

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001581-MR

AARON WHITE

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 12-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, DIXON AND STUMBO, JUDGES.

STUMBO, JUDGE: The appellant, Aaron White, appeals the Wolfe County Circuit Court's denial of his motion to suppress. White preserved his claims via a conditional guilty plea made pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.09 and contends he was subjected to an unconstitutional search. We disagree and affirm the decision of the circuit court.

On November 29, 2011, Kentucky State Police Troopers Alvin Eiserman and Brandon Eversole went to 5173 Kentucky 15 South to serve an arrest warrant on Stephen Gabbard. Upon seeing Gabbard's vehicle at the residence, the troopers proceeded onto the property and discovered John Wilson outside working on a vehicle. White was inside and stepped out to the porch when he heard the troopers' vehicle approaching. Eversole informed White that he was there to serve a warrant on Gabbard, but the trooper was advised that Gabbard was no longer there. While on the property, Eversole informed White that he smelled a strong chemical smell he attributed to the manufacture of methamphetamines. Eversole also noticed several propane tanks. Eversole asked White if he could search the property, but White declined. White began walking backwards, leading Eversole to believe he would run, so Eversole detained White and informed him that he was going to seek a search warrant.

Eversole left the property to obtain the warrant and White was released. Eiserman remained at the premises while Eversole obtained the warrant.

The warrant stated the following:

While speaking with subjects at residence, affiant could smell a strong odor commonly associated with manufacturing of meth. Affiant has had training in this area and has actual prior experience in meth related cases. Affiant has smelled same odor during prior incidents and it has later been confirmed to him that smell was related to meth production. Upon questioning individuals at residence, they denied drugs or paraphernalia in the residence, however affiant observed propane tanks in the area as well, which further indicated meth production.

The search revealed incriminating evidence that ultimately lead to White's arrest. White was indicted for manufacturing methamphetamine, possession of marijuana, possession of a controlled substance in the first degree, possession of a controlled substance in the second degree, possession of drug paraphernalia, and cultivating marijuana.

On July 20, 2012, White challenged the search via a motion to suppress arguing the warrant was deficient on its face. The circuit court overruled the motion to suppress. On August 23, 2011, White entered a conditional guilty plea to the charges of possession of methamphetamine precursor, possession of marijuana, and possession of a controlled substance in the first degree. The conditional plea reserved the right to appeal the circuit court's decision to overrule the motion to suppress.

We will not disturb the circuit court's findings of fact on a motion to suppress if they are supported by substantial evidence. *Drake v. Commonwealth*, 222 S.W.3d 254, 256 (Ky. App. 2007). However, the circuit court's legal conclusions are reviewed *de novo*. *Id.*

First, it is important to note that White failed to include the suppression hearing video or transcript as part of the record on appeal. It is the appellant's duty to ensure that we receive the complete record. *Chestnut v. Commonwealth*, 250 S.W.3d 288, 303 (Ky. 2008). "When the record is incomplete, this Court must assume that the omitted record supports the trial

court.” *Id.* With this in mind, we turn to White’s assertion that the warrant was not supported by probable cause and was facially deficient.

Section 10 of the Kentucky Constitution provides that ‘no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.’ This section has long been held to require that the affidavit for a search warrant reasonably describe the property or premises to be searched and state sufficient facts to establish probable cause for the search of the property or premises. Likewise, the warrant itself must contain a reasonably specific description of the object of the search.

Coker v. Commonwealth, 811 S.W.2d 8, 9 (Ky. App. 1991) (citations omitted).

In this case, Eversole submitted a sworn affidavit indicating that he smelled chemicals he attributed to the production of methamphetamine. Eversole concluded that the smell was attributable to the manufacture of methamphetamines because of his experience and personal knowledge he gained executing search warrants under similar circumstances. Eversole also observed propane gas tanks, some of which were consistent with personal use and some of which were for commercial use. The warrant, as indicated above, detailed with sufficient particularity the officer’s reasoning for believing criminal activity was afoot and his reasoning was included in the sworn affidavit. The warrant also detailed the items to be searched for and the location at which the search would be performed. Specifically, the warrant instructed that the search would include “places in the home where illegal drugs, chemical agents, or products used in the manufacture of meth or other narcotics” might be found. The warrant also indicated that any

precursors to meth, products associated with its creation, or equipment used to convey meth were the subject of the warrant.

The warrant and its supporting affidavit were not deficient and probable cause existed to justify the search; therefore, the decision of the circuit court is affirmed.

DIXON, JUDGE, CONCURS.

CAPERTON, JUDGE, DISSENTS.

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