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TO BE PUBLISHED

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

NO. 2011-CA-000671-MR

DENNIS W. BOUNDS

APPELLANT

v. APPEAL FROM GRAYSON CIRCUIT COURT  
HONORABLE ROBERT A. MILLER, JUDGE  
ACTION NO. 09-CR-00064

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; NICKELL AND STUMBO, JUDGES.

ACREE, CHIEF JUDGE: The Court is called upon to decide whether a police officer's affidavit established probable cause to issue a search warrant for the residence, person, and vehicle of Appellant, Dennis Bounds. Because the factual representation contained in the affidavit provided a substantial basis for the warrant-issuing judge to conclude that probable cause existed, we affirm.

## **I. Facts and Procedure**

On May 28, 2009, Detective Terry Blanton of the Grayson County Sheriff's Office submitted an affidavit for a search warrant in the Grayson District Court.

Detective Blanton believed Bounds was manufacturing methamphetamine. In his affidavit, Detective Blanton recounted the following information:

- Detective Blanton was a detective with the Grayson County Sheriff's Office and he had served in that capacity for approximately seven years.
- On May 27, 2009, Deputy Robert Jackson was called to the residence of Tony Harshfield to listen to a message left on Harshfield's answering machine by Bounds. In the message, Bounds asked Harshfield to purchase "some pills" for Bounds. The telephone call was from a phone number associated with Bounds.
- Bounds visited Harshfield's apartment while Deputy Jackson was there. Deputy Jackson answered the apartment door and, following a brief conversation, Bounds left. Shortly thereafter, Deputy Jackson left. Bounds then returned to Harshfield's apartment and again asked Harshfield to buy pseudoephedrine for Bounds. Harshfield refused. Harshfield claimed that Bounds continued to make similar requests.
- The next day, Detective Blanton interviewed Harshfield. Harshfield informed Detective Blanton that, one month prior, Harshfield purchased a box of pseudoephedrine for Bounds at Rite Aid. After running a "meth check", Detective Blanton confirmed the transaction had taken place but at Wal-Mart, not Rite Aid. Harshfield also advised Detective Blanton that, at the time he purchased the pseudoephedrine, Harshfield observed "Coleman fuel, yellow ammonia stuff, and ether in a can" located in Bounds's car. Bounds purchased those items at the same time Harshfield purchased the pseudoephedrine.
- An anonymous informant informed Detective Blanton that Bounds also asked the informant to purchase pseudoephedrine for Bounds. The informant also advised that Bounds was in a relationship with Sandra Decker.

- Detective Blanton performed a “meth check” and confirmed that Bounds and Decker each purchased pseudoephedrine on both May 19, 2009, and May 27, 2009, in addition to the pills Bounds asked Harshfield to buy.
- Detective Blanton reported the Grayson County Sheriff’s Office had received numerous tips that Bounds was cooking methamphetamine.

Based on the above information, the district court issued a warrant to search Bounds’s home, vehicle, and person.

Detective Blanton immediately executed the warrant. Upon searching Bounds’s person, Detective Blanton discovered a pen casing containing white powder and a piece of plastic pipe wrapped in foil. In the residence, officers discovered numerous items used to manufacture methamphetamine, including mason jars in steel cooking pots, a yellow funnel, a two-liter bottle with ether, forty-one empty pseudoephedrine boxes, a blender, and a spray can with a hole punched in the bottom. Several of these items contained white powder or white powder residue that subsequently tested positive for methamphetamine.

Bounds moved to suppress the evidence seized, arguing the affidavit used to secure the search warrant was defective because it failed to establish probable cause for a warrant. A hearing on the motion was held on August 6, 2010, after which the Grayson Circuit Court concluded the affidavit presented sufficient facts to establish probable cause to justify issuance of the search warrant.

On March 29, 2011, Bounds entered a conditional guilty plea to manufacturing methamphetamine, first-degree possession of a controlled substance, and possession of drug paraphernalia. As part of his plea, Bounds

reserved the right to appeal the circuit court's denial of his suppression motion.

On April 12, 2011, the circuit court sentenced Bounds to ten years imprisonment.

This appeal ensued.

