

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-09-1078

Appellee

Trial Court No. CR0200801515

v.

Jamie Williams

DECISION AND JUDGMENT

Appellant

Decided: December 4, 2009

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Michael D. Bohner, Assistant Prosecuting Attorney, for appellee.

James E. Carlisle, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant's motion to disclose the identity of a confidential informant and appellant's motion to suppress evidence obtained pursuant to a *Terry* stop. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jamie R. Williams, sets forth the following five assignments of error:

{¶ 3} "FIRST ASSIGNMENT OF ERROR. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO THE PREJUDICE OF APPELLANT BY NOT GRANTING HER MOTION TO SUPPRESS EVIDENCE BECAUSE ITS FINDINGS WERE CONTRARY TO THE SUFFICIENCY OF THE EVIDENCE.

{¶ 4} "SECOND ASSIGNMENT OF ERROR. THE TRIAL COURT ABUSED ITS DISCRETION BY SERVING AS A SECOND PROSECUTOR BY ENDORSING CONTRADICTORY EVIDENCE AND INSERTING FACTS IN THE CASE FOR WHICH THERE WAS NO BASIS OF EVIDENCE.

{¶ 5} "THIRD ASSIGNMENT OF ERROR. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT REQUIRING THE DISCLOSURE OF CERTAIN EXCULPATORY EVIDENCE TO THE DEFENDANT, AMONG WHICH WAS THE DISCLOSURE OF THE IDENTITY OF THE CONFIDENTIAL INFORMANT.

{¶ 6} "FOURTH ASSIGNMENT OF ERROR. THE SEIZURE OF THE DEFENDANT AND THE INVESTIGATORY STOP LACKED THE NECESSARY AND PARTICULAR ARTICULABLE SUSPICION NEEDED TO JUSTIFY THE SEARCH OF DEFENDANT'S VEHICLE.

{¶ 7} "FIFTH ASSIGNMENT OF ERROR. THE FORENSIC ANALYST FAILED TO CERTIFY HIS TEST OF THE DRUGS WHEN HE SUBMITTED HIS

REPORT AS PART OF THE STATE'S EVIDENCE AS REQUIRED BY OHIO
REVISED CODE §2925.51."

{¶ 8} The following undisputed facts are relevant to the issues raised on appeal. This case stems from a 2007 drug-related incident occurring at a gas station in West Toledo. On August 29, 2007, a sergeant from the Toledo Police Department's Vice Narcotics Unit had discussions with a known and previously reliable confidential informant ("CI") asserting that appellant had sold crack cocaine to the CI. The CI disclosed to the officer that he had purchased crack from appellant earlier that very same day. Significantly, the CI further conveyed that appellant had conducted the drug transaction with her infant son present with her and had stored the drugs in a child's shoe.

{¶ 9} Based upon the receipt of the above-described information, the officer promptly met in person with the CI at a gas station located in West Toledo. During their meeting, the CI furnished additional relevant details surrounding the drug sale to the officer. The CI revealed that appellant was a young black female named Jamie who drove a newer black sedan type of vehicle. Based upon the foregoing, the officer had the CI telephone Jamie in his presence in order to arrange for another drug sale to be conducted shortly following the phone call. The CI informed Jamie in the officer's presence that he would be waiting for Jamie to arrive shortly at the telephone booth at this particular gas station in order to make another crack cocaine purchase. In connection with this undercover drug operation, the officer placed other undercover members of the

vice squad in close proximity to the gas station where the drug sale was scheduled to occur to conduct surveillance.

{¶ 10} Approximately 15 minutes following the CI's phone call to appellant to arrange for the sale of crack cocaine at the telephone booth at that gas station, the officer who met with the CI observed a young black female driving a newer black sedan pull into the gas station where the drug sale was arranged to occur and observed her pull directly towards the waiting CI at the payphone, the designated meeting location.

