

[Cite as *State v. Hillis*, 2004-Ohio-1020.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. Case No. 19939
vs.	:	T.C. Case No. 03-CR-385
DONNA M. HILLIS	:	(Criminal Appeal from Common
	:	Pleas Court)
Defendant-Appellant	:	

.....

OPINION

Rendered on the 5th day of March, 2004.

.....

MATHIAS H. HECK, JR., Prosecuting Attorney, By: KIRSTEN A. BRANDT, Assistant Prosecuting Attorney, Atty. Reg. #0070162, P.O. Box 972, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorneys for Plaintiff-Appellee

ARVIN S. MILLER, Assistant Public Defender, Atty. Reg. #0016355, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

.....

BROGAN, J.

{¶1} Donna Hillis appeals from her conviction in the Montgomery County Common Pleas Court of one count of drug abuse. The facts surrounding Hillis' conviction are set out in her brief and are not in dispute. They are as follows:

{¶2} "On January 30, 2003, at around 1:25 a.m. Ms. Hillis was at the

intersection of Leo and North Keowee Street when she came in contact with Officer St. Clair of the Dayton Police Department. Officer St. Clair testified that he was in his cruiser on Leo Street waiting for the light to turn green. Initially the light was red. When it turned green, the officer testified that Ms. Hillis stepped from the curb in front of his cruiser. The cross walk indicated don't walk. Ms. Hillis got about ten feet from the curb in front of the officer's cruiser. Officer St. Clair got out of his cruiser and made contact with Ms. Hillis. Ms. Hillis apologized for stepping in front of his car. She said she didn't realize or think what she was doing. While the officer was talking to Ms. Hillis, she placed her hand in her jacket pocket. The officer asked her to remove her hand and she did. Ms. Hillis did not make any threatening comments to the officer.

{¶3} “The officer testified that the area where he contacted Ms. Hillis was an area in which he has made numerous drug and weapon arrests. Officer St. Clair decided to conduct a pat-down search of Ms. Hillis. During that pat- down, the officer felt what he determined was a crack pipe and recovered it from Ms. Hillis' jacket.”

{¶4} In overruling Hillis' motion to suppress, the trial court stated the following:

{¶5} “THE COURT: This matter is before the Court on a Motion to Suppress and I had taken the matter under advisement and I indicated that I would issue a decision last week and unfortunately due to matters beyond all of our control I was unable to do that, but I have reviewed the matter again last night and I would make the following findings of fact. First of all, that on January 30th at about 1:25

a.m. at the corner of Keowee and Leo Streets Officer St. Clair observed the Defendant jaywalking. The Court would note that although she indicated that she perhaps was not jaywalking and just stepped off the curb the Court would note that the Court believes the officer that she was in the middle of the street at the time that the light was red or least in the middle of the cross-walk area standing right in front of the cruiser. Furthermore, that this is a high drug area with a place where the officer has made numerous weapons arrests and when he approached the Defendant she put her right hand into her coat pocket. He was concerned about a weapon for his safety and he therefore padded [sic] her down while he interviewed her for a jaywalking citation. Furthermore the Court would find as a matter of fact that the Defendant who had taken the stand stated that she realized that she had done something wrong. Furthermore that she demonstrated to the Court exactly how this pat down occurred and in fact the Court believes that the demonstration was of a pat down and not of a complete search of the Defendant and therefore the Court finds that this pat down was a pat down and no more and that during that pat down the officer felt what he stated that he knew to be a crack pipe at some point in the discussion the Defendant even indicated on the stand that it was pretty obvious that he knew what the crack pipe was. The Court therefore believes one, that the stop was constitutionally appropriate based upon the fact that she was jaywalking and the Court refers to a case out of the Second District Court of Appeals justifying such a kind of a stop and that is *Ohio v. Waller* (1997), Ohio App. LEXIS 3569. Furthermore, once the stop for the jaywalking is found to be appropriate. The Court believes that the officer was authorized to conduct a limited search of the

Defendant's person for weapons under *Terry v. Ohio* and as confirmed by the case that I just cited upon doing that he determined that there was a crack pipe in her pocket that he then removed. Therefore, the Court is going to find that the search was constitutional. Furthermore, at that point although she did not contest this on the witness stand herself there was testimony from the officer that she was advised of her Miranda rights and she understood each of her rights and that she waived them by making statements. The Court would then overrule the Motion to Suppress with regard to Miranda. That being the case then I have an entry to that effect."

{¶6} Ms. Hillis argues that the trial court erred in overruling her motion to suppress because Officer St. Clair did not have reasonable suspicion to believe she was armed and dangerous and therefore should not have "frisked" her. She notes that she cooperated with the officer and admitted she made a mistake in crossing against the traffic light. She notes that she removed her hand from her jacket pocket when requested to do so and that her hands were in her pocket because it was cold. She argues that Officer St. Clair should have merely cited her for the alleged jaywalking violation and not subjected her to a search. She notes that there were no bulges in her pockets or any other indication she was armed that would have justified Officer St. Clair's frisk of her.

{¶7} The State argues that the trial court properly overruled Ms. Hillis' suppression motion because under the circumstances Ms. Hillis' act of placing her hand in her pocket when approached by Officer St. Clair reasonably warranted him to fear for his safety. We agree.

{¶8} Officer St. Clair testified that his contact with Ms. Hillis was made in a

high crime area in which he had made numerous arrests for weapons offenses. In *State v. Woods* (July 3, 2003), Mont. App. No. 19385, we noted that “Woods’ behavior in immediately putting his hands in his pockets when the officer approached him could have given the officer reason to fear for his safety because the area was a known drug area where open drug sales and other crimes often occur and where guns have been found on persons.” The appellant’s assignment of error must be overruled.

{¶9} The judgment of the trial court is Affirmed.

.....

WOLFF, J., and GRADY, J., concur.

Copies mailed to:

Kirsten A. Brandt
Arvin S. Miller
Hon. Michael Hall