[Cite as *State v. Huffman*, 2010-Ohio-5113.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92477

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

OREON HUFFMAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-497938

BEFORE: Sweeney, J., Stewart, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: October 21, 2010

FOR APPELLANT

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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Oreon Huffman ("defendant"), appeals pro se his various drug related convictions. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On June 27, 2007, defendant was indicted for drug trafficking, drug possession, and possession of criminal tools. After a hearing, the court denied defendant's motion to suppress evidence. On November 5, 2008, defendant pled no contest to the charges and the court sentenced him to 12 months in prison for each offense, to run concurrently.

{¶ 3} Defendant appeals and raises five assignments of error for our review. "I. The trial court erred in denying appellant's motion to suppress."

{¶ 4} "Appellate review of a trial court's ruling on a motion to suppress presents mixed questions of law and fact. An appellate court is to accept the trial court's factual findings unless they are clearly erroneous. We are therefore required to accept the factual determinations of a trial court if they are supported by competent and credible evidence. The application of the law to those facts, however, is subject to de novo review." *State v. Polk*, Cuyahoga App. No. 84361, 2005-Ohio-774, ¶2.

{¶ 5} Warrantless searches are presumptively unconstitutional, subject to a limited number of specific exceptions. A search of a person incident to a lawful arrest is one exception that is reasonable under the Fourth Amendment. *Chimel v. California* (1969), 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685. Searches incident to arrest are broad in scope and the police may fully search an arrestee's person for weapons and contraband. *State v. Ferman* (1979), 58 Ohio St.2d 216, 389 N.E.2d 843.

{¶ 6} A valid warrantless arrest is based on probable cause — whether "the facts and circumstances within the officer's knowledge were sufficient to cause a prudent person to believe that the individual had committed or was committing an offense." *State v. Johnson*, Cuyahoga App. No. 84282, 2005-Ohio-98, ¶13.

{¶ 7} The following evidence was presented at defendant's suppression hearing:

{¶ 8} Cuyahoga Metropolitan Housing Authority Detective James Neal testified that on April 30, 2007, he was investigating alleged drug activity in the Riverside Park area of Cleveland. Police targeted this area based on complaints from management and residents, along with police observation of suspicious activity during prior arrests. Det. Neal instructed a confidential informant (CI) to attempt to buy drugs in the area. While monitoring the CI, Det. Neal observed a man, later identified as Marcus Richardson ("Richardson"), standing near a white Nissan, motioning to passersby. Det. Neal testified that this behavior can be "indicative of illegal drug sales."

{¶ 9} Det. Neal was approximately 200 feet from the Nissan and he watched what transpired through binoculars. A woman approached the Nissan and leaned into the passenger side of the vehicle. Richardson got into the front passenger seat. Defendant was sitting in the driver's seat of the Nissan and another man was asleep in the backseat. Richardson and defendant made movements around the center console and began "pulling stuff from plastic baggies and weighing it * * *." A hand-to-hand transaction involving the exchange of money took place between the female and Richardson.

{¶ 10} The CI approached the vehicle during this transaction, but was waved off while the men dealt with the female. However, the CI reported to Det. Neal via a wireless transmitter that the two males in the car were weighing

marijuana. Det. Neal advised the take-down units to move in. When the police approached the Nissan, Richardson fled on foot and threw something to the ground. Police caught up with him quickly and recovered two baggies of marijuana from his hand and a black electronic scale from the ground where Det. Neal saw him throw an object.

{¶ 11} Det. Neal testified that based on his observations, which were confirmed by the CI, defendant and Richardson were packaging and selling drugs out of defendant's car. Defendant was arrested on the scene for drug trafficking. Police searched defendant and found seven baggies of marijuana in his front pants pockets and $375 in cash in his back pocket. Defendant subsequently admitted to having two rocks of crack cocaine in his sock.

{¶ 12} We find that the police had probable cause to arrest defendant for drug trafficking, thus rendering the subsequent search of him constitutional. It is reasonable to believe that defendant knowingly participated in selling marijuana to the female. The police were acting on reports of drug activity in this area; Richardson made gestures to people passing defendant's car, which is typical during drug transactions; the transaction took place in defendant's car, as he was sitting in the driver's seat; Det. Neal saw defendant and Richardson weighing and putting something in plastic bags over the center console; the CI confirmed the detective's observations, stating that defendant and Richardson were weighing marijuana; and Richardson and the female engaged in a hand-to-hand transaction involving money, which is also typical of a drug transaction.

{¶ 13} Accordingly, the court did not err in denying defendant's motion to suppress and his first assignment of error is overruled.

{¶ 14} Defendant's second through fifth assignments of error will be addressed together as they allege speedy trial violations:

{¶ 15} "II. The trial court erred in violating appellant's speedy trial rights.

