

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000951-MR

EDDIE FRANKLIN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 13-CR-01313

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MAZE, STUMBO AND TAYLOR, JUDGES.

STUMBO, JUDGE: Eddie Franklin appeals from a Judgment of the Fayette Circuit Court reflecting his conditional plea of guilty to one count of Convicted Felon in Possession of a Firearm. Franklin argues that the circuit court improperly issued a search warrant based on unreliable information, and that as such, certain evidence obtained by the search should have been suppressed. We find no error, and AFFIRM the Judgment on appeal.

On December 2, 2013, the Fayette County grand jury indicted Franklin on charges of Trafficking in a Controlled Substance, First Degree (Less than 2 Grams of Heroin) and Convicted Felon in Possession of a Handgun. The charges arose from a police investigation that began on or around November 4, 2013, when a confidential informant ("C.I.") told Kentucky State Police Detective ("KSP") Elisha Morris that he could purchase heroin from a seller known to the C.I. as Eddie. The C.I. provided information about the seller, Appellant Eddie Franklin, including the location of Franklin's residence and descriptions of Franklin's vehicles. Detective Morris would later state that the C.I. had previously provided reliable information to a KSP trooper. The C.I. stated that Franklin always carried a gun, and that he typically kept heroin, scales and a firearm in his vehicle. Detectives Morris and Nettles subsequently confirmed the location of Franklin's residence and his vehicle registrations.

After the information was corroborated, the detectives met with the C.I. to arrange a controlled buy of heroin from Franklin. The C.I. stated that he and Franklin had a "falling out", and that the C.I. would have to use a middleman to purchase heroin from Franklin. The C.I. then arranged a purchase of heroin from Franklin through middleman Kyle Perry. In anticipation of the purchase, the detectives searched the C.I., and provided him with \$420 and a digital audio recorder.

The C.I. called Perry, who told the C.I. that there was a new shipment of heroin that was getting pressed into a tablet form that looked like Percocet 30

mg tablets. Later that evening, a green Ford Explorer picked up the C.I. It was driven by Perry's girlfriend, with Perry as a passenger. Detectives Morris and Nettles, along with KSP Detective Masters and Scott County Detective Ernest followed the vehicle to Franklin's residence. Perry then completed a transaction by purchasing what appeared to be Percocet 30 mg tablets in a cellophane wrapper.

The detectives then met with the C.I., who produced a plastic wrapper containing 8 light blue tablets appearing to be Percocet 30 mg tablets. The tablets field tested positive for heroin. The detectives also retrieved the digital audio recorder, which had recorded for approximately 72 minutes. The recording included conversations between the C.I., Perry and Perry's girlfriend Jackie about the pills and the transfer.

Based on the foregoing, including the controlled buy and the information provided by the C.I., Detective Masters prepared an affidavit for a search warrant of Franklin's residence. The affidavit was presented to Judge Goodman of the Fayette District Court at her residence, and a search warrant was signed at 1:58 a.m. on November 5, 2013. This was about 2 hours after the controlled buy. Officers observed Franklin's residence during the time between the buy and the issuance of the warrant, and no one entered or exited Franklin's residence during that period.

Later that morning, KPS troopers executed the search warrant at Franklin's residence. Franklin, along with four other individuals, were found inside the residence. The officers found various items including drugs, drug

paraphernalia, money and four weapons. Franklin was arrested and subsequently indicted.

On February 7, 2014, Franklin filed a Motion to Suppress and supportive memorandum. Franklin alleged that the search warrant was defective and not supported by probable cause, claiming that there was no indication that the C.I. was reliable, and that the controlled buy was only "controlled in the loosest sense of the word." Franklin further alleged that the police proceeded to "freeze the scene" before the search warrant was obtained and executed, resulting in an alleged "illegal detention and/or search". The Commonwealth responded that the search warrant was based on sufficient probable cause based on the four corners of the affidavit. It sought to distinguish the case law relied on by Franklin, which it claimed was based on events involving completely anonymous and uncorroborated tips, and it argued that even if the court did find error, the good faith exception should be applied.

