

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

State of Ohio

Court of Appeals No. F-14-013

Appellee

Trial Court No. 14CR123

v.

Ian C. Ruffer

DECISION AND JUDGMENT

Appellant

Decided: May 1, 2015

* * * * *

Scott A. Haselman, Fulton County Prosecuting Attorney, for appellee.

Clayton M. Gerbitz, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from an October 28, 2014 judgment of the Fulton County Court of Common Pleas, denying appellant's motion to suppress in the underlying possession of heroin case, in violation of R.C. 2925.11(A), a felony of the fifth degree.

For the reasons set forth more fully below, this court reverses the judgment of the trial court.

{¶ 2} Appellant, Ian C. Ruffer, sets forth the following sole assignment of error:

I. THE TRIAL COURT ERRED BY DENYING APPELLANT'S
MOTION TO SUPPRESS EVIDENCE IN VIOLATION OF HIS RIGHTS
UNDER THE U.S. CONST. AMEND. IV, XIV, AND OHIO CONST.
ART. I, SECTION 14.

{¶ 3} The following undisputed facts are relevant to this appeal. On March 22, 2014, Deputy Steven Waxler (“deputy”) of the Fulton County Sheriff’s Department was conducting surveillance of a residence located on Elm Street in the city of Wauseon, Ohio. The deputy had recently commenced brief periods of surveillance of the residence, lasting approximately 20 minutes in duration on each occasion, several days prior to the day of the incident. The surveillance was initiated in response to information obtained from a confidential informant claiming to have purchased heroin at a separate location from the owner of the residence that was placed under surveillance.

{¶ 4} While on duty and conducting surveillance on March 22, 2014, the deputy observed appellant driving his motor vehicle with one male passenger in the vicinity of the home under surveillance. The vehicle did not park at the residence but did stop in the general area of the residence. The deputy observed the passenger from appellant’s vehicle exit and walk towards the subject residence.

{¶ 5} Notably, the deputy did not observe the passenger enter into or exit the subject residence. Rather, the deputy did observe the passenger walk onto the property of the residence but remain outside of the physical structure. No further details of other forms of suspicious conduct by the passenger, consistent with conduct affiliated with those engaged in unlawful activity, while standing upon the property was noted by the deputy.

{¶ 6} The deputy believed based upon his observations that an unlawful drug transaction had just occurred. Accordingly, the deputy notified the Wauseon Police Department and they initiated a stop of appellant's vehicle which was now located at the Circle K shop on Fulton Street in Wauseon. In the course of the search conducted pursuant to that stop, no unlawful items were recovered or located in connection to the passenger who had been observed earlier located upon the property of the subject residence. However, a hypodermic needle with trace amounts of heroin was recovered from the inside of one of appellant's socks.

{¶ 7} On September 16, 2014, appellant was indicted on one count of possession of heroin, in violation of R.C. 2925.11(A), a felony of the fifth degree. Counsel for appellant subsequently filed a motion to suppress.

{¶ 8} On October 22, 2014, the trial court conducted an evidentiary hearing on the pending motion to suppress. The deputy was the sole witness who testified in support of the disputed stop of appellant's vehicle. On October 28, 2014, the trial court denied the motion to suppress. On October 29, 2014, appellant entered a no contest plea to the

single count pending against him. Appellant was convicted and the sentence imposed in that matter has been stayed pending the outcome of this appeal.

{¶ 9} In the sole assignment of error, appellant maintains that the motion to suppress should have been granted based upon the assertion that the deputy did not possess the requisite reasonable articulable suspicion of criminal activity so as to warrant the disputed stop.

{¶ 10} We note at the outset that appellate review of a motion to suppress comprises a mixed question of law and fact. An appellate court must not reject the trial court's factual findings if they are supported by competent, credible evidence. If so supported, the appellate court then independently determines whether these facts satisfy the applicable legal standard. *State v. Boyd*, 6th Dist. Lucas No. L-04-1173, 2005-Ohio-3044, ¶ 10.

{¶ 11} When a police officer does possess a reasonable suspicion of criminal activity, based upon specific and articulable facts, the officer may make a brief, investigatory stop. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In conjunction with this, the propriety of the stop is determined according to the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988). An officer's reliance upon a hunch is not adequate to justify such a stop. *Terry* at 27.

