

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

State of Ohio

Court of Appeals No. L-09-1187

Appellee

Trial Court No. CR0200901638

v.

Brandon Lamont Conner

DECISION AND JUDGMENT

Appellant

Decided: September 3, 2010

* * * * *

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

Deborah Kovac Rump, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which denied appellant's motion to suppress. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Brandon Lamont Conner, sets forth the following sole assignment of error:

{¶ 3} "The trial court erred by denying Conner's motion to suppress."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. In 2008, the Toledo Police Department narcotics unit was furnished information from a previously reliable confidential informant that appellant was engaged in unlawful drug trafficking of oxycontin and ecstasy in Toledo. The informant further significantly conveyed that it was appellant's consistent practice to carry a firearm.

{¶ 5} On January 1, 2009, a detective from the narcotics unit collaborated with the informant to arrange an illegal drug purchase from appellant. The informant contacted appellant in the presence of the detective and coordinated an ecstasy purchase from appellant. Appellant instructed the informant to meet him at the AutoZone store on Cherry Street in Toledo. The informant was further advised that appellant would be in the parking lot as a passenger in an older, white Cadillac driven by a white female.

{¶ 6} Shortly thereafter, the detective and the informant drove past the designated location and a vehicle matching the one which was described to the informant was observed. The detective promptly set up surveillance of the site subsequent to his independent confirmation of the details furnished by the informant. As a safety precaution, in light of appellant's practice of carrying a firearm, the detective requested that the directed patrol unit stop the vehicle.

{¶ 7} Upon arriving at the parking lot and positioning themselves next to the vehicle, a Toledo police sergeant observed appellant in the passenger seat moving his hands in close proximity to the glove compartment. Upon their stop of the vehicle, appellant was removed from the passenger seat by the police officers. During their protective search of appellant, the officers recovered 20 oxycontin pills from appellant's person. During the *Terry* search of the vehicle, the officers recovered a loaded 9 mm semi-automatic gun and counterfeit ecstasy pills from the glove compartment directly in front of where appellant had been seated and where appellant had been observed by the officers moving his hands upon their arrival.

{¶ 8} Appellant was indicted with one count of having a weapon under disability, one count of carrying a concealed weapon, and one count of aggravated possession of drugs. On June 4, 2009, in response to his motion to suppress being denied, appellant pled guilty to carrying a concealed weapon and aggravated possession of drugs in exchange for dismissal of the remaining count. Timely notice of appeal was filed.

{¶ 9} In his single assignment of error, appellant asserts that the trial court erred in denying the motion to suppress. It is well-established that in reviewing a motion to suppress, the appellate court may not reverse the trial court ruling if it is supported by competent, credible evidence. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665. The rationale underlying this deferential standard of review is in recognition that the trial

court is most effectively situated to weigh and consider evidence, witness credibility, and resolve factual questions. *State v. Mills* (1992), 62 Ohio St.3d 357, 366.

{¶ 10} The determinative threshold issue relevant to this appeal is whether appellant, a passenger in the vehicle stopped and searched, possessed the requisite standing to challenge the propriety of the search. The constitutionality of the stop itself is not in dispute.

{¶ 11} In the highly relevant United States Supreme Court ruling set forth in *Rakas v. Illinois* (1978), 439 U.S. 128, the court notably determined that passengers in a motor vehicle did not possess any lawful expectation of privacy in the vehicle's glove compartment or in the space under the seats. As such, there was no standing to challenge the propriety of the search. The Ohio Supreme Court has likewise consistently concluded that a motor vehicle passenger lacks standing to challenge a search of a properly stopped vehicle absent a possessory interest in the vehicle, an interest in the property seized, or a legitimate expectation of privacy in connection to that vehicle. *State v. Carter* (1984), 69 Ohio St.3d 57.

{¶ 12} While appellant bases his challenge upon the United States Supreme Court decision set forth in *Arizona v. Gant* (2009), 129 S.Ct. 1710, 173 L.Ed.2d 485, that case is plainly, materially distinguishable in that it involved a scenario in which the constitutionality of the initial stop itself was being challenged. That is not the situation in the instant case.

{¶ 13} Given the controlling precedent set forth in *Rakas* and *Carter*, we find that the record is devoid of any evidence establishing the prerequisite standing on the part of appellant necessary for a motion to suppress regardless of any debatable merits of same. Appellant failed to establish a possessory interest in the motor vehicle, an interest in the items seized, or any other relevant legal basis sufficient to constitute an expectation of privacy in the motor vehicle. As such, appellant lacks the standing to invoke a Fourth Amendment challenge to the search of another party's vehicle. Wherefore, we find appellant's sole assignment of error not well-taken.

{¶ 14} 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

Thomas J. Osowik, P.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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