**[Cite as *State v. Woods*, 2018-Ohio-5460.]**

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

| | | |
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| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | Case No. 18CA10 |
| vs. | : | |
| VANESSA WOODS, | : | DECISION AND JUDGMENT ENTRY |
| Defendant-Appellant. | : | |

APPEARANCES:

J. Roger Smith, II, Huntington, West Virginia, for appellant.

Brigham M. Anderson, Lawrence County Prosecutor, and C. Michael Gleichauf, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED:12-27-18
ABELE, J.

**{¶ 1}** This is an appeal from a Lawrence County Common Pleas Court judgment of conviction and sentence. Vanessa Woods, defendant below and appellant herein, appeals her conviction for (1) aggravated trafficking in drugs in violation of R.C. 2929.03(A)(2)(C)(1)(d), and (2) aggravated possession of drugs in violation of R.C. 2925.11(A)(C)(1)(c).

**{¶ 2}** Appellant raises the following assignment of error for review:

> "THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION AND OTHERWISE COMMITTED REVERSIBLE ERROR BASED ON AN ERRONEOUS STANDARD OR A MISCONSTRUCTION OF LAW IN DENYING APPELLANT'S MOTION TO SUPPRESS ALL EVIDENCE AGAINST HER AS THE SEARCH OF APPELLANT'S VEHICLE WAS

> DONE IN VIOLATION OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AS WELL AS HER DUE PROCESS RIGHTS UNDER THE OHIO CONSTITUTION."

**{¶ 3}** On November 1, 2017, the Lawrence County Grand Jury returned an indictment that charged appellant with (1) on one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2)(C)(1)(d), and (2) one count of aggravated possession of drugs in violation of R.C. 2925.11(A)(C)(1)(c). Both offenses are second-degree felonies. Appellant entered not guilty pleas.

**{¶ 4}** Subsequently, appellant filed a motion to suppress evidence and argued the stop and search of her vehicle violated her Fourth and Fourteenth Amendment right against unlawful search and seizure.

**{¶ 5}** On January 26, 2018, the trial court held a hearing on the motion to suppress. South Point Police Patrolman Robert Fouch testified that he and his partner, Patrolman Jordan Reyes, stopped appellant at 1:12 a.m. on September 19, 2017. Fouch testified that he followed appellant over railroad tracks, and observed her stop at a stop sign, then activate her turn signal. Fouch stated that appellant failed to activate her turn signal one hundred feet prior to her turn, in violation of R.C. 4511.39. Fouch also stated that prior to the traffic stop, he had looked for appellant's vehicle because a narcotics unit officer informed him that a vehicle that fit that description was possibly trafficking drugs in the village of South Point. Fouch testified that when he approached appellant he asked for her license, registration, and proof of insurance. Appellant gave Fouch all three items and advised him that the car belonged to her mother. Fouch stated that he then asked for consent to search the vehicle and, at first, appellant refused consent and asked if she could go home. Fouch

explained that it "struck me as odd so I, I'd advised her not until we were done with the traffic stop." Fouch stated that at that point, he planned to issue a citation for the traffic violation, but had not yet done so. Fouch also testified that appellant asked him if she had to give consent to search, and he told her "absolutely not." After Fouch asked appellant a second time, she consented to the search. This occurred prior to Fouch receiving information from dispatch about appellant's license. Fouch stated that probably five minutes expired from the time of the stop until appellant gave consent.

**{¶ 6}** Officer Fouch explained that when appellant gave consent to search, he also asked if any weapons were in the vehicle. Fouch asked appellant to step out of the car, patted her down and noted no weapons on her person. Fouch stated that he then took appellant to the front of her vehicle and told her that if she saw them searching an area of the vehicle that she did not give consent to search, she should tap on the vehicle's hood and inform them that she wanted to "take consent away." Fouch testified that appellant was not under arrest at that time. During the search, appellant did not tell officers to stop the search. Inside the vehicle, officers found 32 grams of methamphetamine.

**{¶ 7}** At the hearing, the state played footage from Officer Reyes's body camera.[1] When questioned by the court, Officer Fouch admitted that if appellant had told him no the second time when he sought consent, he "would have called for the K-9 Unit." The trial court inquired how long he would have waited for the K-9 and Officer Fouch responded, "[a]s long as it takes me to write the citation."

**{¶ 8}** On February 2, 2018, the trial court denied the motion to suppress and found the stop

[1] Officer Fouch testified that their department required officers to wear body cameras, but he had loaned his to Officer Reyes that night because one was missing and one was uncharged, and he did not want Reyes, a new hire, to be reprimanded.

legitimate and consent voluntary. On March 7, 2018, appellant pled guilty to both charges. On March 21, 2018, the court sentenced appellant to serve five years on each charge, to be served concurrently for a total sentence of five years imprisonment, with three years of mandatory postrelease control. Counsel also indicated that this agreement is a negotiated plea and recommendation and that the state agreed not to oppose early release after three years to Star Community Justice Center. This appeal followed.

