[Cite as *State v. Colopy*, 2010-Ohio-2804.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ANNA E. COLOPY

Defendant-Appellant

JUDGES:
Hon. Julie A. Edwards, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 09 CA 105

O P I N I O N

CHARACTER OF PROCEEDING: Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 667

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 14, 2010

APPEARANCES:

For Plaintiff-Appellee

KENNETH W. OSWALT
PROSECUTING ATTORNEY
CHRISTOPHER A. REAMER
ASSISTANT PROSECUTOR
20 South Second Street, Fourth Floor
Newark, Ohio 43055

For Defendant-Appellant

JUSTIN RADIC
57 East Main Street
Newark, Ohio 43055

Wise, J.

{¶1} Appellant Anna E. Colopy appeals the decision of the Court of Common Pleas, Licking County, which denied her motion to suppress evidence in a drug possession case. The relevant facts leading to this appeal are as follows.

{¶2} On May 19, 2008, appellant and a male companion entered a Giant Eagle grocery store in Heath, Ohio. Appellant's automobile was left parked in the store's lot. Store personnel thereafter observed appellant's companion putting items from the store into his pockets, in appellant's immediate presence.

{¶3} The Heath Police Department was summoned, and Officers Shane Satterfield and Michael Banks responded to the scene. Stolen items were recovered from appellant's companion; no merchandise was found on appellant's person. Officer Satterfield then accompanied appellant to her vehicle, a Honda Civic, and he thereupon noted that appellant's Honda's license plate tag had expired. Satterfield also conducted a plain view search of the vehicle. The officers requested permission from appellant to more thoroughly search the car, including the trunk. Appellant refused to give consent. Satterfield then announced he would be impounding appellant's car. The officers thereupon conducted an inventory search of the vehicle.

{¶4} Officer Banks soon discovered a beverage can in a seat pocket labeled as "Red Bull" energy drink. However, Banks observed that it felt warm and was unusually heavy. Recalling that similar cans have been used to hide contraband via a false compartment, Banks unscrewed and opened the top of the container, at which time he found two bags of a crystalline substance and a marihuana roach.

{¶5} Appellant was arrested and taken into custody. She was thereafter arraigned and initially pled not guilty to charges of aggravated drug possession (R.C. 2925.22(A)(C)(1)(a)) and possession of drug paraphernalia (R.C. 2925.14(C)(1)).

{¶6} Appellant filed a motion to suppress on May 27, 2009. A suppression hearing went forward on June 4, 2009. On the same day, the trial court denied appellant's motion to suppress. Appellant thereupon pled no contest to the aforesaid charges.

{¶7} On August 17, 2009, appellant filed a notice of appeal. This Court granted appellant's motion for leave to file a delayed appeal on October 8, 2009. She herein raises the following sole Assignment of Error:

{¶8} "I. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE OFFICERS' SEARCH OF THE APPELLANT'S VEHICLE WAS A PROPERLY CONDUCTED INVENTORY SEARCH OF AN IMPOUNDED VEHICLE, AND NOT A PRETEXT FOR AN UNLAWFUL EVIDENTIARY SEARCH."

Standard of Review

{¶9} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's finding of fact. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this third type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in the given case. *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641

N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. As the United States Supreme Court held in *Ornelas v. U .S.* (1996), 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

I.

{¶10} In her sole Assignment of Error, appellant contends the trial court committed reversible error in not suppressing the results of the inventory search of her car. We disagree.

{¶11} In *South Dakota v. Opperman* (1976), 428 U.S. 364, the United States Supreme Court concluded that a routine inventory search of a lawfully impounded automobile is not unreasonable within the meaning of the Fourth Amendment of the United States Constitution when performed pursuant to standard police practice and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle. Accordingly, to satisfy the Fourth Amendment, an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedures or established routine. *State v. Howard* (2001), 146 Ohio App.3d 335, 342, 766 N.E.2d 179, citing *State v. Hathman* (1992), 65 Ohio St.3d 403, 604 N.E.2d 743, paragraph one of the syllabus. If a law enforcement officer discovers a closed container during a valid inventory search of a lawfully impounded vehicle, the container may be opened only as part of the inventory process if there is in existence a standardized policy or

practice specifically governing the opening of such containers. *Id.* citing *Hathman* at paragraph two of the syllabus.

{¶12} We find this appeal presents two main issues for our review. The first is whether appellant's vehicle was lawfully impounded so as to duly set the stage for the officers' subsequent inventory search. If we answer that question in the affirmative, the second issue is whether the officers' warrantless opening of the Red Bull "container" was constitutionally valid as part of the inventory search.

