

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002376-MR

JAMES "BO" HACKER

APPELLANT

v. APPEAL FROM OWSLEY CIRCUIT COURT  
HONORABLE WILLIAM TRUDE, JUDGE  
ACTION NOS. 97-CR-00038 AND 97-CR-00039

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS, DYCHE, and GARDNER, Judges.

COMBS, JUDGE. Appellant, James "Bo" Hacker, appeals from the order of the Owsley Circuit Court entered on July 20, 1998, which denied his motion to suppress evidence on grounds that his warrantless arrest was without probable cause. After reviewing the record, we affirm.

On April 17, 1997, Barbara Gabbard called Owsley County Sheriff Tye Hensley to report that several guns and tools had been stolen from her home. After hearing about the burglary, Ricky Wilson and Chad Baker called the Gabbards and informed them that they had taken Hacker to the residence (at Hacker's request)

in order for him to pick up some tools, which Hacker said belonged to him. The Gabbards immediately relayed the information to Sheriff Hensley. Sheriff Hensley, who had been in contact with Lee County Sheriff William Kilburn, called Sheriff Kilburn, gave him the identity of Hacker, and reported the location of Hacker in Lee County.

Sheriff Kilburn testified that when he located Hacker, he was walking toward a residence with two guns in his hands. Sheriff Kilburn stopped him, took possession of the two guns, and placed him in his cruiser. Appellant disclosed the location of the remaining guns after Sheriff Kilburn questioned him about the burglary. Hacker was taken to the Lee County Sheriff's office, and Owsley County Sheriff Hensley was notified that he was in custody. Appellant was not read his rights until he was taken back to Owsley County by Sheriff Hensley. Appellant then gave a written statement confessing to the burglary at the Gabbard residence and to an earlier burglary at the Short residence.

Following a hearing on July 20, 1998, the circuit court denied appellant's motion to suppress. The court found that Sheriff Kilburn had probable cause to arrest appellant and that the signed confessions made after appellant was read his rights were admissible; but the court held that the guns discovered by Sheriff Kilburn after questioning appellant prior to advising him of his rights were inadmissible. On July 29, 1998, appellant filed a motion to enter a conditional guilty plea to two counts of first-degree burglary and two counts of first-degree theft by

unlawful taking. The circuit court accepted appellant's motion, and judgment was entered on September 11, 1998.

On appeal, appellant argues that the circuit court erred in denying his motion to suppress, that it denied him his constitutional right to cross-examine witnesses, and that it prevented him from putting evidence into the record by way of avowal.

KRS 431.005(1)(c) provides that a peace officer may make a warrantless arrest when he has probable cause to believe that the person being arrested has committed a felony. "Probable cause" exists when the totality of the evidence known to the arresting officer at the time of the arrest – which includes the reliability of an informant and the basis of the informant's knowledge – creates a fair probability that the arrested person committed the felony. Eldred v. Commonwealth, Ky., 906 S.W.2d 694, 705, cert. denied, 516 U.S. 1154, 116 S. Ct. 1034, 134 L.Ed.2d 111 (1996).

The issue presented in this case is whether Sheriff Kilburn had probable cause to believe that appellant had committed a burglary. The information provided to Sheriff Hensley from the Gabbards included the following: (1) tools and guns were stolen from their home earlier that day; (2) a pick-up truck was spotted by a neighbor in the area; (3) Ricky Wilson and Chad Baker told them that appellant had taken tools from their residence; and (4) appellant was in Lee county. Sheriff Hensley then gave the following information to Sheriff Kilburn: (1) tools and guns had been stolen from a residence in Owsley county; (2)

the suspect (appellant) was seen taking tools from the residence; (3) the suspect (appellant) was in Lee county. Based on the information received by Sheriff Kilburn and his own observation of appellant at the Lee County location with two guns, Sheriff Kilburn had probable cause to believe that Hacker very likely had committed the burglary. Thus, Hacker's warrantless arrest was valid.

Hacker next argues that the circuit court erred when it refused to allow appellant to cross-examine witnesses. The crux of his argument relates to the apparent inability to develop a time-line for the events leading up to his arrest. Hacker's argument is without merit. The circuit court's rulings on objections made by the Commonwealth to the line of questioning by Hacker did not detract from or diminish the ability of Hacker to cross-examine the witnesses on the evidence that established probable cause. The circuit court's failure to allow avowal on such questions amounts to harmless error -- if indeed any.

The order of the Owsley Circuit Court is hereby affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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