[Cite as *State v. Henak*, 2020-Ohio-5023.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff - Appellee	:	Hon. Patricia A. Delaney, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
ANASTASIA HENAK,	:	Case No. 2020 CA 0030
	:	
	:	NUNC PRO TUNC
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Richland County Court of Common Pleas, Case No. 2018-CR-0602R
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	October 19, 2020

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
GARY BISHOP Prosecuting Attorney Richland County, Ohio	RANDALL E. FRY 10 West Newlon Place Mansfield, Ohio 44902
By: JOSEPH C. SNYDER Assistant Prosecuting Attorney 38 South Park Street Mansfield, Ohio 44902	

Baldwin, J.

{¶1} Defendant-appellant Anastasia Henak appeals from the overruling by the Richland County Court of Common Pleas of her Motion to Suppress. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On July 16, 2018, the Richland County Grand Jury indicted appellant on one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(a), a felony of the fifth degree. At her arraignment on February 26, 2019, appellant entered a plea of not guilty to the charge.

{¶3} Appellant, on April 17, 2019, filed a Motion to Suppress, arguing that the evidence was seized without probable cause. A hearing on the motion was held on September 18, 2019.

{¶4} At the hearing, Officer Travis Stantz testified that he was a patrol officer with the Mansfield Police Department. He testified that he was on duty on May 4, 2018 and was in uniform in a marked cruiser. He testified that he was on regular patrol when he observed a yellow Chevy Cobalt traveling westbound on 3rd Street in front of him. The vehicle quickly pulled into a driveway a block or two down the road and backed out and began traveling again. Officer Stantz testified that he had made a lot of drug arrests in the area and that it was a high crime area. He testified that the Cobalt backing out of the driveway caught his attention because "[t]hat's a sign that somebody was trying to elude you." Transcript at 11. The Officer testified that he had circled the block and that he immediately saw the Cobalt backing out of the driveway.

{¶5} Officer Stantz ran the vehicle's license through his in-car computer and discovered that the license plate was expired. He then initiated a traffic stop of the vehicle. The driver of the vehicle was Shane Ohl. The Officer made contact with Ohl and asked him what he was doing in the area because he had noticed that Ohl was not from the area by running the license plate. The Officer testified that he was suspicious because Mansfield was a high crime area and when people from outside the area were driving around a high drug area, it caught his attention. Ohl was not able to explain why he was in the area.

{¶6} Appellant was in the front passenger seat in Ohl's vehicle. Officer Stantz testified that Ohl gave him consent to search his vehicle. The Officer pulled both occupants out of the vehicle. Once back-up assistance arrived, he began searching the vehicle. On the front passenger floorboard, Officer Stantz found "a carton of cigarette tubes that was empty and inside the carton was a piece of ripped off Chore Boy."[1] Transcript at 17. He testified that the Chore Boy, which could be used to filter crack pipes, was within appellant's reach. The small size of the Chore Boy aroused his suspicions. Based on his review of the Chore Boy, the Officer believed that a drug paraphernalia offense had been committed.

{¶7} He then advised appellant that she was being placed under arrest. When he asked appellant if there was anything else on her, she told him that she had something in her bra, but did not indicate what. The Officer did not search appellant at that time because he was waiting for a female officer. During a search by a female officer, a syringe

[1] A Chore Boy is a metallic scouring pad that is torn into small pieces and used to block the end of a crack pipe in order to smoke crack cocaine.

and a crack pipe which had crack cocaine in the end of it were located on appellant's person.

{¶8} The items were collected and appellant was taken to the jail and subsequently charged with possession of cocaine.

{¶9} At the hearing, Sergeant Sara Napier testified that when she arrived on the scene, appellant was already in handcuffs and that Officer Stantz told her that appellant needed searched before going to jail. She testified that the search was incident to arrest. She testified that when she asked appellant if she had anything illegal on her, appellant said that she had a crack pipe in her bra. A crack pipe and a syringe were retrieved from appellant's bra.

{¶10} Pursuant to a Judgment Entry filed on September 20, 2019, the trial court overruled appellant's Motion to Suppress, finding that "[b]ased on the testimony of Ptl. Stantz and Sgt. Napier. … Ptl. Stantz had probably (sic) cause to arrest [appellant] for possession of drug paraphernalia." Thereafter, appellant, on October 2, 2019, entered a plea of no contest to the charge of possession of cocaine. The trial court found her guilty and, on February 12, 2020, appellant was placed on three years of community control.