{¶ 12} We have carefully reviewed and considered the record of evidence in this matter, paying particular attention to the transcript of the motion to suppress hearing. We find based upon our review of the deputy's testimony that the requisite reasonable

articulable suspicion that appellant was engaged in criminal activity so as to warrant the disputed investigatory stop of his vehicle was not demonstrated.

{¶ 13} We note that the deputy's testimony reflected significant uncertainty regarding his observations of facts and circumstances immediately preceding the disputed stop.

{¶ 14} One key factor to consider in support of reasonable articulable suspicion in connection to suspected illegal drug transactions is a high-volume of persons going in and out of the subject premises in short intervals of time. When asked to provide a general estimate of how many people he observed going in and out of the residence during his brief surveillance of the residence, totaling approximately one hour of total surveillance time, the deputy unconvincingly replied, "I couldn't put an actual number on it, but there was just a lot."

{¶ 15} Notably, the deputy further stated that although he observed multiple people going in and out of the residence, he could not be certain that they were different people or simply the same people going in and out on multiple occasions. The deputy testified in pertinent part, "I may [have] been watching the same people. I know there were multiple people. I'm not necessarily saying the people themselves, I'm saying the amount of activity."

{¶ 16} Later during the testimony, the deputy was asked to describe how appellant's vehicle traveled from one location to another during the surveillance and prior to the stop. The deputy testified, "No. I don't recall." When asked whether he knew at

that time the identity of the male passenger observed in the vehicle, the deputy's testimony was again equivocal. The deputy testified, "I know who it is, but I did not know exactly who it was at the time."

{¶ 17} Significantly, the testimony provided at the suppression hearing also made clear that the deputy never actually observed the passenger go into or out of the subject residence and he failed to describe any specific, suspicious conduct by the passenger during the period of time in which the passenger was located on the property where the deputy suspected unlawful drug transactions occurred. The deputy testified, "I did not see him enter or exit the residence. I saw him at the residence." When asked to elaborate, the deputy affirmatively testified that he was referring to witnessing the passenger on the property of the residence. No further testimony of suspicious conduct while on the property was provided.

{¶ 18} The testimony further reflects that the deputy was uncertain regarding approximately the time of day in which the deputy observed the passenger on the land of the subject residence. In response to the trial court inquiry, "Was it morning, afternoon, evening," the deputy replied, "I believe it might have been late morning, early afternoon maybe." Even after being furnished an opportunity to review his own documentation of the events to refresh his recollection as to time of day, the deputy remained uncertain on the matter.

{¶ 19} The record reflects that although the deputy concedes he never observed the passenger from appellant's vehicle enter or exit the subject residence and did not

articulate specific suspicious conduct of the passenger when he was on the property where it was suspected drug transactions might occur, nevertheless shortly thereafter appellant's vehicle was stopped as the deputy believed that the passenger had engaged in criminal activity while at the property that the deputy had placed under surveillance.

{¶ 20} In the course of the search conducted after the disputed stop, nothing was recovered from the passenger who served as the basis of the deputy's suspicions connecting the stopped vehicle to the property under surveillance. However, a hypodermic syringe with trace amounts of heroin was recovered from inside appellant's sock.

{¶ 21} We find based upon our review of the totality of the circumstances in this matter, with particular emphasis placed upon the transcript of the suppression hearing, that no reasonable articulable suspicion of criminal activity of either appellant or his passenger was demonstrated prior to the disputed stop. The record reflects considerable uncertainty in the testimony of the sole witness in support of the stop. The totality of the circumstances described by the deputy and other documentation in the record does not establish reasonable articulable suspicion that the passenger who walked upon the property of the residence under surveillance was engaging in criminal activity so as to justify the subsequent stop.

{¶ 22} We find that appellee lacked the requisite reasonable articulable suspicion in support of the stop of appellant's vehicle. Accordingly, we find that the trial court erred in denying appellant's motion to suppress.

{¶ 23} On consideration whereof, the judgment of the Fulton County Court of Common Pleas is hereby reversed. The matter is remanded for proceedings consistent with this decision. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

Judgment reversed.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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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