

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23693
v.	:	T.C. NO. 2009CR863
	:	
WILLIAM M. JOHNSON	:	(Criminal appeal from Common Pleas Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 17th day of December, 2010.

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OSOWIK, J. (by assignment)

{¶ 1} This is an appeal from a judgment of the Montgomery County Court of Common Pleas, which found appellant, William Johnson, guilty of one count of possession of crack cocaine, in violation of R.C. 2925.21(A), a felony of the fifth degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following sole assignment of error:

{¶ 3} "The Trial Court Erred When It Overruled Appellant's Motion To Suppress"

{¶ 4} The following undisputed facts are relevant to the issue raised on appeal. On March 15, 2009, Officer Orick of the Dayton Police Department observed a Cadillac parked in front of 42 Santa Clara in the city of Dayton. This location is known by the local law enforcement agencies to be home to a large amount of drug activity. Consistent with this, Officer Orick himself had been involved in many drug related arrests at this particular location.

{¶ 5} Officers Sharp and Roberts were relayed the information from Officer Orick, who had responded to another call for service. Officer Sharp was likewise familiar with 42 Santa Clara as a location of numerous drug arrests. Officer Sharp ran the plates on the suspicious vehicle and learned that the vehicle had been subject to drug field investigations in the past. The officers witnessed appellant stepping into the car and driving off.

{¶ 6} After the vehicle left the location, the officers followed and noticed that it failed to make a complete stop. It also made a wide turn onto Main Street. Officer Sharp initiated a traffic stop in the People's Market parking lot. Appellant got out of the car and waited for the officer. Officer Sharp noticed that the vehicle had essentially traveled in a circle after leaving 42 Santa Clara. However, appellant stated that he had not been at 42 Santa Clara, contrary to the officers' firsthand observations. Officer Sharp instructed appellant to step out of the vehicle and asked if they could do a search of his person and vehicle. Appellant gave consent to search his person but not his vehicle. No weapons or drugs were found on appellant nor were any found after a quick look inside the vehicle.

{¶ 7} Officer Orick arrived on the scene shortly after this traffic stop. Following a briefing by the other officers, Officer Orick had reason to suspect that appellant had a weapon in his car. Because appellant was going to be let back into his car, Officer Orick was concerned about the safety of himself and others. Officer Orick performed a brief search of the car and recovered crack cocaine that was present on the driver's side door electronic panel. No other weapons or drugs were found.

{¶ 8} On April 14th, 2009, appellant was indicted for possession of crack cocaine. Appellant subsequently filed a motion to suppress the evidence found in his vehicle. Officers Sharp and Orick testified during the suppression hearing on June 5th, 2009. The trial court denied appellant's motion to suppress. Appellant entered a no contest plea. The trial court found appellant guilty and sentenced him to community control.

{¶ 9} In his sole assignment of error, appellant claims that the trial court erred when it overruled his motion to suppress. Specifically, appellant claims that the crack cocaine should not have been admitted as evidence because the officers on duty failed to conduct a legal search of appellant's automobile.

{¶ 10} In a motion to suppress case, the trial court assumes the role of the trier of fact. *State v. Retherford* (1994), 93 Ohio App.3d 586, 592. The trial court is also in the best position to resolve questions of fact and evaluate the credibility of witnesses. *Id.* In reviewing the trial court's ruling on a motion to suppress evidence, this court is governed by the de novo standard of review and must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. *State v. Keller* (Jan. 14, 2000), Montgomery App. No. 17896, 2000 WL 20873 at 3.

{¶ 11} Generally, warrantless searches and seizures are *per se* unreasonable under the Fourth Amendment. *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576. However, there are three specifically established explanations. One of these exceptions is when an officer, based on reasonable, articulable suspicion, searches a passenger compartment for weapons. *Michigan v. Long* (1983), 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201.

{¶ 12} This court has long recognized that persons engaged in illegal drug activity are often armed with a weapon. *State v. Roberts*, Montgomery App. No. 21221, 2006-Ohio-3042, at ¶12. Thus, the searching of a passenger compartment of an automobile, where a weapon may be hidden, is permissible if the officer possesses a reasonable belief, through specific and articulable facts and inferences, that the suspect is dangerous and may gain immediate control of weapons. *Michigan v. Long* (1983), 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201. These facts generally include: the high crime rate in the area, time of day, experience of the officers, whether the officer was away from his cruiser, and suspicious activities by the suspect such as furtive gestures. *State v. Wilcox*, 177 Ohio App. 3d 609, 2008-Ohio-3856, citing *State v. Bobo* (1988), 37 Ohio St.3d 177.

{¶ 13} In *State v. Roberts*, officers pulled over a female driver with a male passenger, Roberts, for a broken tail light. *State v. Roberts*, Montgomery App. No. 21221, 2006-Ohio-3042, at ¶3. Based on the observed behavior and demeanor of Roberts, the officers searched the vehicle out of safety concern of a hidden weapon. *Id.* What they found was a brown paper bag in the glove compartment which contained a large amount of cocaine. *Id.* This court ruled that the traffic stop was reasonable because the officers had

reason to believe that Roberts was involved in a drug transaction. Id. at ¶9. Furthermore, this court ruled that the officers' search of the car was reasonable because of the officers' belief that the defendant was involved in a drug transaction, causing the officers to fear for their own safety. Id. at ¶12.

{¶ 14} In this case, appellant was seen leaving a well-known drug location at 1:30 A.M. Appellant subsequently implicated himself by denying this after being pulled over. Neither a pat down nor a cursory glance inside the vehicle can adequately negate the possibility that a weapon was in the vehicle. A brief protective sweep of the vehicle was necessary to ensure the safety of the officers and others. The limited, protective search was very brief. It only lasted about ten to fifteen seconds. Given the facts and circumstances, this was a legal search. The trial court did not err in admitting the crack cocaine as evidence and overruling appellant's motion to suppress. Appellant's assignment of error is not well-taken.

{¶ 15} On consideration whereof, the judgment of the Montgomery County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App. R. 24.

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FAIN, J., concurs.

FROELICH, J., concurs in judgment only.

(Hon. Thomas J. Osowik, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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