

RENDERED: JULY 9, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000480-MR

CHARLES SMITH

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
INDICTMENT NO. 02-CR-00398

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: JOHNSON, MINTON, and TACKETT, Judges.

MINTON, Judge: Charles Smith appeals following his conditional plea of guilty to charges of possession of cocaine, possession of marijuana, and possession of drug paraphernalia. Smith was a passenger in a vehicle in which the driver was stopped for a traffic violation. He argues that his continued detention and the pat-down of his person violated the Fourth Amendment to the

United States Constitution and Section Ten of the Kentucky Constitution.

As previously mentioned, Smith was one of two passengers in a vehicle driven by an individual identified only as "Stevens." Stevens's vehicle was pulled over by Officer Michael Lehkamp of the Fort Thomas Police for traveling between lanes and weaving from lane to lane. Stevens was only able to produce an Ohio identification card, which Officer Lehkamp discovered was because his Ohio driver's license was suspended indefinitely. At that point, Officer Lehkamp arrested Stevens and, upon performing a search incident to the arrest, found various items of drug paraphernalia in Stevens's pockets. Officer Lehkamp also did a cursory search of the interior of the vehicle and found a marijuana cigarette in the car's ashtray. Smith does not challenge the legality of the traffic stop of Stevens's vehicle or his arrest for driving while his license was suspended.

Smith was ordered to exit the vehicle, which he did while holding a grocery bag.¹ Officer Lehkamp performed a pat-down search of Smith, during which he suspected Smith had drugs or drug paraphernalia in his pants pockets. Upon reaching into

¹ There is some dispute regarding the precise details of Smith's exit from the car and what he did with the grocery bag. However, our resolution of the case is unaffected by any difference in those details.

Smith's pockets, Lehkamp found rolling papers in one pocket and a rolled-up dollar bill containing a rock of crack cocaine in the other pocket. Inspection of the grocery bag revealed thirteen rocks of crack cocaine hidden among miscellaneous items.

Smith challenges both the propriety and the extent of the pat-down of his person. He argues that Lehkamp did not have an individualized suspicion that he was armed and dangerous, thereby invalidating any purported justification for the pat-down.² Furthermore, Lehkamp testified that the items he felt in Smith's pockets were obviously not weapons, thus providing no legal basis on which Lehkamp could have reached into his pockets and removed the items.³

Shortly after Smith filed this appeal, the United States Supreme Court decided Maryland v. Pringle.⁴ In that case, a police officer found \$763.00 in the glove compartment of a car and cocaine hidden behind the back seat armrest. All three occupants denied ownership of the drugs and money, so the police officer arrested all three. The Supreme Court held that the location of the cocaine in an area accessible to all three

² See Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979).

³ See, e.g., Commonwealth v. Crowder, Ky., 884 S.W.2d 649 (1994).

⁴ ___ U.S. ___, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003).

occupants of the car gave the officer probable cause to arrest all three for possession of the cocaine, thereby making Pringle's arrest proper under the Fourth Amendment.⁵

Section Ten of the Kentucky Constitution is interpreted consistently with the Fourth Amendment.⁶ Therefore, if Smith's search and arrest were proper under the Fourth Amendment, they were proper under Section Ten.

Smith's case is similar to Pringle's in that a quantity of drugs was found in an area accessible to all occupants of a car. Here, a marijuana cigarette was in the ashtray, which we find to be analogous to the cocaine behind the armrest. Therefore, under Pringle, Officer Lehkamp had probable cause to arrest all three occupants of the vehicle upon discovering the marijuana cigarette in the ashtray. The cocaine and paraphernalia in Smith's pockets would have inevitably been found either incident to his arrest or upon transport to a detention facility.

Finally, we mention in passing that Smith has not challenged the voluntariness of his consent to search his apartment, which occurred following his arrest. Therefore, we have no reason to question the validity of that search or anything discovered as a result thereof.

⁵ *Id.*, 124 S.Ct. at 800-801.

⁶ LaFollette v. Commonwealth, Ky., 915 S.W.2d 747 (1996).

For the foregoing reasons, the denial of Smith's motion to suppress is affirmed.

ALL CONCUR.

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