

[Cite as *State v. Jimenez*, 2011-Ohio-1572.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95337

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MIGUEL A. JIMENEZ

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-528285

BEFORE: Stewart, P.J., Cooney, J., and E. Gallagher, J.

RELEASED AND JOURNALIZED: March 31, 2011

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MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Miguel A. Jimenez, appeals a decision of the Cuyahoga County Court of Common Pleas, denying his motion to suppress evidence. Appellant raises a single error for our review in which he challenges the trial court's application of the plain view doctrine to the facts of the case. Upon review of the record and for the reasons stated below, we affirm.

{¶ 2} During a traffic stop, a firearm was found on the floor of appellant's car. Appellant was arrested and indicted on charges of having a weapon while under disability and improper handling of a firearm in a motor vehicle. He entered a plea of not guilty and filed a motion to suppress the evidence obtained from his car. In his motion, appellant claimed he had an expectation of privacy in his vehicle and argued that the police violated his Fourth Amendment rights by conducting a warrantless search of his automobile without the requisite probable cause.

{¶ 3} The trial court held a suppression hearing during which the state presented the testimony of Cleveland police officer Robert Mason. Mason testified that on August 27, 2009, he and Officer Miranda were driving around on patrol. At around 10:00 p.m., Mason observed appellant make a left-hand turn without stopping at a stop sign. He activated the siren and overhead lights to effectuate a traffic stop. Appellant did not pull over but continued to drive down the street, passing a number of houses. Mason saw the driver reach around the front part of the car and bend over with his hand off of the steering wheel. The car then came to an abrupt stop, and appellant jumped out. Mason thought appellant was going to run so he quickly approached the car, placed appellant in handcuffs, patted him down for weapons, and put him in the zone car. Mason walked back to appellant's car to close the driver's door, which remained open into the narrow side street.

As Mason walked past the car, he looked inside and noticed the handle of a gun sticking out from underneath the back of the driver's seat. Mason opened the car's rear door and retrieved the weapon. He discovered the gun was loaded with a bullet in the chamber. Appellant was placed under arrest.

{¶ 4} The trial court denied appellant's motion to suppress finding that the gun was in plain view and, therefore, the police were authorized to remove it from the car. Appellant timely appeals this ruling raising as a single assignment of error that the trial court erred in overruling his motion to suppress evidence.

{¶ 5} The standard of review regarding motions to suppress is set forth by the Ohio Supreme Court as follows:

{¶ 6} "Appellate review of a motion to suppress presents a mixed question of law and fact. 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. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." (Internal citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8.

{¶ 7} Appellant contends that three events occurred that implicated his Fourth Amendment rights: the stop of his car; his detention by police; and the search of the car and resultant seizure of the weapon. Appellant does not expressly contest the propriety of the traffic stop or his detention. He argues only that the court erred in finding that the gun was in plain view because, “it was simply impossible for Officer Mason to have observed, at night, a small portion of a dark object on the floor of the back seat area while he was walking toward the front door.” Appellant argues that this court is not required to accept trial court findings that “defy credulity.”

{¶ 8} Under the “plain view” doctrine, an officer may seize an item without a warrant if the initial intrusion leading to the item’s discovery was lawful, the discovery of the evidence was inadvertent, and it was immediately apparent that the item was incriminating. *State v. Williams* (1978), 55 Ohio St.2d 82, 377 N.E.2d 1013, paragraph one of the syllabus. Objects falling in the plain view of an officer who has a right to be in the position to have the view are subject to seizure. *State v. Thurman* (Oct. 25, 2001), 8th Dist. No. 78230, citing *Harris v. United States* (1968), 390 U.S. 234, 88 S.Ct. 992, 19 L.Ed.2d 1067. Thus, a police officer may seize contraband in plain view inside a vehicle when the officer has a lawful reason to stop or investigate the automobile. *Texas v. Brown* (1983), 460 U.S. 730, 103 S.Ct. 1535, 75 L.Ed.2d 502. Moreover, shining a flashlight into the car to illuminate the interior is

not prohibited by the Constitution, and doing so “trench[es] upon no right secured to [the defendant] by the Fourth Amendment.” *Id.* at 740.

{¶ 9} Appellant does not contest that his car was lawfully stopped for a traffic violation. He also does not contest that he was lawfully detained while his driver’s license information was verified. He argues only that because it was dark, the gun could not have been in “plain view” for Mason to observe. However, the evidence shows that Mason was carrying a flashlight when he walked up to appellant’s car to close the door. Mason testified that when he looked into the back seat area of the car, he could clearly see the handle of a gun sticking out from underneath the back of the driver’s seat. Accordingly, there is competent and credible evidence in the record to support the trial court’s finding that the gun was in plain view, subject to lawful seizure by the police. Appellant’s single assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, PRESIDING JUDGE

COLLEEN CONWAY COONEY, J., and
EILEEN A. GALLAGHER, J., CONCUR