W.2d 496, 503 & n. 2 (Ky. App. 1995), to determine probable cause for a search:

Magistrates and judges must examine the “totality of the circumstances” set forth in the affidavit to determine whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527, 548 (1983) (adopted for purposes of Kentucky Constitution in *Beemer v. Commonwealth*, Ky., 665 S.W.2d 912, 914 (1984)). . . The standard of review for the issuance of a search warrant requires reviewing courts to examine whether the issuing judge had a substantial basis for concluding that the affidavit in support of the warrant established probable cause. *Gates, supra*, 426 U.S. at 238-239, 103 S.Ct. at 2332; *Beemer, supra*, 665 S.W.2d at 915.

However, it has been held that a magistrate’s ruling on probable cause should be afforded great deference by reviewing courts. *Gates*, 462 U.S. at 236, 103 S.Ct. at 2331. In the case at hand, we have no difficulty with the trial court deciding, given the circumstances described by Deputy Workins, that probable cause existed to issue a search warrant to examine the contents of the safe.

A valid search warrant must also describe with particularity the things to be seized. “Items to be seized under a legally executed search warrant must be described ‘particularly’ or ‘as nearly as may be’ under the respective provisions of the Fourth Amendment to the U.S. Constitution and § 10 of the Kentucky Constitution.” *Wilson v. Com.*, 621 S.W.2d 894, 895 (Ky. 1981). The rationale behind the particularity requirement is to minimize the “unlimited discretion in the

executing officer's determination of what is subject to seizure and [the] danger that items will be seized when the warrant refers to other items." *U. S. v. Ables*, 167 F.3d 1021, 1033 (6th Cir. 1999), *cert. denied*, 527 U.S. 1027, 119 S.Ct. 2378, 144 L.Ed.2d 781 (1999) (quoting *U. S. v. Savoca*, 761 F.2d 292, 298-99 (6th Cir. 1985)). But, as stated in *U. S. v. Henson*, 848 F.2d 1374, 1383 (6th Cir. 1988), *cert. denied*, 488 U.S. 1005, 109 S.Ct. 784, 102 L.Ed.2d 776 (1989), "the degree of specificity required is flexible and will vary depending on the crime involved and the types of items sought." Furthermore, in *U. S. v. Blum*, 753 F.2d 999, 1001 (11th Cir. 1985), it is explained that "[t]hus a description is valid if it is as specific as the circumstances and the nature of the activity under investigation permit." Given these parameters, did the trial court appropriately conclude that Sigler's search warrant had a sufficient particularity?

An examination of the facts shows that Deputy Workins in his affidavit for a search warrant of the safe recited the following facts to establish probable cause and the necessity to search the safe: the individual's near accident; the individual's running after the officer identified himself as a police officer and asked the individual to stop; the individual's entry into someone else's residence holding the black case (the search warrant refers to the safe as a case); the individual's stopping only after the officer showed his taser; individual continued to be in possession of the locked black case; individual's stating that the safe was not his even though the key was in the individual's pocket on his key ring; individual's behavior indicated he was under the influence of drugs since he was

profusely sweating, grinding teeth, and his speech was slurred; and individual's refusal to open the case.

Besides describing the suspicious circumstances, Workins also listed on the affidavit that the evidence he was seeking inside the safe was:

1. Stolen or embezzled property;
2. Property or things used as the means of committing a crime;
3. Property or things in the possession of a person who intends to use it as a means of committing a crime;
4. Property or things in the possession of a person to whom it was delivered for the purposes of concealing it or preventing its discovery and which is intended as a means of committing a crime;
5. Property or things consisting of evidence which tends to show that a crime has been committed or that a particular person has committed a crime.

Workins' enumeration of potential items to be found in the safe and the totality of the circumstances are sufficient to demonstrate that the affidavit was written with adequate particularity. It is reasonable, under these facts, to believe that the safe was either stolen property or contained stolen property. We disagree with Sigler's logic that, because the affidavit did not specify methamphetamine or drug paraphernalia, the affidavit is not specific enough. His suggestion is that whenever a locked compartment or inaccessible item requires a search warrant that, prior to opening it, any and all potential items must be described on an affidavit. In such a scenario, it would be necessary for the applicant to list every possible drug or weapon or criminal item. Obviously, this is not possible.



Sigler's reliance on *Crum v. Com.*, 223 S.W.3d 109 (Ky. 2007), is misplaced. In *Crum*, the thing to be seized is described only as "illegal contraband," the informant is not named, and the officer's reason for believing in the informant's reliability is not stated. Additionally, the search in *Crum* involved the entire house as opposed to a locked safe. Indeed, the search warrant issued in *Crum* was basically for a fishing expedition in someone's home without any indicia of probable cause. Here, the totality of the circumstances provides criminal behavior, behavior indicative of drug use, and one locked item. When the suspect refused permission to open the safe, the search warrant prepared by Deputy Workins was based on probable cause and contained sufficient particularity.

The Henderson Circuit Court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven J. Buck  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Ken W. Riggs  
Assistant Attorney General  
Frankfort, Kentucky