[Cite as *State v. Courtney*, 2010-Ohio-774.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92830

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KRISTOPHER COURTNEY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-497145

BEFORE: Sweeney, J., Kilbane, P.J., and Blackmon, J.

RELEASED: March 4, 2010
JOURNALIZED:

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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Kristopher Courtney ("defendant"), appeals from the trial court's denial of his motion to suppress. For the reasons that follow, we affirm.

{¶ 2} On March 20, 2008, the trial court held an evidentiary hearing where the State presented the testimony of Officer Jeffrey Yasenchack, and defendant testified on his own behalf.

{¶ 3} According to Yasenchack, he and his partner, Officer Taylor, observed a vehicle change lanes without signaling near the intersection of East 71st and Harvard. The officers followed this vehicle in their marked patrol car. The officers observed a second traffic violation when the vehicle made a left turn into a gas station, again without signaling. The officers ran the license plate through the computerized system. However, Yasenchack initiated a traffic stop before the results were returned. He approached the driver's side as his partner approached the passenger side of the vehicle. Defendant was driving. They observed defendant and the front seat passenger shove something in their pants. Taylor asked what it was and the passenger said it was marijuana and relinquished the bag containing the contraband. The passenger was then arrested.

{¶ 4} Yasenchack was not sure what defendant put in his pants and believed it was possibly a weapon. Defendant was asked to step out of the vehicle, where he was handcuffed. Yasenchack then conducted a brief pat down before he decided to move defendant towards the rear of the vehicle. He

explained that the area was restrictive due to the gas pumps being so close to the vehicle. He intended to do a more thorough search for either weapons or contraband. Having recovered drugs from one of the vehicle's occupants, Yasenchack said he was uncertain whether there were also weapons at hand, possibly even in the vehicle. However, after taking about two steps towards the rear of the vehicle, a bag fell out of defendant's pants. Yasenchack did not know if the bag contained heroin or cocaine. Defendant tried to step on it and kick it under the car. Upon seeing the bag contained heroin, Yasenchack arrested defendant.

{¶ 5} Defendant provided the following version of events: According to him, he "pulled up to * * * 71st and Harvard * * * got in the left turning land, which is the left signal, and * * * stayed in that lane." He noticed a police car behind him, turned left into the gas station, and pulled up to the pump. Defendant said he "put [his] blinker on." Defendant said he attempted to give the officer his license and insurance but was instead assisted out of the vehicle. He was handcuffed and subjected to a "brief little search" before the officer was trying to get him to move towards the back of the vehicle. Defendant denied "know[ing] anything about any drugs being on the ground."

{¶ 6} On cross-examination, defendant agreed he had changed lanes. He confirmed that the officer performed "a quick pat-down." He had obtained his license from the center console of the vehicle as the officers were approaching him. Again, he denied knowing anything about the drugs.

{¶ 7} Defendant's assignments of error are interrelated and will be addressed together for ease of discussion, both essentially asserting that the trial court erred by denying his motion to suppress evidence.

{¶ 8} "I. The trial court erred when it denied the defendant's motion to suppress.

{¶ 9} "II. Given any outright detention of a motorist that is unrelated to an asserted-to-be traffic stop must be based on probable cause, it follows the court erred when it denied the motion to suppress for this reason alone."

{¶ 10} The facts set forth above will only be repeated here to the extent necessary for ease of discussion.

{¶ 11} Appellate courts should give great deference to the judgment of the trier of fact. *Ornelas v. United States* (1996), 517 U.S. 690; *State v. George* (1989), 45 Ohio St.3d 325, 544 N.E.2d 640. Accordingly, we are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Armstrong* (1995), 103 Ohio App.3d 416, 420, 659 N.E.2d 844; *State v. Williams* (1993), 86 Ohio App.3d 37, 41, 619 N.E.2d 1141. However, the reviewing court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the appropriate legal standard. *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906.

