[Cite as *State v. Beavers*, 2009-Ohio-4214.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 08AP-1070
v.	:	(C.P.C. No. 08CR01-107)
Paula A. Beavers,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 20, 2009

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*, for appellee.

Olivia O. Singletary, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Paula A. Beavers, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

{¶2} On the evening of July 9, 2007, Columbus Police Officers Christopher Jones and Mark Baker were patrolling the area of South Linden and Cleveland Avenue when they stopped a car driven by Robert Spraggins. Appellant was a passenger in the car. As the officers approached the car, the driver sped off and nearly struck Officer Baker.

{¶3} The officers pursued the fleeing car and as they caught up, Spraggins suddenly stopped his car, got out and fled. The officers apprehended Spraggins and returned to secure the car and the remaining passengers. Officer Jones asked appellant for her identification. She initially gave him a photo identification that did not match her appearance. The officer then asked appellant for her real name and another form of identification. The officer obtained a social security card and used it to run a LEADS search on appellant.

{¶4} The LEADS search revealed that appellant had an outstanding warrant for a probation violation. Officer Jones verified the warrant and arrested appellant. The officer then searched appellant and her purse. Officer Jones found an unlabeled pill bottle in appellant's purse. Inside the bottle was a white, powder substance that Officer Jones thought was heroin. A laboratory test later confirmed that the substance was heroin.

{¶5} As a result of these events, a Franklin County Grand Jury indicted appellant with one count of possession of heroin in violation of R.C. 2925.11, a felony of the fifth degree. Appellant entered a plea of not guilty and proceeded to trial. The jury found appellant guilty of possession of heroin and the trial court sentenced appellant accordingly.

{¶6} Appellant appeals and assigns the following errors:

> I. APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL WHEN COUNSEL FAILED TO FILE A MOTION TO SUPPRESS ALL EVIDENCE FROM THIS UNLAWFUL TRAFFIC STOP IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS.
>
> II. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ADMITTED INTO EVIDENCE THE PILL BOTTLE

> AND HEROINE [SIC] WHICH WERE UNLAWFULLY OBTAINED FROM AN ILLEGAL SEARCH.

{¶7} Appellant contends in her first assignment of error that she received ineffective assistance of trial counsel. Specifically, she contends that she received deficient representation because her trial counsel failed to file a motion to suppress the evidence obtained from the traffic stop. We disagree.

{¶8} To prevail on a claim of ineffective assistance of counsel, appellant must satisfy the two-prong test enunciated in *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052; accord *State v. Bradley* (1989), 42 Ohio St.3d 136. Initially, appellant must show that counsel's performance was deficient. To meet that requirement, appellant must show counsel's error was so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Appellant may prove counsel's conduct was deficient by identifying acts or omissions that were not the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. *Strickland* at 690. Appellant's failure to satisfy one prong of the Strickland test negates a court's need to consider the other. Id. at 697.

{¶9} In analyzing the first prong under *Strickland*, there is a strong presumption that defense counsel's conduct falls within a wide range of reasonable professional assistance. Id. at 689. Appellant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. Id., citing *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158, 164.

{¶10} If appellant successfully proves that counsel's assistance was deficient, the second prong under *Strickland* requires appellant to prove prejudice in order to prevail. Id. at 692. To meet that prong, appellant must show counsel's errors were so serious as

to deprive her of a fair trial, "a trial whose result is reliable." Id. at 687. Appellant would meet this standard with a showing "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

{¶11} Appellant challenges the initial stop of Spraggins' car. She alleges that because the traffic stop was "questionable," trial counsel should have filed a motion to suppress the evidence obtained as a result of the traffic stop. Failure to file a suppression motion does not constitute per se ineffective assistance of counsel. *State v. Madrigal*, 87 Ohio St.3d 378, 389, 2000-Ohio-448, citing *Kimmelman v. Morrison* (1986), 477 U.S. 365, 384, 106 S.Ct. 2574, 2587. Failure to file a motion to suppress constitutes ineffective assistance of counsel only if, based on the record, the motion would have been granted. *State v. Randall*, 10th Dist. No. 03AP-352, 2003-Ohio-6111, ¶15; *State v. Cline*, 10th Dist. No. 05AP-869, 2006-Ohio-4782, ¶21.

