

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2006-CA-001878-MR

CURTIS DARNELL HARRIS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JOHN L. ATKINS, JUDGE  
INDICTMENT NO. 06-CR-00198

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, TAYLOR AND WINE, JUDGES.

LAMBERT: Curtis Darnell Harris (“Harris”) appeals from a denial of his pretrial Motion to Suppress evidence. For the reasons set forth herein, we affirm the judgment of the Christian Circuit Court.

Officer Clayton Sumner (“Sumner”) stopped a car driven by an individual only identified as “Ms. Pope,” for a routine traffic violation. Harris was one of four passengers. Eventually, Ms. Pope gave permission for Sumner to search her vehicle. After backup arrived, all occupants exited the vehicle to allow the search. As the search

began, Harris asked if he could stand in a different spot as his mother worked at a hospital across the street, and he feared she would see him. Sumner found Harris' behavior odd and asked everyone if they “had anything on them.” Harris proceeded to pull a bag of marijuana from a box of cigars on his person. Based on these items, he was cited for possession of marijuana and drug paraphernalia.

Harris was indicted and charged with one count of Possession of Drug Paraphernalia, Subsequent Offense and one count of Possession of Marijuana. He filed a pretrial motion to suppress alleging that the items turned over were inadmissible because the question posed to him by Sumner was a custodial interrogation, and he had not been given of his *Miranda* rights.

At the suppression hearing, Sumner testified that the question “do you have anything on you?” was asked due to Harris' odd behavior and was asked of everyone from the vehicle. Furthermore, the question was intended to determine if any of the occupants had weapons. After weighing all the evidence, the trial court denied the motion.

The trial court subsequently accepted a guilty plea from Harris, and he was sentenced to two years for the drug paraphernalia charge and thirty days on the marijuana charge. This appeal followed.

Harris argues that the trial court improperly denied his pretrial Motion to Suppress the evidence he handed over to Officer Sumner on the grounds that Sumner's

question was a custodial interrogation requiring the explanation of *Miranda* rights. We find this issue unpreserved and therefore deny review.

It is well-settled that “a plea of guilty constitutes a waiver of all defenses other than that the indictment charged no offense.” *Sparks v. Commonwealth*, 721 S.W.2d 726, 727 (Ky.App. 1986) (citing *Sanders v. Commonwealth*, 663 S.W.2d 216, 218 (Ky.App. 1983)). In order to properly preserve an issue via a conditional guilty plea, RCr 8.09 requires in pertinent part that, “[w]ith approval of the court, a defendant may enter a conditional plea of guilty, reserving *in writing* the right, on appeal from the judgment, to a review of the adverse determination of any *specified* trial or pretrial motion.” (emphasis added).

Harris cited the video record as preservation, which clearly does not satisfy the writing requirement of RCr 8.09. Moreover, the Judgment of the case makes no indication that this was a conditional guilty plea nor does it specifically preserve any issues for appeal. Rather, it states that “defendant entered a *valid guilty plea*...and waived the rights guaranteed by the Constitution.” (emphasis added).

Accordingly, we find the issue unpreserved and deny review on the merits. Thus we affirm the judgment of the Christian Circuit Court.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

WINE, JUDGE, CONCURS AND FILES SEPARATE OPINION.

WINE, JUDGE, CONCURRING: I concur with the majority opinion that the judgment of the Christian Circuit Court should be affirmed but for an additional

reason. I believe the trial court, in denying the suppression motion, failed to make adequate findings of fact or conclusions of law as mandated by RCr 9.78. The appellant recognized this and asked the court to make the necessary findings. Whether the court did or didn't is not clear as the appellant does not include that order with this appeal as mandated by CR 76.12(4)(c)(vii). Thus, even if properly preserved as a conditional plea, any brief by the appellant could be struck. CR 76.12(8)(a).

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