## **II. Standard of Review**

In *Commonwealth v. Pride*, 302 S.W.3d 43 (Ky. 2010), our Supreme Court concisely set forth the standard to be used when assessing whether a search warrant was properly issued based on probable cause:

The proper test for appellate review of a suppression hearing ruling regarding a search pursuant to a warrant is to determine first if the facts found by the trial judge are supported by substantial evidence, . . . and then to determine whether the trial judge correctly determined that the issuing judge did or did not have a “substantial basis for . . . conclud[ing]” that probable cause existed.

*Id.* at 49 (citations and footnotes omitted).

## **III. Analysis**

Bounds contends the search warrant was not supported by probable cause, rendering it invalid. Specifically, Bounds takes issue with Detective Blanton's affidavit. His argument is three-fold: (1) the affidavit did not allege sufficient probable cause that Bounds was engaged in criminal activity; (2) the affidavit did not allege sufficient probable cause that evidence of criminal activity would be found in Bounds's residence; and (3) if this Court determines the affidavit was deficient and the search warrant improperly issued, the “good faith” exception does not operate to save the search and prevent suppression of the evidence seized. We are not persuaded by these arguments.

Fundamentally, “a search warrant may only be issued upon a finding of probable cause.” *Fentress v. Commonwealth*, 279 S.W.3d 168, 171 (Ky. App. 2008). Probable cause is gleaned from the sworn facts represented in the affidavit seeking the search warrant. *See Howard v. Commonwealth*, 362 S.W.3d 333, 336 (Ky. App. 2011) (“A warrant should be granted based upon facts given under oath, establishing probable cause[.]”). If the facts set forth in an affidavit are insufficient to establish probable cause, a warrant issued under it is invalid. *Workman v. Commonwealth*, 204 Ky. 544, 264 S.W. 1097, 1097 (1924).

Whether the warrant-issuing court had probable cause to issue a search warrant is determined by examining the totality of the circumstances. *Moore v. Commonwealth*, 159 S.W.3d 325, 329 (Ky. 2005). “[T]he test for probable cause is whether there is a *fair probability* that contraband or evidence of a crime will be found in a particular place.” *Id.* (emphasis added). To that end, probable cause “*does not require certainty* that a crime has been committed or that evidence will be present in the place to be searched.” *Id.* (emphasis added).

In ascertaining whether probable cause existed, we are bound by “the four corners of the affidavit” and must afford substantial deference to the warrant-issuing court’s probable cause determination. *Pride*, 302 S.W.3d at 49. Consequently, we will not reverse so long as the warrant-issuing court had a “substantial basis for concluding that a search would uncover evidence of wrongdoing.” *Ragland v. Commonwealth*, 191 S.W.3d 569, 583 (Ky. 2006) (citing *Illinois v. Gates*, 462 U.S. 213, 236, 103 S.Ct. 2317, 2331, 76 L.Ed.2d 527 (1983)).

In sum, we must determine whether the circuit court properly concluded, “under the ‘totality of the circumstances’ presented within the four corners of the affidavit, [that the] warrant-issuing judge had a substantial basis for concluding that probable cause existed.” *Pride*, 302 S.W.3d at 49. Notably, we “review the sufficiency of an affidavit underlying a search warrant in a commonsense, rather than hypertechnical, manner.” *Moore*, 159 S.W.3d at 329.

With these standards as our guide, we turn to Bounds’s claims of error.

Bounds first contends Detective Blanton’s affidavit was insufficient to establish probable cause that Bounds was engaging in criminal activity. In particular, Bounds argues “the affidavit does not state [pseudoephedrine] may be used in the production of methamphetamine, nor does it recite any training the detective may have had which would indicate he had knowledge of the link between various chemical compounds and the manufacture of methamphetamine.” (Appellant’s Brief at 9-10). Therefore, Bounds suggests, the affidavit failed to establish probable cause of criminal activity. We disagree.

First, despite Bounds’s assertion to the contrary, Detective Blanton’s affidavit indicated he was a seven-year veteran law enforcement officer with the Grayson County Sheriff’s Office. Second, it is well known among law enforcement and the courts that pseudoephedrine is a key ingredient used to manufacture methamphetamine. *Commonwealth v. Hayward*, 49 S.W.3d 674, 676 (Ky. 2001) (“The precursor, and main ingredient, of methamphetamine is ephedrine or pseudoephedrine.”); *Varble v. Commonwealth*, 125 S.W.3d 246, 250

