

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000280-MR

LEONARD SMIDDY

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT  
HONORABLE SAM H. MONARCH, JUDGE  
ACTION NO. 02-CR-00078

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, SCHRODER, AND TAYLOR, JUDGES.

BARBER, JUDGE: Appellant Leonard Smiddy appeals the Meade Circuit Court's denial of his motion to suppress evidence. We find that the affidavit supporting the search warrant was sufficient, and affirm the trial court's ruling.

Smiddy's home was searched pursuant to a search warrant on May 23, 2002. The affidavit for the search warrant detailed three sources from whom the investigating officer received information. The sources are identified as being

independent of one another. The affidavit identifies Smiddy as an individual with a history of being involved with illegal controlled substances, and recites an investigation determining that there was extensive short-term motor vehicle traffic in and out of Smiddy's home.

A hearing was held to determine whether the affidavit formed an adequate basis for the issuance of a valid search warrant. At the hearing the officer informed the court that two of the sources were jail inmates and close friends. The third source, a friend of the first two, was a confidential informant who had attempted a drug buy from Smiddy with the aid of an unidentified third party and had no independent knowledge regarding Smiddy. A review of the investigation into automobile traffic determined that on the first of the two night investigations four vehicles visited the residence, and that on the second night, there was no vehicle traffic at all to the residence. Smiddy's criminal record shows a charge of possession of marijuana, fifteen years prior to the offenses asserted below. After a hearing, the trial court overruled the motion to suppress, and Smiddy entered a conditional plea of guilty to the charges of possession and manufacture of a controlled substance.

Smiddy asserts that the affidavit tendered in support of the search warrant was lacking in probability and could not

have been relied upon in good faith. The test used to determine the sufficiency of such an affidavit is found in Beemer v. Commonwealth, Ky., 665 S.W.2d 912 (1977), which states that the court must find that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." Id., at 914. The court must take into consideration the basis of knowledge of persons supplying information, and the veracity of such persons. Id. Smiddy argues that there was no information tending to show the veracity of the sources contained in the affidavit, and that for this reason, the affidavit was defective and unreliable.

Kentucky law requires that an affidavit in support of a search warrant be made in good faith. Crayton v. Commonwealth, Ky., 846 S.W.2d 684, 688 (1992). Kentucky law requires that the officer executing the warrant must have an "objectively reasonable belief" in the sufficiency of the evidence asserted in the affidavit. Commonwealth v. Opell, Ky. App., 3 S.W.3d 747 (1999). The information obtained by the investigating officer regarding the alleged meth lab was specific as to the location of the suspicious materials, and the purpose for which Smiddy obtained and set up such materials.

An affidavit in support of a search warrant may only be found lacking in probable cause where it contains false or misleading information such that "the officer's reliance cannot

be reasonable.” Commonwealth v. Opell, Ky. App., 3 S.W.3d 747, 752 (1999). Although the warrant in the present case was lacking in some relevant information, and failed to detail the sources with accuracy, sufficient information was contained therein to support a reasonable belief that Smiddy was engaging in illegal activity. An affidavit does not have to specify an informant’s veracity and reliability where there are other strong indicia of reliability and accuracy in the informant’s account. Lovett v. Commonwealth, Ky., 103 S.W.2d 72, 77 (2003). The Court must take into account the totality of the circumstances in making a ruling on the sufficiency of an affidavit in support of a search warrant. Id., 103 S.W.3d at 78, finding that testimony specifically detailing materials set up in a certain location for an illegal purpose was sufficient to support a search warrant, even where the reliability of the informant was not shown.

Kentucky law is clear in holding that affidavits in support of search warrants must be interpreted in a commonsense manner. Hause v. Commonwealth, Ky. App., 83 S.W.3d 1, 13 (2001). Smiddy has failed to show an abuse of discretion or reversible error in the trial court’s denial of his motion to suppress. For this reason, the trial court’s ruling is affirmed.

SCHRODER, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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