[Cite as *State v. Brock*, 2010-Ohio-5885.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23665
v.	:	T.C. NO. 09 CR 873
RUSTY J. BROCK	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 3rd day of December, 2010.

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CARLEY J. INGRAM, Atty. Reg. No. 0020084, Assistant Prosecuting Attorney, 301 W. Third Street, Suite 500, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

MARK J. KELLER, Atty. Reg. No. 0078469, 130 W. Second Street, Suite 840, Dayton, Ohio 45402
Attorney for Defendant-Appellant

RUSTY J. BROCK, 103 Cherry Street, Fountain City, Indiana 47341
Defendant-Appellant

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FROELICH, J.

{¶ 1} On June 29, 2009, Appellant Brock pled no contest to one count of possession of heroin in violation of R.C. 2925.11(A), a fifth-degree felony. On that same

day, Brock also pled no contest to one count of tampering with evidence; tampering with evidence is in violation of R.C. 2929.12(A)(1), which is a third-degree felony. The court accepted Brock's no contest pleas and found him guilty on both counts. After a pre-sentence investigation, he was sentenced to community control.

{¶ 2} Both of these drug-related violations occurred a little after 10:10 p.m. on the night of March 16, 2009, following a traffic stop for failing to signal a right hand turn. Prior to the stop, Brock was seen driving away from a known drug house by Detective Bell, an undercover narcotics detective with the Dayton Police Department. The detective was engaged in undercover surveillance at this same drug house; this surveillance was pursuant to a tip received by Bell from a confidential informant, neighbor complaints about the residence in question, and an arrest made the prior week involving individuals purchasing heroin capsules there.

{¶ 3} Bell observed a silver 2000 Ford Taurus, later determined to be driven by Brock, pull into an alleyway adjacent to the house in the same manner described in the previous complaint made to the Dayton Police. Approximately thirty seconds later, Bell saw the Taurus quickly exit the alleyway and proceed down the street. Bell began to follow the Taurus in an unmarked cruiser. Shortly thereafter, both vehicles pulled up to a red light at Brooklyn and West Third Street, at which point the Taurus made a right-hand turn onto westbound Third Street without properly signaling the turn. Failing to signal a turn is a violation of Dayton City Code Section 71.31.

{¶ 4} After observing the Taurus turn without signaling, Bell continued to follow the vehicle. Bell contacted a uniformed police officer in a marked police cruiser to make a

stop of the suspect's car. Uniformed Dayton Police Officer Letlow responded, and caught up to the other vehicles where West Third Street connects to Route 49. Letlow then activated his cruiser's emergency lights in order to effectuate a stop of the Taurus.

{¶ 5} Immediately following Letlow's actions, the Taurus made a right-hand turn onto the northbound lane for Route 49. Bell pulled up beside the Taurus, simultaneously turning beside the Taurus from the center lane. With Bell's vehicle beside the Taurus and Letlow's immediately behind with its lights still activated, Bell observed Brock pull objects from his waist or belt area and move them up to his mouth. Bell testified at the motion to suppress hearing that he saw Brock with "a handful of clear gelatin capsules with a substance inside, which in my experience I believed to be heroin." Bell testified that while the interior light of the Taurus was not on, the roadway was "very lighted" due to its proximity to the freeway.

{¶ 6} Bell testified that he observed Brock put the capsules into his mouth and appeared to be swallowing them. Upon swallowing the capsules, Brock then slowly pulled over to the side of the road, with Bell's vehicle beside and Letlow's still behind the Taurus. Bell then exited his vehicle and asked Brock to "step from his vehicle" contemporaneously with removing Brock from the Taurus.

{¶ 7} Bell testified that upon removing Brock from the vehicle, that he "immediately placed [Brock] in handcuffs for my safety. Knowing that [Brock] had just left a known drug house, was trying to destroy evidence, so I secured him for my safety, placed [Brock] under arrest for the heroin capsules." Bell then testified that "[a]s I pulled him out of the vehicle, off his waistband area and lap area I saw two additional heroin capsules fall to

the ground on the outside of the vehicle onto the roadway." These capsules were "consistent" with those that Bell testified to seeing Brock put in his mouth and swallow before finally pulling over.

{¶ 8} After placing Brock in handcuffs, Bell searched him, found, and removed another capsule from Brock's right jacket pocket. This capsule was "consistent" with the ones he had already seen fall to the street. These capsules were field tested and were positive for heroin. Letlow recovered the two capsules that had fallen to the street as Brock exited the Taurus, along with another capsule that was on the driver's-side floorboard of the car.

