[Cite as *State v. Wingfield*, 2009-Ohio-5833.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92763

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GUY WINGFIELD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515498

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

RELEASED: November 5, 2009
JOURNALIZED:

ATTORNEY FOR APPELLANT

Susan J. Moran
55 Public Square, Suite 1616
Cleveland, Ohio 44113-1901

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
By: Ralph A. Kolasinski
Assistant County Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113

JAMES J. SWEENEY, J.:

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

{¶ 2} The following facts were derived from the trial court's hearing on defendant's motion to suppress evidence: Officer Smoot, of the Euclid police department, testified that on August 9, 2008 he was on duty patrolling the area near the J & M Food Mart Plaza on Warrensville Center Road (the "Food Mart"). He noticed a male loitering in the parking lot. According to Officer Smoot, he and others have made arrests of people dealing drugs in that parking lot. He stationed his car in order to watch the male. Officer Smoot observed the male approaching cars and other people, "cars were pulling up to him, on and off his cell phone, and all of his interactions with the people lasted between five and ten seconds." This lead him to suspect the male of drug dealing. Officer Smoot observed this individual for about one-half hour until the man walked westbound. Officer Smoot circled the block to observe where he was going. Officer Smoot then saw the man seated in the passenger side of a car that belonged to defendant. The officer pulled behind defendant's car and began speaking with the occupants of it.

{¶ 3} Officer Smoot collected identifications from the passenger and defendant. At that point, Officer Smoot immediately noticed a distinct odor of marijuana coming from the car.

{¶ 4} Officer Smoot discovered a warrant for the passenger and awaited backup from the canine unit. Officer Blansette, a canine handler, responded with his dog, Recon. The passenger's warrant was confirmed and the defendant and his passenger were removed from the car. Recon scanned the vehicle and gave a positive alert for narcotics. The officers then searched defendant's car and located suspected marijuana, plastic baggies, and a scale. Officer Smoot further testified that the amount of marijuana seized from the car, coupled with the scale and plastic baggies can constitute drug trafficking in Cuyahoga County. Both defendant and the passenger were arrested.

{¶ 5} The marijuana was packaged inside a black bag that was found in the backseat of the car. During cross-examination of Officer Smoot at the suppression hearing, he stated he could not smell the marijuana contained in the exhibits. He confirmed, however, that he could smell it on August 9, 2008. He speculated that there might have been stems or seeds on the floor but acknowledged he did not find any at the time of the arrest.

{¶ 6} Officer Blansette testified that he arrived to assist Officer Smoot at the scene and brought a canine, Recon, to do a narcotics scan. Recon scanned the exterior of defendant's car and detected an odor of narcotics in the car. Officer Smoot then conducted a search of the vehicle and found the drugs, baggies, and scale.

{¶ 7} Defense questioned Officer Blansette concerning why Recon had not alerted in court to the presence of drugs contained in the exhibits. Officer

Blansette responded that he had instructed Recon to "lay there and stay there." Officer Blansette instructed Recon to search in court and according to the officer the canine "was in odor at bottom when he was sniffing the seam down at the bottom there * * * he was in odor of narcotics."

{¶ 8} Detective Volek interviewed defendant at the detective bureau after his arrest. Defendant made an oral statement indicating that the passenger had no knowledge of the drugs in the vehicle. State's exhibit 3 was an audiotape of Det. Volek's interview with defendant. Det. Volek recalled defendant saying he was "tired of other people getting in trouble" because of his problems. Det. Volek interpreted this as defendant accepting responsibility for the drugs that were found in his car.

{¶ 9} The trial court denied defendant's motion to suppress finding that the officers had reasonable suspicion to investigate. Officer Smoot had observed the passenger engaging in suspected drug activity and soon after saw him in defendant's car. After this ruling, defendant entered a no contest plea, was found guilty, and sentenced.

{¶ 10} Defendant's sole assignment of error provides:

{¶ 11} "I. The trial court erred by denying appellant's motion to suppress evidence obtained as a result of an unreasonable seizure, in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 14 of the Ohio Constitution."

{¶ 12} Defendant maintains that Officer Smoot lacked reasonable suspicion to stop him.

{¶ 13} A reviewing court is bound to accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. *State v. Klein* (1991), 73 Ohio App.3d 486, 597 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.

{¶ 14} 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. Under the *Terry*-stop exception, an officer properly stops an automobile 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; *State v. Heinrichs* (1988), 46 Ohio App.3d 63.

{¶ 15} In *Bobo*, the court assessed "what degree of conduct must a police officer observe to give rise to a 'reasonable suspicion.'" *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489. In *Bobo*, the court found significant the following facts: that Bobo was parked in an area noted for a number of drug

transactions; the time of the stop being late at night coupled with the experience and training of the officer; and the officers' observation of Bobo "popping up and then ducking down or leaning forward" under these circumstances. The Ohio Supreme Court found the "officers reasonably stopped Bobo for investigative purposes and acknowledged, 'The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. * * * *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response.'" Id. at 180.

{¶ 16} This Court has recently reaffirmed that, "the smell of marijuana gives rise to a reasonable suspicion that the person stopped is engaged in criminal activity." *State v. Hopper,* Cuyahoga App. Nos. 91269 and 91327, 2009-Ohio-2711, ¶20, citing *State v. Moore*, 90 Ohio St.3d 47, 53, 2000-Ohio-10, 734 N.E.2d 804, holding that "the smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to search a motor vehicle, * * *." Where an officer had "a reasonable suspicion that criminal activity was occurring, he had the right to detain the car's occupants and search the car." Id.

{¶ 17} In this matter, the trial court's findings of fact were supported by competent, credible evidence. Officer Smoot had four years experience on patrol. The area in question was known by him to be a "high drug trafficking area," where he had made arrests "of people dealing drugs through the parking

lot." It was around 5:15 p.m. Officer Smoot observed an individual's behavior in this parking lot for about one-half hour and ultimately saw him in defendant's vehicle. Officer Smoot possessed reasonable suspicion to justify an investigative stop of the passenger who was inside defendant's car. *Bobo*, supra. Upon approaching the vehicle, Officer Smoot immediately smelled marijuana.[1] This provided reasonable suspicion to detain the car's occupants and search the car. *Hopper*, supra. When backup arrived, the canine alerted to the presence of drugs in the car and ultimately drugs, plastic baggies, and a scale were found in the car. Because the trial court found that reasonable suspicion existed, it did not err by denying defendant's motion to suppress evidence.

{¶ 18} Defendant's sole assignment of error is 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 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.

---

[1]While Officer Smoot admitted he could not smell the marijuana in court, he consistently maintained that he did smell it at the time of the stop. We are bound to accept the trial court's findings of fact in resolving the credibility of a witness's testimony.

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

JAMES J. SWEENEY, JUDGE

KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR