[Cite as *State v. Hamilton*, 2015-Ohio-2366.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- JOSHUA S. HAMILTON Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. Patricia A. Delaney, J. Case No. 14-CA-85 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 14 CR 257
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 16, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
KENNETH W. OSWALT Licking County Prosecutor By: CHRISTOPHER A. REAMER Assistant Prosecuting Attorney 20 S. Second Street, Fourth Floor Newark, Ohio 43055	CHRISTOPHER M. SHOOK Morrow, Gordon & Byrd, Ltd. 33 West Main Street Newark, Ohio 43055

Hoffman, P.J.

{¶1} Defendant-appellant Joshua Hamilton appeals his conviction on one count of aggravated possession of drugs, methamphetamines, in violation of R.C. 2925.11, entered by the Licking County Court of Common Pleas. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Officer Mark Emde of the Heath Police Department testified at a July 10, 2014 Suppression Hearing as to the events in this matter. Officer Emde testified he received information Michele Thomas was involved in suspected narcotic activity in the Heath, Ohio area. He further learned Appellant was known to be associated with Thomas in the sale and dealing of the narcotics.

{¶3} On April 5, 2014, Officer Emde received information from the CODE Task Force on a felony warrant for Michele Thomas, which information stated she would be frequenting a hotel in Heath, Ohio. Officer Emde received a copy of the warrant, and began checking hotels.

{¶4} Officer Emde testified he observed a car matching the description of Thomas' vehicle at the America's Best Value Inn located directly across from the police department in Heath. He then observed a male and female in the lobby area of the hotel. He observed the two persons exit the hotel, and noticed they matched the description of Appellant and Thomas. The two individuals got into the car. The car backed out of the parking spot and proceeded around the north side of the complex, staying within the parking area of the hotel.

{¶5} Officer Emde confirmed the license plate of the vehicle belonged to Thomas and initiated a traffic stop. The vehicle then pulled into a nearby parking space of the hotel. Officer Emde approached the vehicle, and asked Thomas to step outside of the vehicle. Thomas was placed under arrest pursuant to the warrant from the Drug Task Force.

{¶6} Officer Carson, the ride along officer, stepped out of the cruiser and placed Appellant in handcuffs. Officer Emde searched Thomas' purse inside the vehicle and found a baggie of methamphetamine inside.

{¶7} At the same time, dispatch communicated to Officer Emde LEADS indicated Appellant had an active warrant for his arrest out of Richland County. Officer Emde then placed Appellant under arrest. He testified he reached under the handle of the car "where you close the car door at" and found a pack of cigarettes wedged in the handle on the passenger side of the vehicle. He opened the cigarette pack and found several bags of methamphetamine inside.

{¶8} Officer Emde further testified to finding a knife in the vehicle directly where Appellant was sitting.

{¶9} Appellant was arrested and charged with one count of aggravated possession of drugs, methamphetamines, in violation of R.C.2925.11, and possession of drug paraphernalia, in violation of R.C. 2925.14.

{¶10} On June 6, 2014, Appellant filed a motion to suppress. Via Judgment Entry of August 18, 2014, the trial court overruled Appellant's motion to suppress.

{¶11} On October 1, 2014, Appellant entered a plea of no contest to the charges in exchange for the state of Ohio's joint recommendation of a twelve month prison

sentence. On the same date, the trial court found Appellant guilty of the charges and imposed a sentence twelve months on the aggravated possession of drugs charge and thirty days in prison on the drug paraphernalia charge, to run concurrently, for a stated prison term of twelve months.

{¶12} Appellant appeals, assigning as sole error:

{¶13} "I. THE TRIAL COURT ERRED IN ITS DETERMINATION TO DENY APPELLANT'S MOTION TO SUPPRESS BECAUSE THE STATE COULD NOT IDENTIFY A RATIONALE FOR AN IMPOUND AND INVENTORY SEARCH OF A LAWFULLY PARKED VEHICLE."

I.

{¶14} 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 findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the findings of fact are against the manifest weight of the evidence. See: *State v. Fanning (1982),* 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein (1991),* 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger (1993),* 86 Ohio App.3d 592, 621 N.E.2d 726.

