

[Cite as *State v. Hardin*, 2005-Ohio-130.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. Case No. 20305
v.	:	T.C. Case No. 03-CR-3645
MARVIN T. HARDIN	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 14th day of January, 2005.

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FAIN, J.

{¶ 1} Marvin T. Hardin appeals from his sentence and conviction for Possession of Crack Cocaine. Hardin contends that the trial court erred in overruling his motion to suppress, because his encounter with the police was not consensual. We disagree.

{¶ 2} We conclude that Hardin’s encounter with the police was consensual,

and that there is no evidence that there was a display of physical force or authority that would have made a reasonable person in Hardin's position feel that he was not free to decline the police officer's requests or otherwise terminate the encounter. We conclude that the trial court did not err in overruling Hardin's motion to suppress evidence, because Hardin's encounter with the police was consensual and therefore, the Fourth Amendment was not implicated.

{¶ 3} Accordingly, the judgment of the trial court is affirmed.

I

{¶ 4} On October 3, 2003, Officer Tiffany Conley stopped a maroon and gray Cadillac because the license plate on the Cadillac was registered to a different vehicle. Because the driver presented a traffic citation that he had received a couple of hours before Officer Conley's stop, Officer Conley did not give the driver a traffic citation and permitted the driver, an individual identified as Roger Lane, to leave.

{¶ 5} The next day, Officer Conley received a computerized communication that Roger Lane was wanted for the charge of Rape. Around four o'clock in the morning on October 4, Officer Conley observed Lane driving the maroon and gray Cadillac northbound on Central Avenue. Officer Conley then observed Lane pull into a parking lot at 104 Central Avenue. Officer Conley and her partner pulled into the parking lot and stopped the Cadillac. Officer Conley observed Lane with two passengers in the Cadillac. Officer Conley escorted Lane out of the Cadillac and put him in the back of her cruiser. Officer Conley then began getting Lane's

information and started the booking slip and process for his arrest. Because Lane was being arrested, Officer Conley also filled out the tow screen to have the Cadillac towed from the scene. Officer Conley had no contact with the back seat passenger, Marvin Hardin.

{¶ 6} Sergeant Hamilton, Officer Daniel Reynolds, and Officer Eric Brown arrived to the scene to assist Officer Conley and her partner. Officer Reynolds observed a back seat passenger in the Cadillac and opened the door and asked the passenger his name, to which the passenger replied “Marvin Hardin.” Officer Reynolds asked Hardin if he had any identification, and Hardin replied that he did not because he had just gotten out of the hospital. Officer Reynolds asked Hardin to step out of the vehicle. When Hardin got out of the vehicle, Officer Reynolds asked him if he had any weapons and he replied that he did not. Officer Reynolds asked Hardin if he could pat him down for weapons. Hardin said that he did not mind and held his arms straight out. Officer Reynolds patted him down and felt a hard, lumpy object with a soft, squishy substance above the rigid corners of the object in his left, front jeans pocket. Based on his past experience and from the plain feel, Officer Reynolds believed the object to be crack cocaine in a plastic baggy. Officer Reynolds asked Hardin what was in his pocket, and Hardin said “two quarters.” Officer Reynolds removed the object from Hardin’s pocket, and it appeared the object was crack cocaine in a plastic baggy.

{¶ 7} Officer Reynolds placed Hardin under arrest and handcuffed him. He put Hardin in the rear seat of his cruiser and read him his *Miranda* warnings. Hardin indicated that he understood his rights and proceeded to answer Officer

Reynold's questions. After a field test conducted by Officer Brown, the object retrieved from Hardin's jeans pocket was determined to be crack cocaine.

{¶ 8} Hardin was indicted on one count of Possession of Crack Cocaine in an amount which equaled or exceeded one gram but was less than five grams, in violation of R.C. 2925.11(A). Hardin filed a motion to suppress evidence. After a hearing, the trial court overruled Hardin's Motion to Suppress Evidence concluding that the encounter between Officer Reynolds and Hardin was consensual and therefore, the Fourth Amendment was not implicated. Hardin entered a plea of no-contest and was found guilty of Possession of Crack Cocaine. The trial court sentenced Hardin to eight months of imprisonment and suspended his driver's license for a term of eight months. From his conviction and sentence, Hardin appeals.

## II

{¶ 9} Hardin's sole assignment of error is as follows:

{¶ 10} "THE TRIAL COURT ERRED IN OVERRULING MR. HARDIN'S MOTION TO SUPPRESS."

{¶ 11} Hardin contends that the trial court erred in overruling his motion to suppress, because his encounter with the police was not consensual. Hardin contends that he merely acquiesced to a show of police authority, and that the State presented no evidence that he voluntarily consented to being searched. Hardin contends that he was illegally detained without a reasonable suspicion of

criminal activity.

{¶ 12} A trial court undertakes the position of the trier of fact in a motion to suppress evidence. *State v. Retherford* (1994), 93 Ohio App.3d 586, 592, 639 N.E.2d 498. Therefore, the trial court is in the best standpoint to decide questions of fact and assess witness credibility. *Id.*, citing *State v. Clay* (1972), 34 Ohio St.2d 250, 63 O.O.2d 391, 298 N.E.2d 137. In reviewing a motion to suppress, this court will accept the factual findings of a trial court if the findings are supported by competent and credible evidence. *Id.*

{¶ 13} The Fourth Amendment of the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures \* \* \*.” “It is well established that these guarantees are not implicated in every situation where the police have contact with an individual. The United States Supreme Court has created three categories of police-citizen contact to identify the situations where these guarantees are implicated.