A hearing on the matter was conducted on March 6, 2014, where evidence was adduced. KSP Detective Morris testified as to the basis for the warrant. Thereafter, the court determined that though the affidavit could have contained more information regarding the content of the audio recording and verification that the pills were obtained at Franklin's house, it found probable cause from the four corners of the document supporting Judge Goodman's issuance of the warrant.

Franklin then entered a conditional guilty plea on the Commonwealth's offer of dismissing the trafficking charge and a recommended one-year sentence on the charge of possession of a firearm by a convicted felon. The court accepted the plea, sentenced Franklin to one year in prison probated for two years. This appeal followed.

Franklin now argues that the search warrant for his residence was defective, and that the Fayette Circuit Court erred in failing to so rule. The focus of Franklin's argument is that the affidavit failed to establish probable cause to support the warrant. Specifically, Franklin contends that there was no reliable basis for the warrant because the C.I. was unknown to Detective Morris, and the "uncontrolled buy" failed to corroborate his reliability. He argues that the affidavit falsely and recklessly describes the C.I., and improperly omitted problems with the alleged controlled buy. Additionally, Franklin maintains that the affidavit failed to explain any substantive follow-up investigation after the controlled buy, and he argues that the "C.I. may have wanted to frame Mr. Franklin for their falling out and got Mr. Perry or Jackie to help him get Mr. Franklin." In sum, he seeks an Opinion reversing his conviction and instructing the circuit court to suppress the evidence seized as a result of the search.

The standard of review of a circuit court's ruling of a suppression motion following a hearing is twofold. "First, the factual findings of the court are conclusive if they are supported by substantial evidence." *Stewart v. Commonwealth*, 44 S.W.3d 376, 380 (Ky. App. 2000) (footnote and citations

omitted). Second, we must conduct “a *de novo* review to determine whether the court's decision is correct as a matter of law.” *Id.* (footnote and citations omitted).

Kentucky has adopted the standard of review articulated by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), where the Court stated:

[A]s a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. Having said this, we hasten to point out that a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.

The question for our consideration is whether the Fayette Circuit Court properly determined that the four corners of the affidavit established probable cause sufficient to justify the District Court's issuance of the search warrant. We must answer this question in the affirmative. Though Franklin directs our attention to case law addressing anonymous informants or informants whose reliability is unknown, those cases are distinguishable because the C.I. herein was not anonymous and was known to Detective Morris as having worked previously with the KSP. After providing information to the KSP in the instant matter, detectives determined that Franklin resided at the location and possessed the vehicles as described by the C.I.

In the affidavit, Detective Chris Masters affirmed that he received information from the C.I. that a large quantity of heroin was coming to Lexington, and that the C.I., through Perry, could purchase heroin from Franklin. Masters also

stated that the C.I. had provided accurate information regarding Franklin, his residence and vehicles, and that Franklin kept heroin in his vehicle along with scales and a firearm. Detective Morris also showed pictures of Perry and Franklin to the C.I., who confirmed their identities.

Upon considering the Motion to Suppress, the circuit court was "curious" as to why the affidavit did not contain information about the recording device, nor verify that the heroin pills were purchased from Franklin. The court opined, "I don't know why that wasn't in the affidavit. That would've been helpful." We agree that this information would have bolstered the affidavit. However, the question for our consideration is whether the affidavit, as tendered, was sufficient to demonstrate probable cause to support the search warrant. Based on the four corners of the affidavit, the testimony at the suppression hearing, and having applied *Stewart* and *Ornelas, supra*, we find no error in the circuit court's determination that the affidavit established probable cause sufficient to support the warrant. Additionally, we find as purely speculative Franklin's assertion that the C.I. "*may* have wanted to frame Mr. Franklin for their falling out" (emphasis added). This claim is not supported by the record, and does not undermine the court's conclusion that the affidavit established probable cause.

For the foregoing reasons, we AFFIRM the Order of the Fayette Circuit Court overruling Franklin's Motion to Suppress.

ALL CONCUR.

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