{¶ 11} Based upon the foregoing investigation and the collaboration by the investigating officer of the information furnished by the CI, the officer moved in upon appellant and conducted a *Terry* stop and search of appellant and her vehicle. This search verified that the driver was appellant, Jamie Williams, that her infant son was present with her, that baggies of crack cocaine were stored in an infant shoe in the vehicle, all of which was fully consistent with the CI's representations. In addition, a baggie of crack cocaine was recovered from the front seat. Oxycodone pills and additional crack were recovered from appellant's person.

{¶ 12} On March 4, 2008, appellant was indicted on one count of crack cocaine trafficking, in violation of R.C. 2925.03, a first-degree felony, one count of possession of crack cocaine, in violation of R.C. 2925.11, a second-degree felony, and one count of aggravated drug possession, in violation of R.C. 2925.11, a fifth-degree felony. On May 28, 2008, appellant failed to appear for trial. On June 4, 2008, appellee amended the indictment in order to include a new charge covering appellant's failure to appear.

{¶ 13} On July 9, 2008, appellant filed a motion to suppress. On August 26, 2008, appellant filed a motion to disclose the identity of the CI. On September 30, 2008, following briefing by the parties on the CI disclosure motion, the trial court denied the motion. In support of its ruling, the trial court emphasized that the CI's information was independently corroborated by eyewitness officers. As such, testimony from the CI was not vital to defense of the case so as to outweigh the government's protective interest in preserving the confidentiality of the informant.

{¶ 14} The record shows that on October 17, 2008, a detailed and thorough evidentiary hearing was conducted on the pending motion to suppress evidence obtained pursuant to the *Terry* stop. In ultimately denying the motion, the trial court notably emphasized that the totality of the circumstances demonstrated ample facts furnished by the CI and independently corroborated by the officer so as to constitute reasonable and articulable suspicion of appellant being engaged in illegal activity to justify the disputed *Terry* stop. Trial was set for November 19, 2008.

{¶ 15} On November 19, 2008, appellant's counsel was granted leave to withdraw. On December 5, 2008, substitute counsel entered his appearance. A new trial date was established for January 20, 2009. On February 4, 2009, pursuant to a written and voluntarily negotiated plea agreement, appellant entered pleas to one count of drug possession, amended from a second-degree felony to a third-degree felony, and one count of failure to appear, a fifth-degree felony. Appellant was sentenced to serve a one-year

term of incarceration in a case in which she originally faced four felony charges. Timely notice of appeal was filed.

{¶ 16} Appellant's first, second, and fourth assignments of error all commonly stem from the assertion that the trial court erred and abused its discretion in its denial of the motion to suppress. Given their shared premise, we will address them collectively.

{¶ 17} It is well-established that the detention of an individual by a law enforcement officer must be justified by "specific and articulable facts" establishing that the detention was reasonable. *Terry v. Ohio* (1968), 392 U.S. 1. Accordingly, in order to justify an investigatory stop, law enforcement officials must demonstrate "reasonable articulable suspicion" of unlawful activity. This is a lesser evidentiary burden to satisfy in comparison with a probable cause determination.

{¶ 18} In conjunction with this controlling legal principle, the Supreme Court of Ohio has repeatedly held that reasonable suspicion requires that the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion or stop. *State v. Bobo* (1988), 37 Ohio St.3d 177.

{¶ 19} The determinative *Terry* test is whether those facts available to the officer, at the time of the search, would warrant a reasonable man in the belief that the action taken was appropriate. Black letter law on motion to suppress disputes establishes that the trial court assumes the role of trier of fact and is in the best position to resolve factual questions and evaluate witness credibility. *State v. Fanning* (1982), 1 Ohio St.3d 19, 20.

As such, we will not disturb a trial court's determination on a motion to suppress if it is supported by competent, credible evidence. *State v. Davis* (1999), 133 Ohio App.3d 114.

{¶ 20} In appellant's first, second, and fourth assignments of error, appellant goes to great lengths to suggest that the trial court abused its discretion in denying the motion to suppress. Specifically, appellant repeatedly argues that the *Terry* stop was not supported by reasonable and articulable suspicion such that the motion to suppress determination was not properly supported by competent, credible evidence. In connection with these arguments, appellant also asserts that the trial court acted improperly as an advocate during the hearing itself.

