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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001853-MR

CHARLOTTE KOLLEY

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 04-CR-00016

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HENRY AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

VANMETER, JUDGE: A search warrant must be based on information which establishes probable cause that evidence of a crime or contraband will be found at a particular location. In this case, we must determine whether the information contained in an affidavit which led to the search of Charlotte Kolley's

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

recreational vehicle (RV) and her arrest established probable cause. We hold that it did, and therefore affirm the judgment of the Meade Circuit Court.

On January 21, 2004, Kolley was arrested for manufacturing methamphetamine and trafficking in a controlled substance, first degree, along with some misdemeanor charges. The two felony charges were enhanced by the possession of a firearm. The arrest and charges resulted from a search warrant issued by Meade District Judge Embry upon the affidavit of Meade Deputy Sheriff Tommy Stiles.

Deputy Stiles' affidavit concerning the premises was based on information supplied by a known confidential informant who had supplied information to the Meade County Sheriff in the past. The information was that at 2:00 a.m. on January 21, the informant was present in a Winnebago RV on the Green Valley Ranch Road in Meade County while a short, heavy female, known as Charlotte, was using the anhydrous method of manufacturing methamphetamine. Deputy Stiles accompanied the informant to the location of the RV and observed the premises. In addition, approximately a month earlier Deputy Stiles had received an anonymous tip that someone was making methamphetamine in an RV on the Green Valley Ranch Road.

At a suppression hearing, Deputy Stiles testified that the informant had been unknown to him prior to this incident,

but that Meade County Sheriff Clifford Wise knew the informant, who had provided good information to the Sheriff on two or three prior occasions. However, Sheriff Wise did not testify at the suppression hearing. Following the suppression hearing the circuit court entered findings of facts, conclusions of law and an order denying Kolley's motion to suppress. Kolley thereafter entered a conditional guilty plea, and this appeal followed.

Kolley's sole argument is that the information relied upon by the police to obtain the search warrant was insufficient to establish probable cause.

The standard for determining whether an informant's tip provides probable cause for the issuance of a search warrant is based upon the "totality of the circumstances" set forth in the police affidavit.² In *Lovett v. Commonwealth*,³ the Kentucky Supreme Court noted that

[u]nder this test, the issuing magistrate need only "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." [462 U.S.] at 238, 103 S.Ct. at 2332. While an informant's veracity, reliability, and basis of knowledge are all "relevant considerations in the totality of the circumstances analysis," they are not conclusive and "a deficiency in one may be

² *Illinois v. Gates*, 462 U.S. 213, 230-31, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527 (1983); *Lovett v. Commonwealth*, 103 S.W.3d 72, 77 (Ky. 2003).

³ *Supra*, note 1.

compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* at 233, 103 S.Ct. at 2329.

. . .

Gates also explained that a magistrate's determination of probable cause is entitled to "great deference" and should be upheld so long as the magistrate, considering the totality of the circumstances, had a "substantial basis for concluding that a search would uncover evidence of wrongdoing." *Id.* at 236, 103 S.Ct. at 2331 (internal quotation omitted); *Beemer v. Commonwealth*, Ky., 665 S.W.2d 912, 914 (1984); see also *Massachusetts v. Upton*, 466 U.S. 727, 732-33, 104 S.Ct. 2085, 2087, 80 L.Ed.2d 721 (1984) (reemphasizing *Gates*). It is within this rubric that we evaluate the decision of the trial court.

Typically, a bare and uncorroborated tip received from a confidential informant, without more, would be insufficient to establish probable cause for a search warrant. *E.g.*, *Florida v. J.L.*, 529 U.S. 266, 270, 120 S.Ct. 1375, 1378, 146 L.Ed.2d 254 (2000). This is not such a case. As stated *supra*, the totality of the circumstances test requires a balancing of the relative indicia of reliability accompanying an informant's tip. *Gates*, *supra*, at 234, 103 S.Ct. at 2330. Thus, while a court may question an informant's motives, an "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed first-hand, entitles [the informant's] tip to greater weight than might otherwise be the case." *Id.*; *United States v. Sonagere*, 30 F.3d 51, 53 (6th Cir.1994).⁴

⁴ 103 S.W.3d at 77-78.

In *Lovett*, the court upheld a search warrant based on detailed, first-hand observations. Similarly, in this case the affidavit demonstrated that the basis of the informant's knowledge was his first-hand presence and observations at the RV on the morning of the issuance of the search warrant. Additionally, Deputy Stiles stated that the informant and he went to the location of the RV, where he confirmed that the exterior of the premises matched the informant's description.

While the court in *Lovett* relied on *Florida v. J.L.*⁵ in stating that "[t]ypically, a bare and uncorroborated tip received from a confidential informant, without more, would be insufficient to establish probable cause for a search warrant,"⁶ we believe that is a misstatement of the holding in *J.L.* Unlike the situation in *Lovett* and that now before us, *J.L.* involved a tip from an anonymous caller from an unknown location. As subsequently noted by Justice Wintersheimer,

This Court has applied the totality of circumstances approach in *Lovett v. Commonwealth*, 103 S.W.3d 72 (Ky. 2003), wherein an informant provided police with a detailed description of the defendant's methamphetamine laboratory and manufacturing operation. The Court noted that the level of detail provided and the fact that the informant's knowledge was based on his own observation, lent significant reliability to the information. *Lovett, supra*, involved a

⁵ 529 U.S. 266, 270, 120 S.Ct. 1375, 1378, 146 L.Ed.2d 254 (2000).

⁶ 103 S.W.3d at 78.

confidential informant rather than an anonymous caller.⁷

Finally, Kolley seems to complain that Deputy Stiles had no prior contact with the confidential informant, and that the information as to his reliability came from the Meade County Sheriff who did not testify at the suppression hearing. However, this argument lacks merit since hearsay is admissible at a suppression hearing.⁸

Based on the foregoing, the information contained in the search warrant was sufficient to establish probable cause. The order and judgment of the Meade Circuit Court are affirmed.

ALL CONCUR.

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⁷ *Collins v. Commonwealth*, 142 S.W.3d 113, 121 (Ky. 2004) (Wintersheimer, J., dissenting).

⁸ *Kotila v. Commonwealth*, 114 S.W.3d 226, 235 (Ky. 2003) (citing KRE 104(a) and KRE 1101(1)).