[Cite as *State v. Collins*, 2009-Ohio-5362.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92338

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DONALD COLLINS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-508364

BEFORE: Dyke, J., Cooney, A.J., and Stewart, J.

RELEASED: October 8, 2009

JOURNALIZED:

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ANN DYKE, J.:

{¶ 1} Defendant-appellant, Donald Collins ("appellant"), appeals the trial court's denial of his motion to suppress. For the reasons set forth below, we affirm.

{¶ 2} On March 27, 2008, the Cuyahoga County Grand Jury indicted appellant on one count of drug possession. Initially, appellant pled not guilty to the charge and filed a motion to suppress on August 4, 2008. The trial court held a hearing regarding this motion on August 28, 2008 and heard the testimony of Detective Kevin Freeman of the Cleveland Police Department.

{¶ 3} Freeman testified that on March 12, 2008, he, along with Detectives Glover, Crayton, and McClendon, witnessed a green Buick Skylark pull up to a male, later identified as Marcel Curtis, standing in the parking lot of 1177 East 123rd Street. Curtis entered the vehicle, remained for a short period of time, then exited the vehicle. Detective Freeman testified, based on his experience, he believed this behavior to be indicative of a drug buy.

{¶ 4} Detective Freeman then witnessed Curtis walk across the street where Detectives McClendon and Crayton approached him. When the detectives exited the vehicle, Curtis dropped a rock of suspected crack cocaine on the ground. As a result, Curtis was placed under arrest.

{¶ 5} Aware of their colleagues' interaction with Curtis, Detectives Freeman and Glover descended upon the green Skylark. Glover approached

from the driver's side and asked the driver, later identified as appellant, whether he had a valid driver's license. Freeman approached on the passenger side and immediately noticed a rock of suspected crack cocaine on the passenger seat in plain view.

{¶ 6} Freeman advised appellant that he had crack cocaine in his vehicle to which appellant initially denied ownership, asserting that Curtis owned the illegal substance. Detective Freeman informed appellant that the police had Curtis in custody and that Freeman would go back and ask him whether that was his crack cocaine. Immediately, appellant offered that he had paid $20 for the illegal substance and had a drug problem. Freeman advised appellant of his *Miranda* rights and arrested him.

{¶ 7} After considering the foregoing testimony, the trial court denied appellant's motion to suppress. As a result, appellant pled no contest and the trial court found him guilty of one count of drug possession. On October 1, 2008, the court sentenced appellant to two years of community control sanctions.

{¶ 8} Appellant now appeals and presents one assigned error for our review. Appellant's sole assignment of error states:

{¶ 9} "The trial court erred and/or abused its discretion in denying appellant's suppression motion."

{¶ 10} In this appeal, appellant maintains that the trial court erred in denying his motion to suppress his statements that the crack cocaine was his and that he had a drug problem. Appellant maintains that his statements were made during

a custodial interrogation and are inadmissible at trial because the police did not first provide a *Miranda* warning of his Fifth Amendment right against self-incrimination. For the reasons that follow, we find appellant's argument without merit.

{¶ 11} Appellate review of a trial court's ruling on a motion to suppress presents mixed questions of law and fact. See *State v. McNamara* (1997), 124 Ohio App.3d 706, 710, 707 N.E.2d 539. If competent, credible evidence exists to support the trial court's findings, an appellate court must accept the trial court's factual findings. See *State v. Long* (1998), 127 Ohio App.3d 328, 332, 713 N.E.2d 1. Accepting the facts found by the trial court as true, the appellate court must then independently ascertain as a matter of law, without deferring to the trial court's conclusions, whether the facts comport with the applicable legal standard. *State v. Kobi* (1997), 122 Ohio App.3d 160, 168, 701 N.E.2d 420.

{¶ 12} In *Miranda v. Arizona* (1966), 384 U.S. 436, 478-479, 86 S.Ct. 1602, 16 L.Ed.2d 694, the Supreme Court held that a defendant who is subjected to custodial interrogation must be advised of his or her constitutional rights and make a knowing and intelligent waiver of those rights before statements obtained during the interrogation will be admissible. The Court cautioned, however, that *Miranda* does not affect the admissibility of "volunteered statements of any kind." 384 U.S. at 478, 86 S.Ct. at 1630, 16 L.Ed.2d at 726. See, also, *State v. McGuire*, 80 Ohio St.3d 390, 401, 1997-Ohio-335, 686 N.E.2d 1112 (statements given before questioning has begun must be considered voluntarily given and not

made during a "custodial interrogation."); *State v. Jones*, 90 Ohio St.3d 403, 2000-Ohio-187, 739 N.E.2d 300.

{¶ 13} Furthermore, "[t]he duty to advise a suspect of *Miranda* rights does not attach until questioning rises to the level of a 'custodial interrogation.'" *State v. Gumm*, 73 Ohio St.3d 413, 429, 1995-Ohio-24, 653 N.E.2d 253. Custodial interrogation has been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *State v. Williams*, 99 Ohio St.3d 493, 505, 794 N.E.2d 27, 2003-Ohio-4396, citing *Miranda v. Arizona*, supra. In determining whether an individual is in custody for purposes of *Miranda*, the inquiry becomes whether a reasonable person under the circumstances would believe he is under arrest. *Berkemer v. McCarty* (1984), 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317; *Oregon v. Mathiason* (1977), 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714.

{¶ 14} Applying the foregoing to this instance, we are unable to conclude that the trial court erred in denying the motion to suppress as appellant was not in the custody of police at the time he volunteered the incriminating statements. Appellant was not handcuffed or placed in the patrol car at the time he made the statements. Rather, he remained in his own vehicle with the engine running. Additionally, Officer Freeman testified that he never asked appellant any questions. He merely made the statements that he noticed the illegal substance on the seat and that he would ask Curtis who owned the drugs. Appellant

volunteered the incriminating statements that he paid $20 for the illegal substance and that he had a drug problem. Under these circumstances, we do not believe that a reasonable person under the circumstances would believe he was under arrest. Appellant's sole assignment of error is overruled.

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. 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.

ANN DYKE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
MELODY J. STEWART, J., CONCUR