[Cite as *State v. Diluzio*, 2017-Ohio-2988.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104906

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

RYAN DILUZIO

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-16-604437-A

BEFORE: S. Gallagher, P.J., Blackmon, J., and Jones, J.

RELEASED AND JOURNALIZED: May 25, 2017

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SEAN C. GALLAGHER, P.J.:

{¶1} Appellant Ryan Diluzio appeals his conviction for drug possession. Upon review, we affirm the judgment of the trial court.

{¶2} Appellant was indicted on March 24, 2016, and charged with one count of drug possession in violation of R.C. 2925.11(A), a felony of the fifth degree. Appellant pleaded not guilty to the charge and retained counsel. The trial court denied a motion to suppress after a hearing was held. Appellant then withdrew his former plea and entered a plea of no contest to the indictment. The trial court found appellant guilty of the offense as charged. The trial court placed appellant on one year of community control, with a one-year sentence that was suspended. This appeal followed.

{¶3} Appellant raises two assignments of error for our review. Under his first assignment of error, appellant claims his plea was not made voluntarily as required under Crim.R. 11(C). Appellant claims that he was pressured to plead to the offense, that the judge encouraged a "no contest" plea, that he was not comfortable with the case and the plea, and that he is a fragile and vulnerable individual.

{¶4} "When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily." *State v. Engle*, 74 Ohio St.3d 525, 527, 1996-Ohio-179, 660 N.E.2d 450. The record in this case reflects that prior to taking the plea, the trial court engaged in a Crim.R. 11 colloquy with appellant. The trial court recognized appellant's concern with being given probation and informed appellant that he could also go to prison for a year. The trial court expressed a desire to provide appellant

assistance and indicated that the court would include the component of mental-health counseling. The trial court informed appellant of the charge against him and his right to go to trial. The court further informed appellant that it had a reasonable and a sufficient basis to make a finding of guilt upon a no contest plea. The trial court informed appellant what his sentence would be if he pleaded no contest. Defense counsel indicated that "[defendant] has an understanding of his Constitutional rights. It's his desire at this time to enter a no contest plea to that one count possession charge. That would be knowingly, voluntarily, intelligently made while entering his plea."

{¶5} There is nothing in the record evincing that appellant was confused, coerced, or did not understand the proceedings or his plea. Our review of the record reflects that appellant entered his plea of no contest knowingly, intelligently, and voluntarily. His first assignment of error is overruled.

{¶6} Under his second assignment of error, appellant challenges the denial of his motion to suppress, claiming that the search was made absent probable cause in violation of the Fourth Amendment.

{¶7} The record reflects that appellant was a front-seat passenger in a friend's vehicle that was stopped by a state highway patrol trooper for non-illumination of a license plate. Appellant concedes that the trooper had a right to stop the car. He challenges whether the trooper had probable cause for search and seizure.

{¶8} The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20

L.Ed.2d 889 (1968). An investigative traffic stop does not violate the Fourth Amendment where an officer has reasonable suspicion that the individual is engaged in criminal activity, even in the case of a minor traffic violation. *State v. Tate*, 8th Dist. Cuyahoga No. 102474, 2015-Ohio-4496, ¶ 12. So long as the circumstances attending the traffic stop produce a reasonable suspicion of some other illegal activity, further detention is permissible for as long as that new articulable and reasonable suspicion continues. *Id*.

{¶9} In this case, upon conducting the traffic stop, the trooper noticed that appellant was not wearing his seat belt and that appellant appeared "very nervous and fidgety" and "[h]is hands were shaking." The trooper asked appellant to step out of the vehicle. Officers are permitted to order a driver, as well as passengers, out of a vehicle during a traffic stop as a precautionary measure for officer safety. *State v. Lozada*, 92 Ohio St.3d 74, 81, 2001-Ohio-149, 748 N.E.2d 520, citing *Pennsylvania v. Mimms*, 434 U.S. 106, 110-111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). Further, the totality of the circumstances afforded reasonable suspicion for further detention.

{¶10} The trooper testified that when he asked appellant if he had identification, appellant indicated he did not have any identification on him. The trooper stated that he asked appellant if he could pat him down for weapons, but no weapons were found. The trooper also testified that when appellant stepped out of the vehicle, he had two cigarette packets in his hands. Appellant placed the packets on the patrol car. The trooper could see an Ohio identification card inside the clear wrapping of one of the cigarette packets.

The trooper was able to identify appellant from the identification card. The trooper could see a clear plastic baggie sticking out of the other packet. The trooper testified that he noticed visible white residue on the outside of the baggie. The baggie was found to contain a white rock substance consistent with crack cocaine. The trooper testified that in his training and experience, it is common for people to store drugs and contraband in plastic baggies and to hide contraband like drugs in cigarette packages.

{¶11} Our review reflects that the incriminating evidence was lawfully seized under the plain view doctrine. Pursuant to the plain view doctrine, "an officer may seize an item without a warrant if the initial intrusion leading to the item's discovery was lawful and it was 'immediately apparent' that the item was incriminating." *State v. Waddy*, 63 Ohio St.3d 424, 442, 588 N.E.2d 819 (1992). Accordingly, we find the seizure in this case was lawful, and we overrule appellant's second assignment of error.

{¶12} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
LARRY A. JONES, SR., J., CONCUR