[Cite as *State v. Frazier*, 2010-Ohio-2384.]

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

State of Ohio — Court of Appeals No. L-09-1005

Appellee — Trial Court No. CR-200703618

v.

Michael D. Frazier — **DECISION AND JUDGMENT**

Appellant — Decided: May 28, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Lindsay D. Navarre, for appellee.

Dan M. Weiss, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Michael Frazier, appeals a judgment of conviction for cocaine possession and cocaine trafficking, with major drug offender specifications, entered on a guilty plea in the Lucas County Court of Common Pleas.

{¶ 2} Appellant's appointed counsel has requested leave to withdraw in accordance with the procedure set forth in *Anders v. California* (1967), 386 U.S. 738.

{¶ 3} In *Anders* the United States Supreme Court held that if counsel, after a conscientious examination of the appeal, determines it to be wholly frivolous he should so advise the court and request permission to withdraw. Id. at 744. The request shall include a brief identifying anything in the record that could arguably support an appeal. Id. Counsel shall also furnish his client with a copy of the request to withdraw and its accompanying brief and allow the client sufficient time to raise any matters that he chooses. Id. The appellate court must then conduct a full examination of the proceedings held below to determine if the appeal is indeed frivolous. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating constitutional requirements or may proceed to a decision on the merits if state law so requires. Id.

{¶ 4} Here, appointed counsel has met the requirements set forth in *Anders*. We note further that appellant has not filed a pro se brief or otherwise responded to counsel's request to withdraw. Accordingly, this court shall proceed examining the potential assignments of error set forth by counsel on appellant's behalf and the entire record below to determine whether this appeal lacks merit deeming it wholly frivolous.

{¶ 5} On December 6, 2007, police officers established surveillance of a residence on Marlow Street in Toledo. Police had information from a confidential informant that the house located there was being used in a drug trafficking scheme.

According to suppression hearing testimony of one of the officers, the informant had an eight year history of providing reliable information that led to multiple convictions.

{¶ 6} In this instance, the informant told officers that one kilogram of cocaine had been transported to the Marlow Street house to be processed into crack-cocaine. The informant added that, once processed, appellant would be delivering the crack-cocaine using a burgundy Sable automobile. The informant gave police the license plate number of the burgundy Sable. The officer testified that he was familiar with appellant from prior contact.

{¶ 7} When officers arrived at the Marlow Street house, they observed the burgundy Sable described by the informant already parked there. Eventually, officers observed two men leave the house, followed by a third man, later identified as appellant, who drove away in the burgundy Sable. Officers followed the burgundy Sable.

{¶ 8} Because the surveillance team was in an unmarked car, they called for uniformed assistance to pull over the burgundy Sable. When the assisting officer attempted to effect a stop, appellant initially obeyed the lights and siren and pulled over. As the assisting officer exited his vehicle to approach appellant, however, appellant accelerated the Sable and attempted to flee. Less than one minute later, appellant crashed his car into a utility pole.

{¶ 9} As appellant exited the car to flee on foot, he dropped a package on the ground. Appellant was soon apprehended. The package contained 139.25 grams of crack-cocaine. Appellant was subsequently indicted on charges of drug possession and

trafficking, with major drug offender specifications, and failure to comply. Appellant ultimately pled guilty to trafficking and possession with the specifications and was sentenced to concurrent ten year terms of incarceration for the principal offenses and concurrent one year terms on the specifications. From this judgment of conviction, appellant appeals.

{¶ 10} In the brief filed on appellant's behalf, counsel offers two potential assignments of error: (1) "The trial court erred when it failed to grant defendant-appellant's motion to suppress evidence obtained from the officer's investigative stop;" and (2) "The trial court erred in classifying the defendant-appellant as a major drug offender."

{¶ 11} In his first potential assignment of error, appellant asserts that the trial court erred in denying his motion to suppress.

{¶ 12} Appellate review of a motion to suppress evidence presents a mixed question of law and fact. *State v. McNamara* (1997), 124 Ohio App.3d 706, 710. "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." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The appellate court must then accept the trial court's findings of fact provided that they are supported by competent, credible evidence. *State v. Durnwald*, 163 Ohio App.3d 361, 2005-Ohio-4867, ¶ 28. Next, the appellate court, conducting a de novo review, determines independently whether the facts in the case satisfy the applicable legal standard. *State v.*

Claytor (1993), 85 Ohio App.3d 623, 627; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594.

{¶ 13} A warrantless stop is reasonable under the Fourth Amendment to the United States Constitution if there was probable cause to make the stop or there was some articulable, reasonable suspicion of criminal activity to justify an investigatory stop. *Whren v. United States* (1996), 517 U.S. 806 citing *Delaware v. Prouse* (1979), 440 U.S. 648, and *Terry v. Ohio* (1968), 392 U.S. 1. See, also, *State v. Erickson* (1996), 76 Ohio St.3d 3. Probable cause to stop or arrest arises when, at the moment of stop or arrest "the facts and circumstances within the officer's knowledge and of which [he] had reasonable trustworthy information" were sufficient to cause a reasonable person to believe that a crime had been or was being committed. *Beck v. Ohio* (1964), 379 U.S. 89, 91. Information from a reliable confidential informant that a vehicle of a particular description contained a large quantity of illegal drugs, coupled with police verification of other information from the informant, has been deemed probable cause to make a stop. *State v. Roberts*, 2d Dist. No. 21221, 2006-Ohio-3042, ¶ 18; *State v. Hopkins*, 6th Dist. No. L-05-1012, 2006-Ohio-967, ¶ 13; *State v. Williams*, 3d Dist. No. 13-06-46, 2007-Ohio-5489, ¶ 21.

{¶ 14} In this matter, the informant's tip provided the officers with specific information: the exact model, make, and license plate of the car; a specific time-frame and location in which a specific amount of cocaine would be processed into crack-cocaine; and the specific person and method for distributing the cocaine. Additionally,

this particular informant had proven to be reliable and credible in the past in aiding the officers with information that led to convictions. More compelling yet, the information given by the informant was corroborated when the officers observed the specified Sable parked at the specified residence and then observed the specified individual driving the Sable. Given the totality of the circumstances, we find the officers had probable cause to stop the burgundy Sable. Appellant's first potential assignment of error is without merit.

{¶ 15} Appellant, in his second potential assignment of error, challenges the classification of his offenses with a major drug offender specification.

{¶ 16} R.C. 2929.01(W), in part, defines a major drug offender as "an offender who * * * pleads guilty to the possession of, sale of, or offer to sell any drug, compound, mixture, preparation, or substance that consists of or contains * * * at least one hundred grams of crack cocaine". Appellant pled guilty. In doing so he effectively conceded that the amount of crack-cocaine exceeded one hundred grams as described in the indictment and waived his right to challenge any evidence which proves the amount. Therefore, appellant's classification as a major drug offender is a specification provided by statute. Appellant's second potential assignment of error is found without merit.

{¶ 17} Upon this record, we concur with appellate counsel that appellant's appeal is without merit. Moreover, upon our own independent review of the record, we find no other grounds for meritorious appeal. Accordingly, this appeal is found to be without merit, and wholly frivolous. Counsel's motion to withdraw is found well-taken and is, hereby, granted.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs 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

Keila D. Cosme, J. _____
CONCUR.
JUDGE