

RENDERED: JANUARY 11, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001579-MR

SHELLY RENEE POE

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE FRANK A. FLETCHER, JUDGE
ACTION NO. 17-CR-00045

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING AND REMANDING

** ** * * * **

BEFORE: DIXON, GOODWINE, AND MAZE, JUDGES.

GOODWINE, JUDGE: Shelly Renee Poe appeals as a matter of right from a judgment of the Powell Circuit Court. Poe was indicted by a Powell Circuit Court grand jury on charges of trafficking in a controlled substance, first degree, first offense, and persistent felony offender in the first degree. Following the denial of her motion to suppress, Poe entered a conditional guilty plea to an amended charge

of possession of methamphetamine, first degree.¹ The persistent felony offender charge was dismissed. Poe was sentenced to three years in prison. On appeal, she challenges the trial court's denial of her motion to suppress contending the search warrant was invalid on particularity grounds. Finding no error, we affirm.

BACKGROUND

In January of 2017, two undercover police officers purchased narcotics from an individual in the Clay City area. That individual was not Poe. Following the controlled buy, the officers obtained a search warrant for the residence of the individual from whom they bought the narcotics. The affidavit used to procure the search warrant contained some inaccuracies.² At the suppression hearing, one of the officers who participated in the execution of the search warrant testified about the description in the affidavit and the actual location of the residence searched. The address of the house searched was 70 Powell Street. The address listed in the affidavit was 113 Powell Street. According to a defense witness, the two houses are 200-300 feet apart. One is on the right side of the street and the other is on the left side of the street. The trial court noted that the house searched was red brick and vinyl, which was the same description listed in

¹ The final judgment entered by the Powell Circuit Court incorrectly lists the charge as trafficking in a controlled substance, first degree. The parties agree the case should be remanded to correct the clerical error in the final judgment.

² The Court notes that the affidavit and the search warrant are not in the record. The parties' description of the residence, the location, and directions to the residence searched differ slightly.

the affidavit. The affidavit also indicated there was a lawnmower in the front yard. The witnesses testified there was no lawnmower in the front yard of the house searched. The trial court noted, however, that lawnmowers are very mobile and could have been moved.

Several officers executed the search warrant, including Kentucky State Police Officer Grant Faulkner and Officer Crabtree. Poe was sitting in a car in the driveway outside a house when law enforcement executed the search warrant. Officer Faulkner recognized Poe sitting in her vehicle in the driveway and confirmed she had an outstanding warrant for her arrest. Poe was arrested and a search incident to said arrest produced evidence which resulted in Poe being charged with trafficking in a controlled substance, first degree and persistent felony offender first degree.

Poe filed a motion to suppress the search warrant challenging its validity on particularity grounds. The trial court denied her motion to suppress. Thereafter, Poe entered a conditional guilty plea to an amended charge of possession of methamphetamine, first degree, and was sentenced to three years in prison.

The Powell Circuit Court's judgment indicates Poe pled guilty to a trafficking charge. However, it is clear from the record that Poe pled guilty to

possession of methamphetamine.³ On appeal, Poe contends that the trial court erred in denying her motion to suppress the search warrant arguing it lacked the particularity required under the 4th Amendment of the U. S. Constitution and Section 10 of the Kentucky Constitution.

STANDARD OF REVIEW

To challenge the validity of a search warrant, an individual must have standing to contest the search. *Ordway v. Commonwealth*, 352 S.W.3d 584, 592 (Ky. 2011); *Hawley v. Commonwealth*, 435 S.W.3d 61, 66 (Ky. App. 2014). Poe must establish standing by showing that she had a legitimate expectation of privacy in the premises where the officers conducted the search. *Ordway*, 352 S.W.3d at 592; *Hawley*, 435 S.W.3d at 66.

When reviewing a suppression hearing regarding a search warrant, appellate courts first determine if the facts demonstrate substantial evidence supporting the trial court's decision, and second determine whether the trial court correctly held that the search warrant contained a substantial basis for concluding probable cause existed. *Minks v. Commonwealth*, 427 S.W.3d 802, 809-10 (Ky. 2014); *Rawls v. Commonwealth*, 434 S.W.3d 48, 57-58 (Ky. 2014). An appellate court must give great deference to the issuing judge's decision to grant a search

³ The Commonwealth's offer, the plea hearing, the sentencing hearing, and a commitment order all indicate Poe pled guilty to a reduced charge of possession of methamphetamine.

warrant. *Commonwealth v. Pride*, 302 S.W.3d 43, 48 (Ky. 2010). When reviewing the search warrant, the trial court uses the totality of the circumstances approach. *Minks*, 427 S.W.3d at 808; *Beemer v. Commonwealth*, 665 S.W.2d, 912, 914 (Ky. 1984).

ANALYSIS

There was no evidence presented that Poe owned the residence searched; that she temporarily resided there; or that she stayed there from time to time. Poe had no ownership or possessory interest in the residence. Thus, she had no legitimate expectation of privacy in the residence and no standing to challenge the search warrant. *Ordway*, 352 S.W.3d at 592 and *Hawley*, 435 S.W.3d at 66.

Even if Poe had standing to challenge the search warrant, it was not invalid. The trial court found, and this Court agrees, that the inconsistencies were insufficient to invalidate the search warrant, but even if invalid it was not needed for Poe's arrest. The officers saw Poe sitting inside a vehicle parked in the driveway. Poe was plainly visible to the officers. A driveway is a public place without any reasonable expectation of privacy.⁴ *Quintana v. Commonwealth*, 276 S.W.3d 753, 758, 759-60 (Ky. 2008); *Maloney v. Commonwealth*, 489 S.W.3d 235, 241 (Ky. 2016). Upon seeing a person in a public area, law enforcement may

⁴ KRS 525.010(3) defines a public place as “a place to which the public or a substantial group of persons has access[.]”

run a record check for warrants. *Robbins v. Commonwealth*, 336 S.W.60, 63 (Ky. 2011); *Birch v. Commonwealth*, 203 S.W.3d 156 (Ky. App. 2006) (internal citations omitted). Once they found out Poe had an arrest warrant, they lawfully arrested her and properly searched her. *Robbins*, 336 S.W.3d at 63-64; *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981); *Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969).

After hearing the testimony of two witnesses, the trial court found that the deficiencies were not significant enough “to throw out the search warrant.” The trial court correctly held that the law does not require perfection in search warrants and properly denied Poe’s motion to suppress.

CONCLUSION

Based on the foregoing, the judgment of the Powell Circuit Court is affirmed. The case is remanded back to the Powell Circuit Court to correct the clerical error in the final judgment.

ALL CONCUR.

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