[Cite as *State v. Rozier*, 2010-Ohio-1454.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2009-T-0074**
NICOLE LEE ROZIER,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 2007 CR 00611.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Michael A. Partlow, Morganstern, MacAdams & DeVito CO., L.P.A., 623 West St. Clair Avenue, Cleveland, OH 44113-1204 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Nicole Rozier, appeals her conviction, following a jury trial, in the Trumbull County Court of Common Pleas, of possession of heroin and possession of drug paraphernalia. At issue is whether the trial court erred in denying her motion to suppress evidence. For the reasons that follow, we affirm.

{¶2} Appellant was indicted for possession of heroin, a felony of the fifth degree, in violation of R.C. 2925.11, and possession of drug paraphernalia, a misdemeanor of the fourth degree, in violation of R.C. 2925.14. Appellant pled not

guilty and filed a motion to suppress. Following a hearing, the trial court denied the motion. The case went to jury trial, following which the jury found appellant guilty of possession of drug paraphernalia, but was unable to reach a verdict on the possession-of-heroin charge. The case was tried again to a jury on that charge, following which appellant was found guilty. The court sentenced appellant to 11 months for possession of heroin and 30 days for possession of drug paraphernalia, the two terms to be served concurrently.

{¶3} At the suppression hearing, Officer Robert Altier and Sergeant Mick Janovick of the Liberty Township Police Department testified. Appellant did not present any testimony or evidence contradicting any aspect of the officers' testimony, which was thus undisputed. Officer Altier testified that on August 11, 2007, at approximately 9:00 p.m., he was on routine patrol alone in his marked cruiser when he saw a Chevrolet Cavalier parked on a private cul-de-sac, which is abutted by four small apartment buildings. The vehicle was not in a marked parking space. The officer testified this is a very high crime area with significant drug activity.

{¶4} As Officer Altier approached the vehicle, he saw that it was running and that there were two occupants in the front seat. The officer stopped his cruiser about 20 feet behind the vehicle so as not to block it, and activated his overhead lights. Officer Altier approached the vehicle in order to determine why its occupants were parked there. He casually asked the pair what was going on and they said they were just hanging out. The officer asked the driver, who was identified as appellant, if she lived in the area and she said she did not. The officer asked both occupants for their identification and they complied. He then returned to his cruiser and ran the license

plate and their personal information through LEADS. The vehicle came back as registered to appellant. LEADS also indicated that appellant's license was suspended.

{¶5} Officer Altier returned to appellant's vehicle and told her she was driving under suspension. Appellant disagreed. At that point Officer Altier asked appellant to step out of the car because he was going to cite her for driving under suspension. The officer asked for her consent to a limited pat down for weapons and to search her car and appellant agreed to both.

{¶6} Officer Altier then patted down appellant for weapons for his own safety. He felt a long, rigid object in her pocket and asked her what it was. She said, "that's my straw." He asked her if it was used for drugs and she said it was. He asked her to remove it, and she put it on the trunk of his cruiser.

{¶7} Officer Altier then arrested appellant for possession of drug paraphernalia and put her in the back of his cruiser. He then asked the male passenger to leave the car. Officer Altier then patted him down and, while doing so, Sergeant Mick Janovick arrived on scene to provide backup. Officer Altier advised Sergeant Janovick that he had arrested appellant. The sergeant testified that he then read appellant the Miranda warnings from a card he carries with him while appellant was seated in the back of Officer Altier's cruiser. She told him she understood her rights. She said that she had been arrested before and that she had previously been advised of her rights.

{¶8} Officer Altier decided to perform an inventory search and tow appellant's vehicle because: (1) appellant's license was suspended and so she could not drive the vehicle away; (2) appellant was arrested for possession of drug paraphernalia; (3) she did not reside in the area; and (4) the vehicle was parked on a cul-de-sac and could not

remain there. The inventory search was conducted pursuant to the department's standard procedure.

{¶9} While searching the interior of the car, Officer Altier found between the driver's seat and the console a mirror with a powdery residue on it. Under that mirror, he also found a folded page of a magazine that contained a powdery substance, which, based on his training and experience, appeared to be narcotics.

{¶10} Officer Altier took the mirror to appellant and, after she had been advised of her Miranda rights, she said it was her mirror and that she used it for snorting drugs.

{¶11} After the male passenger was patted down, he denied any involvement with the items seized from appellant and he was released. Sergeant Janovick called for a tow truck and waited for it to arrive. Officer Altier drove appellant to the station to be booked. At the station, Officer Altier found another mirror with residue on it and another straw in appellant's purse.

{¶12} In denying appellant's motion to suppress, the trial court found that Officer Altier did not stop appellant because her vehicle was already parked and stationary on the cul-de-sac. Further, the officer did not block appellant, nor did he instruct or ask her to stop. Also, the court found the officer's activation of his overhead lights did not constitute a stop. Further, Officer Altier did not take out his weapon, nor did he restrain appellant's movement. The court found the interaction between Officer Altier and appellant was casual in nature and constituted a consensual encounter.

{¶13} Appellant appeals the trial court's denial of her motion to suppress. She asserts the following as her sole assignment of error:

{¶14} "The trial court erred by denying the appellant's motion to suppress the fruits of an unconstitutional arrest in violation of the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Sections 14 and 16 of the Constitution of the State of Ohio."