{¶ 16} "III. Trial court erred when it abused its [discretion] when it didn't follow Ohio C.P. Superintendence Rule 8(B).[1]

{¶ 17} "IV. Trial court erred by not following and abiding by the statute[s] 2937.21 and 2945.02 continuance, made it prejudicial to the defendant when the court abused its discretion.[2]

{¶ 18} "V. Trial court erred when it abused its discretion by setting a trial date and even after the court denied a violation of speedy trial motion on that date the court granted a continuance two more times to the State after the judge quoted 'If the State isn't prepared to go at the next date this case will be dismissed.'"[3]

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[1]Former C.P.Sup.R. 8(B), which has been replaced by Sup.R. 39(B)(1), is a Supreme Court Rule of Superintendence for Courts of Common Pleas. This administrative rule states that "all criminal cases shall be tried within six months of the date of arraignment on an indictment or information." Sup.R. 39(B)(1). This Court has held that the Rules of Superintendence do not function as rules of practice and procedure. Rather, they assist the court and individual judges "in an effort to efficiently and effectively administer the dockets of the trial courts." *State v. Brown* (May 7, 1987), Cuyahoga App. No. 52098. Therefore, C.P.Sup.R. 8(B) is inapplicable to defendant's arguments on appeal.

[2]R.C. 2937.21 does not apply to common pleas court proceedings. *State v. Martin* (1978), 56 Ohio St.2d 289, 384 N.E.2d 239.

[3]Defendant misstates the facts of this case, because the court did not grant any

{¶ 19} When an appellate court reviews an allegation of a speedy trial violation, it "should apply a de novo standard of review to the legal issues but afford great deference to any findings of fact made by the trial court." *State v. Barnes*, Cuyahoga App. No. 90847, 2008-Ohio-5472, ¶17.

{¶ 20} R.C. 2945.71(C)(2) requires the State to bring a defendant accused of committing a felony to trial within 270 days after his arrest. "[E]ach day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days." R.C. 2945.71(E). Additionally, various events toll speedy trial days as set forth in R.C. 2945.72.

{¶ 21} Defendant was arrested on August 4, 2007 for the charges against him in this case. He was incarcerated, and 15 speedy trial days ran until August 10, 2007, when he requested discovery. R.C. 2945.72(E); *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040, 781 N.E.2d 159. Defendant was released from jail on August 16, 2007, rendering the triple-count provision inapplicable. The State responded to defendant's discovery requests on September 5, 2007, and one speedy trial day ran until September 7, 2007, when defendant requested his first continuance. Defendant's requests for continuances, as well as a motion for new counsel, tolled his speedy trial time until October 31, 2007. R.C. 2945.72(E) and (H). Fourteen speedy trial days elapsed until November 15, 2007, when defendant requested another continuance.

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continuances at the State's request after stating on the record on October 7, 2008, that "if the State is not prepared to go to trial on next [scheduled] date, this case will be dismissed."

{¶ 22} Defendant filed various motions that tolled his speedy trial time until February 12, 2008, including additional discovery requests and his motion to suppress. The court requested a one-day continuance because the building was closed for bad weather on February 13, 2008. This does not count against defendant as a speedy trial day. R.C. 2945.72(H). Defendant requested another continuance until March 5, 2008, when the court held a hearing on his motion to suppress. Thirteen days of speedy trial time ran until March 19, 2008, when defendant requested another continuance until April 28, 2008.

{¶ 23} The court requested a continuance while it was engaged in another trial from April 28 through June 3, 2008. Court requested continuances due to being engaged in another trial are generally reasonable and toll speedy trial time, although the length of the continuance may render some continuances unreasonable, on a case-by-case basis. *State v. Pirkel*, Cuyahoga App. No. 93305, 2010-Ohio-1858. See, also, R.C. 2945.72(H). This court requested continuance totaled 36 days.

{¶ 24} From June 3 through July 30, 2008, defendant requested continuances, as well as filed a motion to dismiss, tolling the time against him. R.C. 2945.72(E) and (H).

{¶ 25} The court requested additional continuances while it was engaged in two other trials from July 30 through September 11, 2008, a total of 41 days.

{¶ 26} Defendant requested a continuance from September 11 through October 7, 2008. On September 30, 2008, defendant was remanded to jail for

testing positive on four drug screens while under supervised release. Subsequent speedy trial days will not be calculated under the triple-count provision, as defendant's incarceration stemmed from charges other than ones pending in this case.

{¶ 27} On October 7, 2008, the court denied defendant's motion to dismiss, determining that his speedy trial time had not run. On the same day, the State requested a continuance until October 23, 2008 because the police officer involved in this case was attending "in-service training." We find this continuance reasonable under R.C. 2945.72(H).

{¶ 28} The court requested a continuance until November 4, 2008, because it was engaged in another trial. This court requested continuance totaled 12 days.

{¶ 29} Defendant pled no contest on November 5, 2008. Even viewing the record in a light most favorable to defendant, by counting all court requested continuances in his favor, no more than 132 speedy trial days elapsed in this case.

{¶ 30} Accordingly, the court did not err by denying defendant's motion to dismiss based on a violation of his right to a speedy trial. Defendant's second, third, fourth, and fifth assignments of error 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 J. BOYLE, J., CONCURS
MELODY J. STEWART, P.J., CONCURS IN JUDGMENT ONLY