

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000970-MR
AND
NO. 2004-CA-001242-MR

SHERRILL WOOSLEY

APPELLANT

v. APPEALS FROM GRAYSON CIRCUIT COURT
HONORABLE SAM MONARCH, JUDGE
ACTION NO.03-CR-00022

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM AND JOHNSON, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: These appeals arising from the same circuit court action have been designated to be heard together and we have elected to dispose of them in one opinion. On March 16, 2004, appellant Sherrill Woosley entered a conditional plea of guilt to trafficking in a controlled substance in the first

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

degree, manufacturing methamphetamines, possession of drug paraphernalia, possession of anhydrous ammonia in an unapproved container, and possession of a firearm by a convicted felon, preserving for our review in appeal number 2004-CA-000979 the question of the sufficiency of the affidavit of the police officer to support execution of a search warrant. Appellant had previously been released on a \$50,000 full cash bond conditioned upon his refraining from the commission of other offenses and using any illegal drugs. The Commonwealth moved for revocation of that bond on April 15, 2004, based upon the fact that appellant had tested positive for use of methamphetamines and the fact that a new manufacturing charge had been lodged against him. The trial judge immediately revoked appellant's bond and set a forfeiture hearing. The propriety of the order forfeiting the \$50,000 bond forms the basis of appeal number 2004-CA-001242. We affirm the decision of the trial court in each appeal.

Concerning the sufficiency of the officer's affidavit to support issuance of a search warrant, appellant argues that the officer lied concerning information supplied by Barbara Wosley, appellant's wife at the time. Based upon evidence adduced at a suppression hearing, the trial judge entered an order in which he concluded that there was no evidence of intentional errors or mistakes in the detective's affidavit. He

also noted that the facts that Barbara Woosley failed to inform the officer of a pending divorce proceeding and that she had a history of domestic violence with appellant were of no consequence in assessing the officer's good faith in his affidavit in support of search warrant.

The trial judge properly observed that evidence seized pursuant to a warrant later determined to be flawed or invalid should not be excluded if the officers executing the warrant had an "objectively reasonable belief in the sufficiency of the warrant."² Here, the evidence adduced at the suppression hearing was sufficient to support the trial court's conclusion that while Barbara Woosley may have retracted portions of the information previously given the officer, such retraction in and of itself would not serve to undermine the sufficiency of the affidavit. On this state of the record, we find absolutely no basis for disturbing the trial judge's decision to deny appellant's motion to suppress the evidence against him.

Similarly, there was ample evidence before the trial judge to sustain his ruling of forfeiture of the cash bond. In explaining his decision to require forfeiture, the trial judge noted that appellant had repeatedly ignored the conditions of his bond, that his "absence of respect for the conditions imposed upon his liberty by the Court is blatant," emphasizing

² Crayton v. Commonwealth, 846 S.W.2d 684, 687 (Ky. 1992).

that forfeiture was necessary so as not to "seriously diminish in the public's eyes the importance of complying with the Court's lawful mandates." Although the trial judge had discretion to forfeit some or the entire bond, given these factors cited in the trial court's opinion, we perceive no abuse of discretion in his decision to forfeit the total sum.³

The judgment of the Grayson Circuit Court is affirmed in each appeal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Albert W. Barber, Jr.
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BRIEF FOR APPELLEE:

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³ See Johnson Bonding Company v. Commonwealth, 487 S.W.2d 911, 914 (Ky. 1972).