{¶ 9} On June 8, 2009, Brock had a hearing on a motion to suppress the heroin. The motion to suppress was based upon Brock's argument that Letlow's initial stop was unlawful. The state designated Detective Bell as its representative, and Bell was the only person who testified at the suppression hearing. Following a post-hearing briefing, the trial court issued a written decision in which it denied Brock's motion to suppress on the grounds that Letlow's initial stop was lawful and that the heroin was found in plain view.

{¶ 10} Appointed counsel for Brock filed an *Anders* brief pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, stating that he "has presented a possible assignment of error for Appellant to present." Brock's appointed counsel also requested that the court conduct a thorough examination of the record to determine whether the appeal has any merit. Brock was advised of his counsel's *Anders* brief representations and that he could file a pro se brief assigning any errors for review by this court. Brock was further advised that absent such a filing, the appeal would be deemed submitted on its merits. No pro se brief has been received. The case is now before us for our

independent review of the record. *Penson v. Ohio* (1988), 488 U.S. 75, 109 S.Ct. 346, 102 L.Ed.2d 300.

{¶ 11} Brock's counsel has identified one "*Anders* Argument" for appeal: "The trial court improperly overruled Brock's motion to suppress."

{¶ 12} "[The] [a]ppellate standard of review for a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the legal standard." *State v. Burnside*, 100 Ohio St. 3d 152, 154-55, 2003-Ohio-5372 (citations omitted).

{¶ 13} Brock contends that the trial court's denial of his motion to suppress was improper because "the state failed to establish that the [uniformed police] officer had sufficient knowledge of the facts to justify the stop." This argument rests on the theory that since Letlow did not witness the actual traffic violation observed by Bell, the stop made by Letlow was unlawful because he did not possess "sufficient facts to justify the traffic stop." More specifically, Brock argues that the "issue is whether Dayton Ofc. Letlow had sufficient knowledge of the alleged traffic violation Det. Bell observed in order to effectuate the warrantless stop and detention of Brock."

{¶ 14} Brock's argument implicates Fourth Amendment guarantees that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures." The "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' within the meaning of this provision [of the Fourth Amendment]. An automobile stop is thus subject to the constitutional imperative that it not be 'unreasonable' under the circumstances. As a general matter, the decision to stop an automobile is reasonable when the police have probable cause to believe that a traffic violation has occurred." *Whren v. U.S.* (1996), 517 U.S. 806, 809-10, 116. S. Ct. 1769, 135 L.Ed.2d 89 (citations omitted).

{¶ 15} When the police have probable cause to believe that a traffic violation has occurred, the existence of a pretextual reason for making the stop does not render it contrary to the Fourth Amendment's prohibition against unreasonable searches and seizures. *Id.* at 812-13; *Dayton v. Erickson*, 76 Ohio St. 3d 3, 11, 1996-Ohio-431;*State v. Desman*, Montgomery App. No. 19730, 2003-Ohio-7248, at ¶ 17. Taken alone, the fact that one officer makes the initial traffic stop based solely on the knowledge of another officer claiming to have witnessed a traffic violation does not support a Fourth Amendment violation. *See State v. Cook* (1992), 65 Ohio St. 3d 516, 521. "An officer need not have knowledge of all of the facts necessary to justify an investigative stop, as long as the law enforcement body as a whole possesses such facts and the detaining officer reasonably relies upon those who posses the facts. A radio broadcast may provide the impetus for an investigatory stop, even when the officer making the stop lacks all of the information justifying the stop. The relevant inquiry is whether the law-enforcement community as a whole complied with the Fourth Amendment; the entire system is required to posses facts

justifying the stop or arrest, even thought the arresting officer does not have those facts." *Id.* (citations omitted).

{¶ 16} Detective Bell testified at the suppression hearing as to what he observed, the traffic violation, and what he had informed Letlow. Officer Letlow could reasonably rely upon Detective Bell's knowledge that Brock had failed to signal his right-hand turn. While Bell was undoubtedly more concerned with investigating the presence of drugs on Brock's person or in his vehicle, Brock committed a traffic violation that justified Bell's contact with Letlow and the eventual stop. The representations made by an experienced police detective are sufficiently credible and reliable enough to allow another officer to make a traffic stop based upon them. Letlow's reliance upon Bell's knowledge that Brock had committed a traffic violation was objectively reasonable. Brock's argument that the stop was in violation of the Fourth Amendment is without merit.