{¶ 12} In a suppression hearing, the evaluation of the evidence and the credibility of witnesses are issues for the trier of fact. *State v. Mills* (1992), 62

Ohio St.3d 357, 582 N.E.2d 972; *State v. Bryson* (2001), 142 Ohio App.3d 397, 401, 755 N.E.2d 964; *Cleveland v. Rees* (Jun. 24, 1999), Cuyahoga App. No. 74306; *State v. McCulley* (Apr. 28, 1994), Cuyahoga App. No. 64470. The trial court assumes the role of trier of fact and, as such, is in the best position to evaluate the credibility of witnesses and resolve questions of fact. *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141.

{¶ 13} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them, per se, unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347. An investigative stop, or *Terry* stop, is a common exception to the Fourth Amendment warrant requirement. *Terry v. Ohio* (1968), 392 U.S. 1. Thus, a law enforcement officer may properly stop an automobile under the *Terry*-stop exception if the officer possesses the requisite reasonable suspicion based on specific and articulable facts. *Delaware v. Prouse* (1979), 440 U.S. 648, 653; *State v. Gedeon* (1992), 81 Ohio App.3d 617, 618, 611 N.E.2d 972; *State v. Heinrichs* (1988), 46 Ohio App.3d 63, 545 N.E.2d 1304.

{¶ 14} A police officer may stop a vehicle based on probable cause that a traffic violation has occurred. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 665 N.E.2d 1091. Officer Yasenchack testified that he initiated a traffic stop after witnessing two violations for failure to signal. Although defendant maintained he used his directional signal when he turned into the gas station, he also testified that he considered getting into the left turning lane and staying there to be “a left

signal." In any case, the trial court resolved any conflicts in the testimony on this matter in favor of Yasenchack's testimony. Being competent, credible evidence in support of this factual resolution, we are bound to accept it. Therefore, the initial stop was lawful.

{¶ 15} "[W]hen detaining a motorist for a traffic violation, an officer may delay the motorist for a time period sufficient to conduct a background check and issue a ticket. However, the detention of a stopped driver may continue beyond this time frame when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop." *State v. Leaks,* Cuyahoga App. No. 88821, 2007-Ohio- 4060, ¶18, internal citations omitted.

{¶ 16} Further, "[w]here a police officer, during an investigative stop, has a reasonable suspicion that an individual is armed based on the totality of the circumstances, the officer may initiate a protective search for the safety of himself and others." *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph two of the syllabus.

{¶ 17} Officer Yasenchack's testimony, if believed, would provide sufficient justification to perform a protective search for safety under the totality of the circumstances. For example, Officer Yasenchack testified that he observed defendant shove something into his pants, an occupant of the vehicle had already been arrested for drug possession, and the officer believed there might be weapons involved and was concerned about his safety. Although he said he

was obtaining his identification from the center console, defendant testified that he was moving around as the police approached his vehicle. Defendant was not removed from the car until after his passenger was arrested for a drug offense. Both Yasenchack and defendant stated that Yasenchack performed only a brief pat down before attempting to move towards the rear of the vehicle. Yasenchack explained this was because he felt he needed more room to conduct an adequate frisk than was available between the vehicle and the gas pumps. At this point, a bag fell out of defendant's pants. Yasenchack believed the bag contained either heroin or cocaine, which it did.

{¶ 18} Under the plain-view doctrine, another exception to the warrant requirement, police may seize articles of incriminating character. *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564. "[T]o justify the warrantless seizure of an item under the plain-view doctrine: (1) the seizing officer must be lawfully present at the place from which he can plainly view the evidence; (2) the officer has a lawful right of access to the object itself; and (3) it is immediately apparent that the item seized is incriminating on its face." *Horton v. California*, 496 U.S. 128, 136-37, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); *State v. Waddy* (1992), 63 Ohio St.3d 424, 442, 588 N.E.2d 819; *State v. Jones*, Washington App. No. 03CA61, 2004-Ohio-7280, ¶35. All three elements were present in this case.

{¶ 19} Accordingly, the trial court did not err by denying defendant's motion to suppress evidence.

{¶ 20} Assignments of Error I and II are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA A. BLACKMON, J., CONCUR