

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000726-MR

BOBBY BISHOP

APPELLANT

v. APPEAL FROM PENDLETON CIRCUIT COURT  
HONORABLE ROBERT MCGINNIS, JUDGE  
ACTION NO. 01-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: JOHNSON, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE. Appellant Bobby Bishop appeals his conviction in the Pendleton Circuit Court for trafficking in a controlled substance in the first degree (methamphetamine), trafficking in a controlled substance in the second degree (hydrocodone), possession of a controlled substance in the first degree (methamphetamine) and criminal attempt to manufacture methamphetamine following a conditional guilty plea. Appellant

argues that the trial court should have granted his motion to suppress the evidence obtained pursuant to a search warrant.

Appellant moved to suppress on the basis that the affidavit for a search warrant did not provide enough information to establish probable cause to search. The trial court held hearings on the motion to suppress and found that the affidavit established probable cause. The court cited "consistent information from four different sources implicating the defendant in drug activity" in the affidavit as determinative. The court was persuaded that the information was more reliable due to the number of sources. The court also found significant corroboration in the officer's further investigation. The officer had contacted the Grant County sheriff's office which reported that appellant was videotaped in a store with someone when that person was seen purchasing quantities of an ingredient used in the manufacture of methamphetamine.

Appellant's arguments on appeal are that the sources identified in the affidavit were not reliable ones, and that the information from the investigation was not verified by the officer and did not establish any criminal activity by appellant. The standard of review for an appeal of an order denying suppression is whether the factual findings of the trial court were "clearly erroneous"; the ultimate legal question of

whether there was probable cause to search is reviewed de novo. Commonwealth v. Banks, Ky., 68 S.W.3d 347, 349 (2001), citing Ornelas v. United States, 517 U.S. 690, 691, 116 S. Ct. 1657, 1659, 134 L. Ed. 2d 911 (1996). The determination of the issuing magistrate as to the existence of probable cause in the warrant is as follows:

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 "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.

Illinois v. Gates, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); Beemer v. Commonwealth, Ky., 665 S.W.2d 912 (1984).

Appellant primarily argues that the officer should have known the sources of information listed on the affidavit could not be relied upon. Two of the sources gave the information in the aftermath of a domestic disturbance. Nevertheless, despite the conflict between the two, they provided consistent information in that both stated they had firsthand knowledge of drug transactions by appellant. Appellant next argues that other sources cited in the affidavit for search warrant denied speaking to the officer or providing the information to him. However, the trial court specifically

found these witnesses not credible following a hearing. The record of the hearing is not provided in the record, and so we assume that the omitted evidence supports the finding of the trial court. Commonwealth v. Thompson, Ky., 697 S.W.2d 143 (1985). Appellant has failed to show that the officer was knowingly using unreliable information or that the issuing magistrate had no basis for relying on this information.

Next, appellant argues that the officer did not perform a sufficient investigation to corroborate the allegations of his sources. Appellant claims a single phone call to another police agency is not enough. We disagree. More important than the scope of the investigation, under Beemer, is whether it provided corroborating information to the officer. Here, the officer had heard from witnesses that appellant was selling methamphetamine, and learned from law enforcement that appellant was seen with someone on a shopping trip for an ingredient of methamphetamine. The investigation of the officer did not have to establish commission of a crime, but only to corroborate information already known. The tip from the Grant County sheriff certainly did so. Moreover, we do not agree that the investigating officer needed to show that he had reviewed the videotape himself, since he could rely on the collective knowledge of the police. United States v. Killebrew, 594 F.2d 1103 (6<sup>th</sup> Cir. 1979).

We agree that the totality of the circumstances supported the issuance of the warrant in this case. We affirm the order of the Pendleton Circuit Court denying the motion to suppress, and affirm appellant's conviction.

ALL CONCUR.

BRIEF FOR APPELLANT:

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