[Cite as *State v. Leiman*, 2004-Ohio-5336.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2004-01-005
	:	O P I N I O N
- vs -		10/4/2004
	:	
ROBERT LEIMAN,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2003-CR-0327

Donald W. White, Clermont County Prosecuting Attorney, David H. Hoffmann, 123 North Third Street, Batavia, Ohio 45103, for plaintiff-appellant

R. Daniel Hannon, Clermont County Public Defender, Robert F. Benintendi, 10 South Third Street, Batavia, Ohio 45103, for defendant-appellee

VALEN, J.

{¶1} The state of Ohio ("State"), appeals the decision of the Clermont County Court of Common Pleas granting a motion to suppress evidence filed by appellee, Robert Henry Leiman. Judgment affirmed.

{¶2} The record reveals the following testimony was presented at the suppression hearing.

{¶3} Just after midnight on or about March 22, 2003, a

Union Township Police Officer pulled over a vehicle because the rear license plate was not illuminated and the registration sticker was missing on the plate. The vehicle, which stopped in a Days Inn parking lot, contained a male driver and a woman in the front passenger seat and a man and woman in the back passenger seats. Appellee was located in a rear passenger seat.

{¶4} The police officer called for and received two additional uniformed officers as back up. The officer would testify that he smelled the odor of alcohol from the driver and observed a twelve-pack of beer in the back seat with two open containers of alcohol. Appellee responded to the officer's inquiry by acknowledging that an open container of alcoholic beverage belonged to him.

{¶5} Appellee was ordered out of the vehicle and patted down for weapons before being placed in the patrol car. The police officer testified that he placed appellee in the patrol car to issue to him a summons for an open container violation.[1] The search of appellee resulted in the discovery of a crack pipe.

{¶6} Leiman moved to suppress evidence after he was indicted on a felony drug charge. The trial court granted the motion, and the state instituted the instant appeal.

1. R.C. 4310.62 and 4301.99 designate this charge as a minor misdemeanor. According to R.C. 2935.36(A), when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation, unless one of a number of exceptions, inapplicable here, applies.

{¶7} Assignment of Error:

{¶8} "THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT'S MOTION TO SUPPRESS."

{¶9} The State argues that the officer was justified in patting appellee down for weapons before placing him in the patrol car because the officer did so for his own safety or to avoid a dangerous condition.

{¶10} In reviewing a trial court's decision on a motion to suppress, an appellate court must accept the trial court's factual findings if they are supported by competent, credible evidence. State v. Isbele (2001), 144 Ohio App.3d 780, 784. However, an appellate court independently determines without deference to the trial court whether the court applied the appropriate legal standard to the facts. State v. Anderson (1995), 100 Ohio App.3d 688, 691.

{¶11} A driver of a motor vehicle may be subjected to a brief pat-down search for weapons even without suspicion of criminal activity where the officer has a lawful reason to detain the driver in a patrol car. State v. Evans, 67 Ohio St.3d 405, 410, 1993-Ohio-186.

{¶12} During a routine traffic stop, it is reasonable to search the driver for weapons before placing the driver into a patrol car, if placing the driver into the car during the investigation prevents officers or the driver from being subjected to a dangerous condition and placing the driver in the patrol car is the least intrusive means to avoid a

dangerous condition. State v. Lozada, 92 Ohio St.3d 74, 2001-Ohio-149, paragraph one of syllabus; see, also, State v. Fleak, Clermont App. No. CA2003-07-056, 2004-Ohio-1371, at ¶13 (rationale of Evans and Lozada applicable to passengers).

{¶13} However, it is unreasonable for an officer to search the driver for weapons before placing him or her in a patrol car, if the sole reason for placing the driver in the patrol car during the investigation is for the convenience of the officer. State v. Lozada, paragraph two of syllabus.

{¶14} The trial court thoroughly reviewed the actions of the police officer and the conditions encountered during this particular stop. The trial court noted that appellee was cooperative, had not been aggressive, and had made no furtive movements inside or outside of the vehicle to cause the officer alarm.

{¶15} Further, the trial court mentioned that two other uniformed police officers were present to assist the officer that evening, and that the driver who smelled of alcohol was permitted to remain behind the wheel, while appellee, a back-seat passenger was removed.

{¶16} We note that the police officer indicated that he routinely pats down individuals for weapons if he is placing them in his patrol car, but his reason for placing appellee in his patrol car was to issue appellee a summons for an open container. The trial court found that assuming, arguendo, that appellee was placed into the patrol car to avoid a dangerous

condition, doing so here was not the least intrusive means to avoid the dangerous condition.

{¶17} After reviewing the record in this case under the applicable standard for a motion to suppress, we find that the trial court did not err in concluding that the search that resulted from placing appellee in the patrol car was unreasonable, given the circumstances as described at the suppression hearing.

{¶18} Accordingly, the trial court did not err in granting appellee's motion to suppress evidence. The State's assignment of error is overruled.

{¶19} Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.