{¶15} Secondly, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. See: *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶16} Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this 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 any 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; and *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, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶17} In order to establish his own Fourth Amendment rights have been violated by an alleged illegal search and seizure, an accused must demonstrate a reasonable expectation of privacy in the area searched. *Rakas v. Illinois*, 439 U.S. 128, 148-49, 99 S. Ct. 421, 433, 58 L. Ed. 2d 387 (1978); *United States v. Salvucci*, 448 U.S. 83, 100 S.Ct. 2547, 65 L.Ed. 2d 619 (1980). The burden is on the defendant to make the showing. Id.; *State v. Coleman* (1989), 45 Ohio St.3d 298. This Court has held a passenger meets his burden to establish a reasonable expectation of privacy in the area searched when he has claimed a possessory interest in the items seized. *State v. Ratcliff* 95 Ohio App.3d 199 (1994).

{¶18} In *Rakas v. Illinois, 439* U.S. 128, 99 S.Ct. 421, 58 L.Ed. 2d 387 (1978), the United States Supreme Court held,

> Judged by the foregoing analysis, petitioners' claims must fail. They asserted neither a property nor a possessory interest in the automobile, nor an interest in the property seized. And as we have previously indicated, the fact that they were "legitimately on [the] premises" in the sense that they were in the car with the permission of its owner is not

determinative of whether they had a legitimate expectation of privacy in the particular areas of the automobile searched. It is unnecessary for us to decide here whether the same expectations of privacy are warranted in a car as would be justified in a dwelling place in analogous circumstances. We have on numerous occasions pointed out that cars are not to be treated identically with houses or Apartments for Fourth Amendment purposes. See *United States v. Chadwick*, 433 U.S., at 12, 97 S.Ct., at 2484; *United States v. Martinez-Fuerte*, 428 U.S. 543, 561, 96 S.Ct. 3074, 3084, 49 L.Ed.2d 1116 (1976); *Cardwell v. Lewis*, 417 U.S. 583, 590, 94 S.Ct. 2464, 2469, 41 L.Ed.2d 325 (1974) (plurality opinion). [Footnote omitted] But here petitioners' claim is one which would fail even in an analogous situation in a dwelling place, since they made no showing that they had any legitimate expectation of privacy in the glove compartment or area under the seat of the car in which they were merely passengers. Like the trunk of an automobile, these are areas in which a passenger *qua* passenger simply would not normally have a legitimate expectation of privacy. *Supra*, at 430.

{¶19} In this case, Officer Emde testified at the suppression hearing,

Q. Officer Emde, you just made a reference, 'He's a 21'.

A. Um-hmm.

Q. What's that mean?

A. That means he's under arrest.

Q. Okay, and why did you make that statement right there?

A. I reached in the handle where you close the car door at, and there was a pack of cigarettes wedged in there. I opened those up. And there was several, couple bags of meth there suspected methamphetamine inside.

Q. Okay. That's passenger side where the Defendant was located at?

A. Yes, sir.

Q. Package of Marlboro cigarettes? Is that correct?

A. Marlboro Black.

Q. Marlboro Black.

A. Yes, sir.

* * *

Q. Officer Emde, after you gave the Defendant Miranda, he declined to give you a statement, correct?

A. Yes.

Q. How'd the cigarettes come up? How did that come up?

A. I can't remember which officer, it was either Carson or Banks, had made a comment about him wanting to smoke a cigarette.

Q. Okay. Did the Defendant pose the question to you, or did you ask him about the cigarettes?

A. About his smoking?

Q. Yeah.

A. He had asked if he could smoke, and that's - -

Q. Okay.

A. - - when I looked at the cigarettes that were in the door.

Tr. at 21-22; 23

{¶20} Upon review of the record, we find Appellant did not unequivocally demonstrate a possessory interest in the cigarette pack seized prior to the search of the vehicle herein. Accordingly, we find Appellant lacks standing to challenge the search of the vehicle.

{¶21} Assuming, arguendo, Appellant did not lack standing to challenge the search based upon a Fourth Amendment violation, we would find the search valid based upon the automobile exception set forth above. Following Appellant's admission to having a "bubble" on his person, Officer Emde had probable cause to believe the vehicle contained contraband, or other evidence subject to seizure, and was justified in conducting a warrantless search of every part of the vehicle and its contents, including all moveable containers and packages, that could logically conceal the objects of the search.

{¶22} Appellant's sole assignment of error is overruled.

{¶23} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J. and

Delaney, J. concur,

Farmer, J. concurs separately.

Farmer, J., concurs

{¶24} I concur with the majority's denial of the sole assignment of error on substantive grounds.

{¶25} However, I would find that appellant had standing to challenge the actual stop and search under the authority of *Brendlin v. California*, 551 U.S. 249 (2007).