{¶12} Under Ohio law, any traffic violation, even a minor traffic violation, witnessed by a police officer is, standing alone, sufficient grounds to stop a car observed violating the ordinance. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 11-12; *State v. Molk*, 11th Dist. No. 2001-L-146, 2002-Ohio-6926, ¶15. Although the officers that testified at trial could not recall why they stopped Spraggins' car,[1] appellant testified that the officers told her they stopped Spraggins' car because the car's headlights were not on. She also admitted that Spraggins' car had a problem with its headlights. Driving without headlights (from sunset to sunrise) violates both R.C. 4513.03 and Columbus City Code 2137.02.[2]

[1] One of the officers in the police car that initiated the stop of Spraggins' car did not testify at trial.

[2] Officer Jones testified that the traffic stop occurred about 11:30 p.m.

Given this evidence, appellant has not shown that a motion to suppress, based upon an unlawful stop, would have been granted. Accordingly, appellant has failed to demonstrate that she was denied effective assistance of counsel. *Randall* at ¶19. Appellant's first assignment of error is overruled.

{¶13} Appellant contends in her second assignment of error that the trial court committed plain error when it admitted into evidence the pill bottle and heroin obtained from the alleged unlawful traffic stop. We disagree.

{¶14} Appellant's trial counsel did not object to the admission of the pill bottle and heroin and has, therefore, waived all but plain error. *State v. Taylor* (1997), 78 Ohio St.3d 15, 26, 1997-Ohio-243. Under Crim.R. 52(B), plain errors affecting substantial rights may be noticed by an appellate court even though they were not brought to the attention of the trial court. To constitute plain error, there must be: (1) an error, i.e., a deviation from a legal rule, (2) that is plain or obvious, and (3) that affected substantial rights, i.e., affected the outcome of the trial. *State v. Barnes* (2002), 94 Ohio St.3d 21, 27. Even if an error satisfies these prongs, appellate courts are not required to correct the error. Appellate courts retain discretion to correct plain errors. Id.; *State v. Litreal*, 170 Ohio App.3d 670, 2006-Ohio-5416, ¶12. Courts are to notice plain error under Crim.R. 52(B) " 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Barnes*, quoting *State v. Long* (1978), 53 Ohio St.2d 91, paragraph three of syllabus.

{¶15} Appellant alleges that the evidence found in her purse was improperly admitted because it was obtained as the result of an unlawful stop of Spraggins' car. However, as we have previously determined, there was evidence at trial that the officers

lawfully stopped Spraggins' car after witnessing the car driving without its headlights on. Thus, the evidence was not obtained from an unlawful traffic stop.

{¶16} Additionally, we note that the officer searched appellant's purse after arresting her on an outstanding warrant. Generally, law enforcement officers may arrest an individual on a valid warrant. *State v. Smith*, 10th Dist. No. 04AP-859, 2005-Ohio-2560, ¶39, citing *State v. Groves* (Feb. 23, 2000), 4th Dist. No. 99 CA 2630. A law enforcement officer may conduct a warrantless search of both the arrestee and the area within the individual's immediate control whenever the search is incident to a lawful arrest. *State v. Dingess*, 10th Dist. No. 01AP-1232, 2002-Ohio-2775, ¶9, citing *Chimel v. California* (1969), 395 U.S. 752, 763, 89 S.Ct. 2034, 2040. Normally, a woman's purse is within her immediate control. *State v. Robinson* (1998), 131 Ohio App.3d 356, 358. See also *State v. Washington* (May 1, 2001), 10th Dist. No. 00AP-663 (holding a police officer was authorized to search appellant's purse under the search incident to lawful arrest exception to the warrant requirement). Thus, not only was the initial stop of Spraggins' car lawful, but the subsequent search of appellant's purse after her arrest was also lawful.

{¶17} The trial court did not err, let alone commit plain error, by admitting the pill bottle and heroin found in appellant's purse. Appellant's second assignment of error is overruled.

{¶18} In conclusion, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.