{¶13} R.C. 4513.61 provides that "[t]he sheriff of a county or chief of police * * * or a state highway patrol trooper * * * may order into storage any motor vehicle * * * that has come into possession of the sheriff, chief of police, or state highway patrol trooper as a result of the performance of the [officer's] duties or that has been left on a public street or other property open to the public for purposes of vehicular travel * * *."

{¶14} Furthermore, section 303.08 of the Heath City Traffic Code states in pertinent part: "IMPOUNDING OF VEHICLES; REDEMPTION. (a) Police officers are authorized to provide for the removal of a vehicle *** [w]hen any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for purposes of vehicular travel or parking."

{¶15} In the case sub judice, Officer Satterfield conducted a "plain view" search of the interior of the car after observing that appellant's license plate tags had expired. Tr. at 11, 32. Satterfield then asked appellant for permission to conduct a closer search of the interior, which appellant declined. Id. at 28. The officer later testified that he intended to impound appellant's vehicle whether or not she consented to a search of its

interior. Tr. at 33. Under the circumstances presented, because the officers had information at the scene that the car may have been part of a theft offense, and particularly in light of code section 303.08, supra, we find no error in the trial court's recognition of a lawful vehicle impoundment in this case. We further note "[t]he reasons that permit impoundment of a vehicle are distinct from the permissible reasons for conducting an inventory search of an impounded vehicle." *State v. Clancy,* Montgomery App. No. 18844, 2002-Ohio-1881, citing *Colorado v. Bertine* (1987), 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739.

{¶16} Turning to the issue of the closed container search during the subsequent inventory search in this matter, we note appellant directs us to *State v. Seals*, Cuyahoga App.No. 90561, 2008-Ohio-5117, wherein the Eighth District Court of Appeals held that evidence obtained by unscrewing a false bottom of a can that was discovered during an inventory search of an impounded car should have been suppressed. Id. at ¶28. In *Seals*, after arresting the defendant, the officer conducted an inventory search of the defendant's car, happening upon what appeared to be an aerosol can in the trunk. *Id.* at ¶8. Aware "that drug couriers frequently carry drugs in a false bottom" of such cans, the officer shook the can, and determined that "it felt as if a bean bag was inside." *Id.* Subsequently, the officer unscrewed the bottom of the can and found numerous individually wrapped rocks of cocaine. *Id.* The Court in *Seals* ultimately determined that "the inventory search [was] a pretext for searching for more evidence," and that the trial court erred in denying the defendant's motion to suppress. *Id.* at ¶28.

{¶17} We have recognized that inventory searches done under the specific guidelines of a written policy can permit the opening of a closed container within a vehicle. *State v. Lott*, Licking App.Nos. 06CA27, 06CA28, 2006-Ohio-6796, ¶ 25, citing *State v. Peagler,* 76 Ohio St.3d 496, 1996-Ohio-73, and *State v. Mesa,* 87 Ohio St.3d 105, 1999-Ohio-253. As the State notes in its response brief herein, the primary concern of the Eighth District Court in *Seals* was the lack of clear officer testimony as to a specific inventory policy regarding the opening of closed containers. See *Seals* at ¶ 24-25. In the case sub judice, the Heath Police Department maintains a written inventory policy. Said policy directs: "Vehicles to be impounded or seized will be inventoried to include glove box compartment, trunks, and all packages within the vehicle. Each vehicle impounded or seized by the department will require an impound form to be completed." (Tr. at 16). The testimony of both officers confirmed that Heath's written impound policy directs officers to inventory packages within an impounded vehicle. (Tr. at 16, 38). Officer Banks noted that a written impound report detailing what was taken from the vehicle was done in this case as required by the Heath impound policy. (Tr. at 38). Officer Banks further testified that he considered the Red Bull container a "package" within the meaning of the policy. (Tr. at 40).

{¶18} Accordingly, upon review, we find the impoundment and the inventory search were valid, and we hold the trial court did not err in denying appellant's motion to suppress.

{¶19} Appellant's sole Assignment of Error is therefore overruled.

{¶20} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Licking County, Ohio, is affirmed.

By: Wise, J.

Edwards, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE

/S/ JULIE A. EDWARDS

/S/ PATRICIA A. DELANEY

JUDGES

JWW/d 0426

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ANNA E. COLOPY	:	
	:	
Defendant-Appellant	:	Case No. 09 CA 105

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE

/S/ JULIE A. EDWARDS

/S/ PATRICIA A. DELANEY

JUDGES