**{¶ 9}** In her assignment of error, appellant asserts that the trial court's denial of appellant's motion to suppress evidence constitutes an "abuse of discretion." In particular, appellant argues the search of her vehicle violated due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution as well as her due process rights under the Ohio Constitution.

**{¶ 10}** The state, however, first challenges appellant's right to appeal this matter based on R.C. 2953.08(D), which provides: "A sentence imposed upon a defendant is not subject to review under this section if the sentence if authorized by law, has been recommended jointly by the defendant and the prosecution in the case, and is imposed by a sentencing judge." The Supreme Court of Ohio examined this statute in *State v. Underwood*, 124 Ohio St.3d 365, 2010-Ohio-1, 922 N.E.2d 923, ¶ 16 and explained that R.C. 2953.08(A) provides a defendant's right to appeal based on specific grounds. However, "[s]ubsection (D)(1) provides an exception to the defendant's ability to appeal. * * * In other words, a sentence that is 'contrary to law' is appealable by a defendant; however, an agreed-upon sentence may not be if (1) both the defendant and the state agree to the sentence, (2) the trial court imposes the agreed sentence, and (3) the sentence is authorized by law. R.C. 2953.08(D)(1). If all three conditions are met, the defendant may not appeal the sentence." *Underwood* at ¶ 16.

**{¶ 11}** Appellant argues, however, that she does not challenge her sentence, but rather is

challenges the trial court's denial of her motion to suppress. Recently, this court addressed this issue in *State v. Spangler*, 4th Dist. Lawrence No. 16CA1, 2016-Ohio-8583. In *Spangler*, the defendant pled guilty to two counts of aggravated robbery and two weapons-related crimes. Later, Spangler asserted that his convictions and guilty plea should be set aside because (1) his counsel was ineffective and failed to file a motion to suppress evidence based on an improper vehicle stop, and (2) the trial court erred by denying counsel's motion to suppress statements. *Spangler* at ¶ 2. This court held, however, that R.C. 2953.08(D)(1) did not apply because Spangler contested his plea and his conviction, rather than his sentence. Thus, R.C. 2953.08(D)(1) did not prohibit the appeal.

**{¶ 12}** Although R.C. 2953.08(D)(1) does not preclude appellant's appeal in this matter, we point out that appellant's guilty plea also constitutes a waiver of her right to challenge the trial court's motion to suppress evidence decision. Generally, a guilty plea is a complete admission of guilt. *See, e.g., State v. Wheeler*, 2d Dist. Montgomery No. 24112, 2011-Ohio-3423; *State v. Barrett*, 2d Dist. Montgomery No. 24150, 2011-Ohio-2303, ¶ 3; Crim.R. 11(B)(1). The United States Supreme Court held that "[a] guilty plea * * * renders irrelevant those constitutional violations not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is validly established." *Menna v. New York*, 423 U.S. 61, 62, 96 S.Ct. 241, 45 L.Ed.2d 195, fn. 2 (1975). Thus, the Supreme Court of Ohio acknowledged that a defendant who voluntarily, knowingly, and intelligently enters a guilty plea with the assistance of counsel "may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, citing *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 36 L.Ed.2d 235.

**{¶ 13}** "Generally, a guilty plea waives all appealable errors that may have occurred in the trial

court, unless the errors precluded the defendant from knowingly, intelligently, and voluntarily entering a guilty plea." *State v. Grove*, 8th Dist. Cuyahoga No. 103042, 2016-Ohio-2721, ¶ 26; *State v. Wheeler*, 4th Dist. Highland No. 15CA21, 2016-Ohio-5503, ¶ 5. In light of that principle, in *Spangler* we held that the defendant's guilty plea precluded his claim that the trial court erred by denying his motion to suppress. *Spangler* at ¶ 17. *See also State v. Johnson*, 4th Dist. Hocking No. 14CA16, 2015-Ohio-854 (guilty plea precluded right to challenge the trial court's decision on motion to suppress); *State v. Lee*, 4th Dist. Washington No. 13CA42, 2014-Ohio-4898 (appellant forfeited her right to appeal trial court's decision on motion to suppress because she had entered a guilty plea).

**{¶ 14}** Like *Lee* and *Johnson*, appellant does not argue here that her plea was involuntarily. Thus, by pleading guilty she has waived her argument concerning the motion to suppress evidence.

**{¶ 15}** Accordingly, based upon the foregoing reasons, we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

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JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Lawrence County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted by the trial court or this court, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the appellant fo file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 1 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.