{¶ 21} We have carefully and thoroughly scrutinized the record of evidence, paying particular attention to the transcript of the motion to suppress hearing, to determine whether the record contains any factual evidence in support of the above arguments. On the contrary, the record establishes overwhelming and independently verified evidence constituting the requisite reasonable and articulable suspicion in support of the *Terry* stop.

{¶ 22} The record unambiguously demonstrates that a known and previously reliable CI furnished detailed information regarding the sale to himself of crack cocaine by appellant to a vice officer from the Toledo Police Department. Specifically, the CI conveyed that a young African-American woman named Jamie driving a black sedan with an infant son present in the vehicle with her and with drugs stored in an infant shoe had sold the CI crack cocaine.

{¶ 23} Based upon this information, and in the presence of the officer, the CI called appellant and arranged for her to meet with him at a specific payphone at a specific West Toledo gas station shortly after the call in order to purchase additional crack cocaine. Approximately 15 minutes later, with undercover officers observing, appellant drove her black sedan with her infant son in the vehicle into the parking lot of the gas station and towards the waiting CI. A *Terry* stop and search ensued revealing crack cocaine and oxycodone on appellant's person, crack cocaine on the front seat, and baggies of crack present in an infant shoe in the vehicle.

{¶ 24} The record shows that relevant information furnished by the CI was independently observed and verified by the investigating officers prior to the *Terry* stop. As such, the CI was not a vital witness to appellant's defense of her case.

{¶ 25} We further note that appellant places much importance on her apparently successful efforts at starting a law abiding new path in life prior to her incarceration in support of her position. While appellant's efforts at reforming her life prior to the conclusion of her criminal case are laudable, they do not negate her criminal culpability. We note that the ultimate one-year term of incarceration received pursuant to the plea agreement was a substantially less severe outcome in comparison to potential sentencing on the original four felony charges filed against appellant.

{¶ 26} The record unambiguously shows that the officer possessed ample reasonable and articulable suspicion in support of the *Terry* stop and search. The record unambiguously shows that the trial court's denial of appellant's motion to suppress was

supported by competent, credible evidence. The record does not show any improper advocacy by the trial court. All suggestions to the contrary are rooted in unsupported arguments, conjecture, and perceptions not consistent with the record. Appellant's first, second, and fourth assignments of error are found not well-taken.

{¶ 27} In appellant's third assignment of error, she argues that the trial court erred in not granting her motion to disclose the identity of the CI. The trial court's determination whether to disclose the identity of a CI will not be reversed on appeal absent a finding of an abuse of discretion. *State v. Brown* (1992), 64 Ohio St.3d 649. To find an abuse of discretion, we must determine that the record establishes that the trial court's actions were unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 28} In conjunction with this analysis, it is well-established that more than mere speculation regarding the potential utility of the testimony of the CI must be established in order to find it "vital" in order to justify the CI's identity being disclosed over and against the state's protective, contrary interest in preserving the CI's confidentiality. *State v. Butler* (1984), 9 Ohio St.3d 156.

{¶ 29} As stated above, the investigating officer first discussed specific information with the CI, subsequently met with the CI in person, directly witnessed the CI's call to appellant, and ultimately made direct, collaborating observations wholly consistent with the CI's information. Given this scenario, there are simply no arguments,

beyond speculation, in support of the claim that the CI was "vital" so as to warrant identity disclosure. We find appellant's third assignment of error not well-taken.

{¶ 30} In appellant's fifth assignment of error, she contends that reversible prejudice was somehow created by the failure of the drug lab analyst to attach a certification to the test results. We need not belabor our analysis on this point.

{¶ 31} By its very language, R.C. 2925.51 pertains to the admissibility as prima-facie evidence of lab reports generated from drug testing. Given the resolution of this case through a negotiated plea agreement, this assignment is moot. We find appellant's fifth assignment of error not well-taken.

{¶ 32} Wherefore, based upon the foregoing, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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