

# on the beat

RESPONDING TO LITIGATION AFFECTING LAW ENFORCEMENT

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## Faulty Affidavits and the Search Warrants They Secure

By Michael D. Crow

The United States Court of Appeals for the Sixth Circuit, in *Lisa Mills v The City of Barbourville, et al*, recently addressed whether an affidavit submitted as part of a request for a search warrant was defective when it failed to contain specific information. Ms. Mills was arrested and her home searched in response to a charge of selling marijuana to a teenager. A security officer at a high school informed police that three of its students skipped school and smoked a marijuana cigarette. One of the students informed Officer Broughton that they purchased the marijuana cigarette from a blond woman named “Lisa” who lived in the housing projects. The teenager specifically identified Ms Mills’ residence to the officer.

Officer Broughton prepared an affidavit as part of a request to search the Plaintiff’s home pursuant to an arrest warrant. He met with a judge, who signed the warrant. Officer Broughton and Chief Smith executed the warrant.

In her lawsuit, Ms. Mills asserted the warrant was defective because it was obtained through a faulty affidavit. Although this was not the only claim in this case, we are limiting the discussion to this issue.

Plaintiff claimed the affidavit to search her home was faulty because it only contained the following language:

[A]ffiant received information from . . . a male juvenile that Lisa Mills had sold the male juvenile a marijuana cigarette for Five (5) Dollars.

[A]ffiant conducted the following independent investigation: On the 1st day of March a male juvenile gave a signed written statement to Officer Broughton stating that he had purchased a marijuana cigarette for Five (5) Dollars from Lisa Mills.

The unsworn statement of the teenager was not attached to the affidavit.

### SECRET WARDLE NOTES:

Essentially, the *Mills* Court ignored that probable cause actually existed to conduct a search of Plaintiff’s home. The opinion focuses solely on whether the affidavit, on its face, provided probable cause to conduct a search, regardless of what additional information was available to the police. Police officers must carefully draft affidavits to include each and every essential element to convince an independent reader that probable cause exists to issue a search warrant. Failure to do so will not only result in the dismissal of the fruits of the search, but will also expose the officers to civil liability. In *Mills*, the failure to properly draft the affidavit resulted in the ability of the Plaintiff to seek monetary damages she didn’t deserve.

## CONTINUED...

According to the Sixth Circuit, the affidavit was defective for a number of reasons. First, it failed to connect the residence to any specific illegal activity. Second, it failed to state that the person engaged in the illegal activity lived at the searched residence. Third, the affidavit contained no statement or other evidence the teenager actually observed contraband on the premises of the place to be searched. Fourth, the affidavit contained no statement the seller of the marijuana lived at 801 North Allison.

The affidavit failed to reflect the officers' determination Ms. Mills lived at the address to be searched or referenced the teenager's identification of Plaintiff's home. According to the Sixth Circuit:

The officers' independent knowledge, without some explanation in the affidavit, is insufficient to allow the magistrate to find probable cause that drugs would be found at 801 North Allison Avenue. Simply put, the affidavit did not provide the required nexus between the place to be searched and Lisa Mills.

In essence, the Court of Appeals reasoned that probable cause to conduct a search of an individual's home is not the determining factor in such cases. The determining factor is whether probable cause is properly laid out on the face of the affidavit. If the warrant is, "so lacking in indicia of probable cause that official belief in the existence of probable cause is unreasonable, qualified immunity is not appropriate." Furthermore, the individual officers are not entitled to immunity just because an independent magistrate signed the warrant.

Here, the officers presented no information in their affidavit indicating the place to be searched was connected to Lisa Mills, either through positive evidence that the residence was the place of a drug purchase or through independent investigation corroborating that Lisa Mills lived at the home. As a result, the affidavit was "so lacking in indicia of probable cause that official belief in the existence of probable cause was unreasonable." The Sixth Circuit Court of Appeals reversed the trial court's granting of Defendant's Motion for Summary Disposition.

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