{¶11} Appellant now raises the following assignment of error on appeal:

{¶12} "I. THE TRIAL COURT ERRED IN OVERRULING THE MOTION TO SUPPRESS FILED IN THIS CASE."

I

{¶13} Appellant, in her sole assignment of error, argues that the trial court erred in overruling her Motion to Suppress. We disagree.

{¶14} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 1996-Ohio-134, 661 N.E.2d 1030. A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate 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 applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 41, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶15} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. *See State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *See Williams, supra.* Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a 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*, 95 Ohio App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

{¶16} In the case sub judice, appellant does not challenge the stop of Ohl's vehicle. Rather, appellant argues that there was not probable cause to search her.

{¶17} Absent some other exception to the warrant requirement, a search of the passenger's person must be based on probable cause that he or she has engaged or is engaging in criminal activity. *See State v. Kay*, 9th Dist. Wayne No. 09CA0018, 2009-Ohio-4801, ¶ 9-17. *See also Wyoming v. Houghton*, 526 U.S. 295, 303, 119 S.Ct. 1297 (1999), citing *United States v. Di Re*, 331 U.S. 581, 68 S.Ct. 222 (1948).

{¶18} Probable cause consists of " 'a reasonable ground for belief of guilt.' " *State v. Moore*, 90 Ohio St.3d 47, 49, 2000-Ohio-10, 734 N.E.2d 804 , quoting *Carroll v. United States*, 267 U.S. 132, 161, 45 S.Ct. 280, 288 (1925). "[A] probable cause determination is a fact-intensive inquiry * * *.' " *State v. Davis*, 9th Dist. Summit No. 29273, 2020-Ohio-473, ¶ 19. The determination "is made from the totality of the circumstances. Factors to be considered include an officer's observation of some criminal behavior by the defendant, furtive or suspicious behavior, flight, events escalating reasonable suspicion into probable cause, [and] association with criminals and locations." *State v. White*, 9th Dist. Wayne No. 05CA0060, 2006-Ohio-2966, ¶ 24, quoting *State v. Shull*, 5th Dist. Fairfield No. 05-CA-30, 2005-Ohio-5953, ¶ 20.

{¶19} In the case sub judice, we find that there was probable cause to search appellant. As is stated above, the car in which appellant was a passenger was stopped after Officer Stantz observed elusive behavior and discovered that the license plate was expired. Appellant does not challenge the stop of the vehicle. After Ohl consented to a

search of the vehicle, the Officer found ripped off Chore Boy on the passenger side floorboard near appellant. When Officer Stantz asked appellant if she had anything on her, she admitted that she did. While, as noted by appellee, the Officer did not explicitly ask her if she had anything illegal on her person, "the circumstances would certainly show that was what he was inquiring about."

{¶20} Moreover, the search of appellant was incident to a lawful arrest. A search incident to arrest is an exception to the general rule that warrantless searches are per se unreasonable. *State v. Mims,* 6th Dist. No. OT–05–030, 2006-Ohio-862, ¶ 23. We note that police may conduct a search of the arrestee's person incident only to a lawful arrest. *State v. Dillon,* 10th Dist. No. 04AP-1211, 2005-Ohio-4124, ¶ 31. In order to justify a search as one incident to arrest, there must be probable cause to arrest. *State v. Robinson,* 9th Dist. Wayne No. 10CA0022, 2012-Ohio-2428. The test for probable cause to arrest without a warrant is whether "the facts and circumstances known to the officer warrant a prudent man in believing the offense has been committed." *State v. Perez,* 124 Ohio St.3d 122, 920 N.E.2d 104, 2009–Ohio–6179, ¶ 73, quoting *Henry v. United States,* 361 U.S. 98, 102, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959).

{¶21} As is stated above, appellant was arrested after the Chore Boy was found near her person and was later searched once Sergeant Napier arrived on the scene. We find that there was probable cause to believe that appellant possessed the Chore Boy. We find therefore, that appellant was lawfully arrested and that her search was incident to a lawful arrest.

{¶22} Based on the foregoing, appellant's sole assignment of error is overruled.

{¶23} Accordingly, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Baldwin, J.

Hoffman, P.J. and

Delaney, J. concur.