(Ky. 2004) (noting pseudoephedrine “is a methamphetamine precursor”). In light of Detective Blanton’s “training as a police officer, we find he had the necessary expertise to determine” Bounds was engaging in criminal activity, namely the manufacturing of methamphetamine, when, as explained in the affidavit, Detective Blanton discovered Bounds was purchasing and simultaneously asking others to purchase pseudoephedrine and, concomitantly, Bounds purchased Coleman fuel, yellow ammonia, and ether, other items used in the manufacturing process.<sup>1</sup> *Howard*, 362 S.W.3d at 337. Likewise, considering all the evidence presented in the affidavit and under the totality of the circumstances, we cannot say the warrant-issuing judge lacked a substantial basis for concluding that Bounds was engaging in criminal activity and, in turn, that probable cause existed.

In any event, “[t]he critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific ‘things’ to be searched for and seized are located on the property to which entry is sought.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 1976-77, 56 L. Ed. 2d 525 (1978) (footnote omitted). This leads us to Bounds’s next argument.

Bounds asserts the circuit court improperly concluded Detective Blanton’s affidavit established probable cause to search his residence. He argues that Detective Blanton’s affidavit failed to establish a nexus between the place to

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<sup>1</sup> Despite our ruling, we acknowledge best practices dictate the officer filing the affidavit specify, in the affidavit, that, based upon his training and experience, certain evidence is consistent with or indicative of certain criminal activity, whatever that may be.

be searched (Bounds's residence) and the suspected criminal activity (manufacturing methamphetamine). Bounds claims Detective Blanton's affidavit was utterly void of any facts connecting his residence to his suspected criminal activities. We are not persuaded.

As pointed out by Bounds, to justify a search, there must be a "nexus between the place to be searched and the evidence sought." *Moore*, 159 S.W.3d at 329 (quoting *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004)). Stated differently, the police officer's affidavit must, at a minimum, suggest "why evidence of illegal activity will be found 'in a particular place.'" *Carpenter*, 360 F.3d at 594.

Nevertheless, as explained, "[p]robable cause does not require certainty that . . . evidence will be present in the place to be searched." *Moore*, 159 S.W.3d at 329. Probable cause, as its very name signifies, turns on the *probability* of criminal activity in a particular situation, or evidence in a particular location. *Illinois v. Gates*, 462 U.S. 213, 232, 103 S. Ct. 2317, 2329, 76 L. Ed. 2d 527 (1983) ("[P]robable cause is a fluid concept-turning on the assessment of probabilities in particular factual contexts[.]"). To that end, the fact that Detective Blanton's affidavit did not affirmatively state the criminal activity occurred or was occurring on or at Bounds's residence does not necessarily render the search warrant fatally flawed.

In *Beckam v. Commonwealth*, 284 S.W.3d 547 (Ky. App. 2009), this court emphasized that "in issuing a search warrant, [the warrant-issuing court] is entitled



to draw reasonable inferences about where the evidence is likely to be kept, based on the nature of the evidence and the type of offense[.]” *Id.* at 550 (quoting *United States v. McClellan*, 165 F.3d 535 (7th Cir. 1999)). In light of this principle, the court concluded “that in the case of drug dealers evidence is likely to be found where the dealers live.” *Id.* We discern no meaningful distinction between a person *dealing* drugs and a person *manufacturing* drugs with respect to where that person may store drugs and related drug paraphernalia. Stated differently, if it is reasonable to assume a person who is a drug dealer stores those drugs in his residence, it is equally reasonable to assume a person who manufactures drugs is doing the same in his residence. As explained in *Moore*, “[i]t was not certain, but there was a fair probability that such evidence [of manufacturing of methamphetamine] would be found in these particular places, [namely, Bounds’s person, residence, and vehicle] and that is all that the Fourth Amendment requires.” 159 S.W.3d at 330. We reject Bounds’s claim of error.

In sum, under the totality of the circumstances, we find the warrant-issuing district court had a substantial basis for concluding the factual recitations contained in Detective Blanton’s affidavit established probable cause to issue the search warrant. The circuit court properly denied Bounds’s suppression motion.

“Since the search was supported by probable cause, we need not address whether the good faith exception would have justified the denial of [Bounds’s] motion to suppress on alternative grounds.” *Pride*, 302 S.W.3d at 51.

#### **IV. Conclusion**

For the foregoing reasons, we affirm the Grayson Circuit Court's April 12, 2011 Judgment and Sentence on Plea of Guilty.

ALL CONCUR.

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