{¶ 14} “The first type is a consensual encounter. Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away. The request to examine one's identification does not make an encounter nonconsensual. Nor does the request to search a person's belongings. The Fourth Amendment guarantees are not implicated in such an encounter unless the police officer has by either physical force or show of authority restrained the person's liberty so that a reasonable person would not feel free to decline the officer's

requests or otherwise terminate the encounter. Once a person's liberty has been restrained, the encounter loses its consensual nature and falls into one of the next two Supreme Court categories.” *State v. Taylor* (1995), 106 Ohio App.3d 741, 747-748, 667 N.E.2d 60, internal citations omitted.

{¶ 15} “The second type of encounter is a ‘*Terry stop*’ or an investigatory detention. The investigatory detention is more intrusive than a consensual encounter, but less intrusive than a formal custodial arrest. The investigatory detention is limited in duration and purpose and can only last as long as it takes a police officer to confirm or to dispel his suspicions. A person is seized under this category when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority a reasonable person would have believed that he was not free to leave or is compelled to respond to questions.

{¶ 16} “\* \* \* [F]actors [that might indicate a seizure] include a threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person, the use of language or tone of voice indicating that compliance with the officer's request might be compelled, approaching the citizen in a nonpublic place, and blocking the citizen's path. A police officer may perform an investigatory detention without running afoul of the Fourth Amendment as long as the police officer has a reasonable, articulable suspicion of criminal activity.

{¶ 17} “The third type of encounter involves a seizure that is the equivalent of an arrest. To perform such a seizure the police officer must have probable cause. A seizure is equivalent to an arrest when (1) there is an intent to arrest; (2) the seizure is made under real or pretended authority; (3) it is accompanied by an

actual or constructive seizure or detention; and (4) it is so understood by the person arrested.

{¶ 18} “These categories must be visited to determine whether an individual's consent to a search during an encounter is valid. For an individual's consent to be valid, the encounter must not have violated the Fourth Amendment. Since the Fourth Amendment guarantees are not implicated in consensual encounters, any voluntary responses given during consensual encounters may be used against the individual in a criminal prosecution. On the other hand, investigatory detentions do implicate the Fourth Amendment, and consent given during an investigatory detention is only valid if the police officer had reasonable suspicion to detain the person. Similarly, the Fourth Amendment guarantees are implicated during an arrest situation, and consent given during an arrest is valid only if the police officer had probable cause and the suspect was read his constitutional rights.” *Taylor*, 106 Ohio App.3d at 748-749, internal citations omitted.

{¶ 19} In this case, the encounter between Hardin and Officer Reynolds occurred in a public parking lot, and Officer Reynolds merely asked Hardin some questions and requested some information from him. Officer Reynolds testified that when he observed a back-seat passenger in the Cadillac, he opened the door and asked the passenger his name, to which the passenger replied “Marvin Hardin.” Officer Reynolds testified that he asked Hardin if he had any identification, and Hardin replied that he did not, because he had just gotten out of the hospital. Officer Reynolds testified that because the vehicle was going to be towed, he asked

Hardin to step out of the vehicle. Officer Reynolds testified that when Hardin got out of the vehicle, he asked Hardin if he had any weapons, and Hardin replied that he did not. Officer Reynolds testified that because of the location in a high-crime area and the fact that Hardin was in a vehicle with a man who was wanted for a felony, Officer Reynolds asked Hardin if he could pat him down for weapons. Officer Reynolds testified that Hardin said that he did not mind and held his arms straight out. Officer Reynolds testified that he patted Hardin down and felt a hard, lumpy object with a soft, squishy substance above the rigid corners of the object in his left, front jeans pocket. Officer Reynolds testified that based on his past experience and from the plain feel, he believed the object to be crack cocaine in a plastic baggy. Officer Reynolds testified that he asked Hardin what was in his pocket, and Hardin said "two quarters." Officer Reynolds testified that "[i]t was obviously not two quarters, money," and he removed the object from Hardin's pocket. Officer Reynolds testified that it appeared the object retrieved from Hardin's pocket was crack cocaine in a plastic baggy. Officer Reynolds placed Hardin under arrest and handcuffed him.

{¶ 20} Based on the foregoing, we conclude that the encounter between Hardin and Officer Reynolds was consensual. To turn this consensual encounter into a detention, there needed to be a display of physical force or authority that would have caused a reasonable person in Hardin's position to believe that he was not free to decline Officer Reynold's requests or otherwise terminate the encounter. The record is devoid of any indication that there was a display of physical force or authority that would have caused a reasonable person in Hardin's position to



believe that he was not free to decline Officer Reynold's requests or otherwise terminate the encounter.

{¶ 21} Officer Reynolds testified that no weapons were drawn and that he did not use an intimidating tone of voice or curse words towards Hardin. Officer Reynolds did not remove Hardin from the vehicle, but requested that he get out, because the vehicle was going to be towed. Officer Reynolds testified that no handcuffs were used on Hardin until he was arrested. Officer Reynolds testified that although Hardin was not free to leave, he never told Hardin he was not free to leave.

{¶ 22} We conclude that there is no evidence that there was a display of physical force or authority that would have caused a reasonable person in Hardin's position to believe that he was not free to decline Officer Reynold's requests or otherwise terminate the encounter. Because we find that Hardin was not detained, we need not address the issue of whether Officer Reynolds had reasonable suspicion that Hardin was engaged in criminal activity.

{¶ 23} We conclude that the trial court did not err in overruling Hardin's motion to suppress evidence, because Hardin's encounter with the police was consensual and therefore, the Fourth Amendment was not implicated.

{¶ 24} Hardin's sole assignment of error is overruled.

### III

{¶ 25} Hardin's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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BROGAN and WOLFF, JJ., concur.

Copies mailed to:

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