

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002490-MR

NELSON GRAVES

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE PAUL F. ISAACS, JUDGE
ACTION NO. 99-CR-00122

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND SCHRODER, JUDGES.

BUCKINGHAM, JUDGE: Nelson Graves appeals from a judgment of the Scott Circuit Court wherein he was convicted of possession of drug paraphernalia (second offense) pursuant to a conditional guilty plea and was sentenced to one year in prison. The sole issue is whether the police officer who arrested Graves had probable cause to do so. We conclude that probable cause for the arrest existed, and we thus affirm.

On December 20, 1998, Officer Hugh Turner of the Georgetown Police Department was dispatched to the local Super 8 motel after a motel clerk had called to complain about a loud party and the smell of marijuana coming from a room rented by Donna Estes. When Officer Turner approached the main entrance of the motel to speak with the clerk, Graves and three other persons were exiting the building. The group consisted of Graves, who is a black male, as well as a white male and two white females.

Officer Turner stayed with Graves and the other three persons while Officer Natalie Payne went with the clerk to look in the room. While in the room, Officer Payne observed a marijuana cigarette butt in a toilet and also sensed the smell of marijuana smoke in the room. Further, the clerk had told Officer Turner that Graves had been one of those in the room.

Graves had a blue bag in his possession, and Officer Turner asked Graves if he could look in the bag. He also asked Graves if he had any weapons or contraband in the bag, and Graves replied that he did not. Upon searching the bag, Officer Turner found rolling papers and a rolling machine. He then arrested Graves for possession of drug paraphernalia.

A black shaving kit-type bag containing morphine and crack cocaine was found fifteen to twenty-five feet away from the scene of the questioning. Also, when Graves was taken to

the jail, two bags of marijuana were found in the blue bag. Officer Turner had apparently overlooked these bags when he initially searched the blue bag.

Graves was charged by a Scott County grand jury with possession of drug paraphernalia (second offense), two counts of trafficking in a controlled substance, possession of marijuana, and first-degree bail jumping. Part of the evidence was apparently lost or misplaced by the law enforcement authorities. As a result, a plea agreement was entered whereby Graves pled guilty to possession of drug paraphernalia (second offense). The other charges were merged with that charge. He received a sentence of one year in prison and was released from custody at that time as he had served 325 days in jail. His guilty plea was a conditional guilty plea entered pursuant to RCr¹ 8.09. This appeal followed.

Graves argues that the circuit court erred when it ruled that the officer had probable cause to arrest him. Graves does not challenge the consent search of the blue bag; rather, he challenges his arrest by arguing that there was no evidence to suggest he had any intent to use the rolling papers and rolling machine in an illegal manner. He notes that the marijuana found in the blue bag was found at the police station after his arrest and was not used as a basis for the arrest. He

¹ Kentucky Rules of Criminal Procedure.

further notes that Officer Turner did not observe him in the presence of the marijuana cigarette butt in the motel room toilet. Graves asserts that the white persons were not searched or charged with any crimes and that he was obviously arrested because of the color of his skin.

Police officers have the right to make an arrest without a warrant when a misdemeanor has been committed in their presence. KRS² 431.005(1)(d). Possession of drug paraphernalia is a Class A misdemeanor for the first offense. KRS 218A.500(5).³ Although the mere possession of the rolling papers and the rolling machine might not have been enough to warrant Graves' arrest, probable cause to believe that Graves had committed the crime of possession of drug paraphernalia existed in light of the fact that he had just emerged from a motel room that contained a marijuana cigarette butt and the presence of marijuana smoke. By having the rolling papers and rolling machine in his possession in the presence of the officer, the officer had the authority to arrest Graves pursuant to KRS 431.005(1)(d).

² Kentucky Revised Statutes.

³ Graves was actually convicted of possession of drug paraphernalia (second offense) which is a Class D felony, but the officer did not know at the time of the arrest that Graves had been previously convicted of that crime.

As for Graves' assertions that he was singled out due to the color of his skin and that the white persons with him could also have been arrested and charged with possession of marijuana, he cites no legal authority to support his argument or to show that he is entitled to any relief on this ground.

The judgment of the Scott Circuit Court is affirmed.

GUIDUGLI, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS.

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