[Cite as *State v. Binford*, 2004-Ohio-4976.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellant v. ALLEN D. BINFORD Appellee	C.A. No. 22038 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 03 11 3579

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, the State of Ohio, appeals from an order of the Summit County Court of Common Pleas which granted criminal defendant Allen D. Binford's motion to suppress. We reverse.

I.

{¶2} On the evening of November 19, 2003, two police officers were dispatched to the vicinity of a three-unit apartment building on a report of suspected drug activity. At least one of the apartments was already known for past drug activity and drug related arrests. The officers parked on the street and placed the building under observation. At approximately 7:45 p.m., the officers saw Mr.

Binford enter the building and then exit a short time later in the company of a female. The officers waited until the two had walked some distance from the apartment building before approaching, and observed no suspicious activity.

{¶3} The officers drove the patrol car up to where Mr. Binford and his companion were walking. The officers approached them from behind, shined a spotlight on them, and requested that they stop walking and answer some questions. Mr. Binford was reportedly mumbling and behaving in a nervous fashion. Mr. Binford consented to a pat-down search, which produced no evidence. However, the officers realized that Mr. Binford had something in his mouth, and upon their insistence, he spit out an object which testing revealed to be crack cocaine.

{¶4} Mr. Binford was arrested and indicted for one count of possession of drugs under R.C. 2925.11(A), a fifth degree felony, and one count of tampering with evidence under R.C. 2921.12(A)(1), a third degree felony. Mr. Binford pled not guilty and filed a motion to suppress the evidence as the result of an illegal search and seizure. The trial court heard and granted this motion, thereby suppressing any and all evidence obtained as a result of the investigative stop.

{¶5} The State of Ohio timely appealed, asserting one assignment of error.

II.

Assignment of Error

"THE TRIAL COURT COMMITTED ERROR SUPPRESSING THE EVIDENCE IN THIS CASE."

{¶6} In its sole assignment of error, the State asserts that the trial court erred by suppressing the evidence collected from the investigatory stop, in that it was a justified, consensual encounter and a lawful inquiry. We agree.

{¶7} A motion to suppress evidence under the Fourth Amendment involves mixed questions of law and fact. *Ornelas v. United States* (1996), 517 U.S. 690, 696-97, 134 L.Ed.2d 911; *State v. Booth*, 151 Ohio App.3d 635, 2003-Ohio-829, at ¶12. Therefore, this Court grants deference to the trial court's findings of fact, but conducts a de novo review of whether the trial court applied the appropriate legal standard to those facts. Id.

{¶8} We begin by recognizing that police officers may engage citizens in conversation without such questioning necessarily becoming a detention. *Florida v. Royer* (1983), 460 U.S. 491, 497, 75 L.Ed.2d 229; *State v. Lawson*, 9th Dist. No. 21227, 2003-Ohio-1299, at ¶12. Furthermore, the officers need not expressly inform the citizen of the right to decline cooperation, or that they are free to leave. *United States v. Mendenhall* (1980), 446 U.S. 544, 555, 64 L.Ed.2d 497; *Ohio v. Robinette* (1996), 519 U.S. 33, 39-40, 136 L.Ed.2d 347. However, to justify an investigatory stop, the officers must be able to point to "specific and articulable facts" warranting a rational belief that criminal behavior is imminent. *Terry v. Ohio* (1968), 392 U.S. 1, 21, 20 L.Ed.2d 889.

{¶9} In the present case, the officers were observing a known drug house with the hope of collecting sufficient evidence that they might obtain a warrant. Prior to his arrival at the scene, Mr. Binford was unknown to these officers and was not a target of their investigation; he merely happened into the ongoing surveillance. Also, the officer testified that neither Mr. Binford nor his companion was acting suspiciously prior to the police encounter. Rather, the officers initiated the conversation because Mr. Binford entered and exited the known drug house for such a short duration, which they found suggestive of drug activity based on their experience and training.

{¶10} We have previously condemned such random stops, where the police offered little more than the defendant's presence at a known drug house as the basis for the stop. See, e.g., *State v. Davis* (2000), 140 Ohio App.3d 659, 664. See, also, *State v. Fitzgerald*, 9th Dist. No. 20866, 2002-Ohio-4523 (Batchelder, J., dissenting). However, in those prior cases, the officers originally approached the defendants in attempts to match the descriptions provided of some known suspects, from a warrant or police broadcast. Id. Those stops were targeted toward the particular suspect, and the rationalization of their proximity to a known drug house was insufficient in and of itself to justify the investigatory stop.

{¶11} In the present case, Mr. Binford was an unknown entity, who introduced himself into a suspected crime scene. The officers did not seek to identify any particular person or suspect, and did not target Mr. Binford

individually for such reason. To the contrary, based on their experience and training, it is reasonable to conclude that the officers could suspect illegal activity from anyone who entered and exited a known drug house for such a short duration. Under these circumstances, the State demonstrated a reasonable and articulable suspicion that Mr. Binford was engaged in criminal conduct. Therefore, the trial court erred in granting Mr. Binford's motion to suppress. The State's assignment of error is sustained.

III.

{¶12} The State's sole assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is reversed.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

Exceptions.

WILLIAM G. BATCHELDER
FOR THE COURT

WHITMORE, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

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