{¶ 17} Furthermore, police officers may require that the occupants of a motor vehicle exit the vehicle pursuant to a stop for a traffic violation because of the legitimate safety concerns of both the officer and the occupants. *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 109-11, 98 S. Ct. 330, 54 L.Ed.2d 331; *State v. Evans*, 67 Ohio St. 3d 405, 407-08, 1993-Ohio-186; *State v. Watson* (Aug. 23, 1996), Montgomery App. No. 15449. The *Mimms* Court held that, with regard to asking a driver to exit a vehicle pursuant to a valid traffic stop, "this additional intrusion can only be described as *de minimis*. The driver is being asked to expose very little more of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside

it. Not only is the insistence of the police on the latter choice not a 'serious intrusion upon the sanctity of the person,' but it hardly rises to the level of a 'petty indignity.' What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." *Mimms*, 434 U.S. at 111 (citing *Terry v. Ohio* (1968), 392 U.S. 1, 17, 88 S. Ct. 1868, 20 L.Ed.2d 889).

{¶ 18} At the motion to suppress hearing, Bell testified that when Brock finally pulled over to the side of the road, Bell exited his vehicle and "made contact with Mr. Brock and asked him to step from the vehicle." Bell also testified that he "[r]emoved [Brock] from the vehicle, immediately placed him in handcuffs for [Bell's] safety." These very concerns for police safety pursuant to traffic stops are those embodied in the *Mimms* decision, and as such Bell's order that Brock step out of the vehicle was lawful.

{¶ 19} Furthermore, the heroin capsules confiscated by Bell and Letlow were admissible as evidence against Brock under the "plain-view" doctrine. "It is now well established that under the 'plain view' doctrine, police officers may seize evidence, instrumentalities, or fruits of a crime without the necessity of having first obtained a search warrant specifically naming such items." *State v. Williams* (1978), 55 Ohio St. 2d 82, 84 (citing *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 446, 91 S. Ct. 2022, 29 L.Ed.2d 564); *see also State v. Logel*, Montgomery App. No. 21912, 2008-Ohio-17, ¶ 29. In *Coolidge*, the Court stated, "What the 'plain view' cases have in common is that the police officer in each case had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification whether it be a warrant, hot pursuit, search incident to

lawful arrest, or some other legitimate reason for being present unconnected with a search directed at the accused and permits the warrantless seizure. Of course, the extension of the original justification is legitimate only where it is immediately apparent that they have evidence before them; the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges." *Coolidge*, 403 U.S. at 446.

{¶ 20} "Hence, in order to qualify under the plain view exception, it must be shown that (1) the original intrusion which afforded the [police] the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating nature of the evidence was immediately apparent." *Williams*, 55 Ohio St. 2d at 85.

{¶ 21} Here, the initial stop of Brock for the traffic violation was lawful pursuant to Brock's failure to signal. The heroin pills initially seized by the officers came into plain view as a result of Bell's lawful decision to remove Brock from his vehicle. After being ordered to exit the vehicle, two heroin capsules fell from Brock's belt or lap area onto the street and were thus inadvertently in plain view. Furthermore, the incriminating nature of the heroin capsules was immediately apparent to Bell. This is based on Bell's testimony as to their nature, based not only upon his years of experience as a narcotics officer, but upon his knowledge that the house Brock had just left was a "known drug house" and that an earlier arrest involving similar heroin capsules had occurred the prior week. Therefore, the seized heroin capsules that fell to the street were in plain view, and were confiscated outside of the Fourth Amendment's prohibitions. The fourth capsule found in Brock's jacket pocket was lawfully found as the result of a permissible search incident to arrest. Accordingly, we find

that the heroin capsules were lawfully seized by Bell and Letlow, and were admissible as evidence against Brock. Brock's first assignment of error is not well taken.

{¶ 22} Upon further independent review of the record, this court finds no issues of arguable merit. At Brock's June 29, 2009 hearing where he pled no contest to both felony charges, the trial court fully complied with Crim. R. 11.

{¶ 23} Accordingly, having conducted an independent review of the record in addition to Brock's "potential sole assignment of error," we find no issues of arguable merit. We agree with his counsel that there are no meritorious issues for appeal. Therefore, the judgement of the trial court is affirmed.

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DONOVAN, P.J. and FAIN, J., concur.

Copies mailed to:

Carley J. Ingram
Mark J. Keller
Rusty J. Brock
Hon. Connie S. Price