{¶15} Appellate review of a trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154, 2003-Ohio-5372. During a hearing on a motion to suppress evidence, the trial judge acts as the trier of fact and, as such, is in the best position to resolve factual questions and assess the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. An appellate court reviewing a motion to suppress is bound to accept the trial court's findings of fact where they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594. Accepting these facts as true, the appellate court independently reviews the trial court's legal determinations de novo. *State v. Djisheff*, 11th Dist. No. 2005-T-0001, 2006-Ohio-6201, at ¶19.

{¶16} Appellant argues that when Officer Altier approached her from the rear with his overhead lights activated, such conduct constituted a stop, and that the trial court erred in ruling the interaction between them constituted a consensual encounter. We do not agree.

{¶17} "*** [T]he concept of an investigative stop allows a police officer to stop an individual for a short period if the officer has a reasonable suspicion that criminal activity has occurred or is about to occur." *State v. McDonald* (Aug. 27, 1993), 11th Dist. No. 91-T-4640, 1993 Ohio App. LEXIS 4152, *10. Police may briefly detain an individual where a police officer observes unusual conduct, which leads him reasonably to

conclude in light of his experience that criminal activity may be afoot. *Terry v. Ohio* (1968), 392 U.S. 1, 21. "In justifying the particular intrusion, the police officer must be able to point to specific and articulable facts which would warrant a man of reasonable caution in the belief that the action taken was appropriate." *State v. Klein* (1991), 73 Ohio App.3d 486, 488, citing *Terry*, supra, at 19-20. "[T]he stop and inquiry must be 'reasonably related in scope to the justification for their initiation.'" *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 881, quoting *Terry*, at 29. "Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." *Berkemer v. McCarty* (1984), 468 U.S. 420, 439.

{¶18} Since the determination of whether an officer had reasonable suspicion depends on the specific facts of the case, the Ohio Supreme Court has consistently held the propriety of such a stop "must be viewed in light of the totality of the surrounding circumstances." *State v. Bobo* (1988), 37 Ohio St.3d 177, paragraph one of the syllabus.

{¶19} However, the United States Supreme Court has held that "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Terry*, supra, at 19, fn. 16.

{¶20} This court has held that a consensual encounter is not a seizure of the person, and, as a result, no Fourth Amendment rights are implicated. *State v. Kock*, 11th Dist. No. 2008-L-067, 2008-Ohio-5859, at ¶17, citing *Florida v. Bostick* (1991), 501

U.S. 429, 434. For purposes of a consensual encounter, an officer may approach an individual in a street or other public place. The individual must feel free to terminate the consensual encounter or decline the officer's request. *Kock*, supra; *Bostick*, supra, at 439. Police may approach an individual, engage in conversation, and request identification, all under the purview of a consensual encounter. Id. at 434-435.

{¶21} We find the holding of the Twelfth Appellate District in *State v. Brown*, 12th Dist. No. CA2001-04-047, 2001 Ohio App. LEXIS 5476, to be pertinent and persuasive. The appellate court held:

{¶22} "A police officer does not necessarily seize the occupants of a parked vehicle through the activation of a police cruiser's overhead lights. ***

{¶23} "***

{¶24} "Officer Pavia's use of his overhead lights is not enough of a show of force or authority to convert the encounter into a seizure. ***

{¶25} "*** [W]e conclude that there was no initial stop or seizure in the present case that would require a reasonable suspicion of criminal activity or probable cause. Brown was not seized within the meaning of the Fourth Amendment when Officer Pavia approached him in a parked car and asked questions, even though Officer Pavia had activated his overhead lights. Absent any evidence that Officer Pavia used some form of coercion or duress to force compliance with his request, Brown's consent to the search of his vehicle was freely and voluntarily given." Id. at *7-*11.

{¶26} We note that the Ninth Appellate District adopted the holding of *Brown* in *State v. Patterson*, 9th Dist. No. 23135, 2006-Ohio-5424, at ¶17, discretionary appeal not allowed at 2007-Ohio-1036, 2007 Ohio LEXIS 590.

{¶27} In *Kock*, supra, this court held:

{¶28} "Officer Daubenmire observed appellant *** in his vehicle sitting in the middle of the parking lot for no apparent reason. The officer simply approached appellant to ask him what he was doing. Appellant was free to answer or not, and nothing the officer did or said would have suggested to appellant that he was not free to leave. Thus, there was nothing inappropriate or unlawful in that initial encounter." Id. at ¶21.

{¶29} Turning to the facts of the instant case, Officer Altier approached appellant's vehicle to determine why it was parked on the cul-de-sac. He asked the occupants what they were doing and also asked them for their identification. The tone of the entire conversation was casual in nature. There was no hint of coercion or duress during the conversation. The trial court found that, under the facts of this case, "a reasonable person in Defendant's position would have believed she was free to leave at any time, prior to her actual arrest."

{¶30} Based on our review of the record, there was competent, credible evidence to support the trial court's finding that the interaction between appellant and Officer Altier constituted a consensual encounter. We therefore hold the trial court did not err in finding that Officer Altier did not stop appellant, and that the contact between them amounted to a consensual encounter.

{¶31} For the reasons stated in the Opinion of this court, the assignment of error is not well taken. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.