

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

NO. 2014-CA-001378-MR

MATTHEW D. WILSON

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT  
HONORABLE BRUCE T. BUTLER, JUDGE  
ACTION NO. 12-CR-00140

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Appellant appeals the denial of his motion to suppress evidence obtained during the execution of a search warrant. Appellant argues that the affidavit which supported the issuance of the warrant contained false and misleading statements; therefore, the search warrant was invalid and all evidence against him should be suppressed. We disagree and affirm.

On September 30, 2012, Jeff King, the Chief of Police for the city of Clarkson, Kentucky was contacted by Debbie Durbin. She informed Chief King that Appellant, her daughter's boyfriend, was making methamphetamine and giving it to her daughter. Chief King discovered that the daughter, Sasha Harrison, had recently purchased pseudoephedrine, which is used in the manufacture of methamphetamine. Ms. Harrison lived with her friend Alicia Polly. The two women did not live within the city limits of Clarkson; therefore, Chief King contacted Deputy Billy Meredith of the Grayson County Sheriff's Department and informed him of the situation.

Deputy Meredith and Chief King went to Ms. Harrison's residence and spoke with the two women. Deputy Meredith interviewed both women. During the suppression hearing held on the search warrant issue, Deputy Meredith testified that Ms. Harrison stated that she had bought pseudoephedrine the day before and gave it to Appellant. Appellant left the two women and later returned to Ms. Harrison's residence with methamphetamine, which the three then consumed. Deputy Meredith also testified that Ms. Harrison had recently witnessed Appellant manufacture methamphetamine at his residence and had informed Deputy Meredith of places inside Appellant's residence where he hides drugs and drug making ingredients.

Both women gave written statements where they described the events of Ms. Harrison purchasing the pseudoephedrine, giving it to Appellant, and later consuming methamphetamine. Neither written statement mentioned Appellant

making methamphetamine at his residence. Ms. Polly's written statement said that Ms. Harrison had informed her that Appellant did not make methamphetamine at his house but at a place called Beavers Dam.

Appellant was then seen in the passenger seat of a car driving by Ms. Harrison's house. Chief King then left the residence and stopped the vehicle and detained the occupants until Deputy Meredith arrived. After Deputy Meredith arrived at the scene, the driver was eventually released, but Appellant remained in the custody of the officers.

Deputy Meredith sought to obtain a search warrant for Appellant's residence. Deputy Meredith wrote an affidavit in support of the warrant. In the affidavit, he discussed the day's events and the written statements of the women. He also recounted the verbal statement made by Ms. Harrison about witnessing Appellant manufacture methamphetamine at his residence and the hiding places Appellant uses at his residence. Deputy Meredith also specifically mentioned that Ms. Polly's written statement indicated Appellant did not make methamphetamine at his residence, but based on the detailed information provided by Ms. Harrison, he believed Appellant did make methamphetamine at his residence.

Deputy Meredith obtained the search warrant. During the search of Appellant's residence, deputies found methamphetamine precursors, some of which were found in the hiding spots described by Ms. Harrison. Appellant was then indicted for manufacturing methamphetamine and possession of methamphetamine. Appellant later moved to suppress the evidence found during

the search of his residence. A suppression hearing was held on April 14, 2014, during which Chief King, Deputy Meredith, Sheriff's Deputy Joey Beasley, and Sheriff's Deputy Adam Cottrell testified. The trial court denied the motion. Appellant then entered a conditional guilty plea to unlawful possession of a methamphetamine precursor, reserving his right to appeal the denial of his motion to suppress. This appeal followed.

When determining whether a search warrant was properly issued, we must examine the "totality of the circumstances." *Beemer v. Commonwealth*, 665 S.W.2d 912, 913 (Ky. 1984)(citing *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and the "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for ... conclud[ing]" that probable cause existed.

*Id.* at 914-15 (citations omitted).

Appellant argues that Deputy Meredith included false statements in his affidavit. Appellant argues that neither written statement says anything about witnessing him manufacture methamphetamine at his residence and that Ms. Polly's written statement states that Appellant manufactures methamphetamine at a place called Beavers Dam. Appellant argues that any statements attributable to

Ms. Harrison set forth in the affidavit that indicate he manufactured methamphetamine at his residence are false, thereby invalidating the search warrant.

To attack a facially sufficient affidavit, it must be shown that (1) the affidavit contains intentionally or recklessly false statements, and (2) the affidavit, purged of its falsities, would not be sufficient to support a finding of probable cause. The same basic standard also applies when affidavits omit material facts. An affidavit will be vitiated only if the defendant can show that the police omitted facts with the intent to make, or in reckless disregard of whether the omission made, the affidavit misleading *and* that the affidavit, as supplemented by the omitted information, would not have been sufficient to support a finding of probable cause.

*Commonwealth v. Smith*, 898 S.W.2d 496, 503 (Ky. App. 1995)(citations omitted).

“The burden of establishing invalidity of the warrant [is] on the defendant, if the warrant was valid on its face.” *Strong v. Commonwealth*, 297 Ky. 591, 594, 180 S.W.2d 560, 561 (1944). “A suppression hearing requires the moving party to carry the burden of establishing the evidence was secured by an unlawful search.” *LaFollette v. Commonwealth*, 915 S.W.2d 747, 749 (Ky. 1996)(abrogated on other grounds by *Kyllo v. United States*, 533 U.S. 27, 29, 121 S.Ct. 2038, 2041, 150 L.Ed.2d 94 (2001)(citations omitted)).

We believe the trial court correctly denied Appellant’s motion. Deputy Meredith relied on both the written statements and the verbal statements of the women when he wrote his affidavit in support of the search warrant. Deputy Meredith disclosed to the issuing judge the fact that Ms. Polly believed Appellant

manufactured the methamphetamine at Beavers Dam and Ms. Harrison believed it was done at Appellant's residence. It was Appellant's burden to convince the trial court that the statements in the affidavit were false. Appellant did not testify at the hearing and neither did Ms. Harrison or Ms. Polly. Deputy Meredith did not testify contrary to the statements he made in the affidavit. Simply because the written statements did not contain the information that Appellant manufactured methamphetamine at his residence does not mean Ms. Harrison did not verbally make that statement.

We believe the issuing judge had a substantial basis for concluding that probable cause existed to issue the search warrant. Appellant was unsuccessful in persuading the trial court and this Court that the statements made by Deputy Meredith in his affidavit were false; therefore, we affirm the judgment of the Grayson Circuit Court.

ALL CONCUR.

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