[Cite as *State v. Canter*, 2009-Ohio-4837.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-47 (C.P.C. No. 2008 CRB 20779)
Steven R. Canter,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 10, 2009

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellee.

Lorie L. McCaughan, for appellant.

APPEAL from the Franklin County Municipal Court.

TYACK, J.

{¶1} Steven R. Canter is appealing from his convictions following no contest pleas to drug abuse and possessing drug paraphernalia. He assigns a single error for our consideration:

> The trial court erred to the prejudice of Appellant by denying Appellant's Motion to Suppress evidence illegally seized by the Columbus Police Department in violation of the Due Process Clause of the Fourteenth Amendment and comparable provisions of the Ohio Constitution.

{¶2} Canter was searched and arrested without the use of a warrant. Such warrantless police activity is "per se unreasonable unless subject to a well-delineated exception" to the requirement. See *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507. The State submits that a number of exceptions apply to the facts of this case.

{¶3} Canter was a passenger in a motor vehicle which was stopped for a traffic violation. When it was discovered that the driver of the car had no valid license, the police decided to arrest the driver and impound the vehicle. After being ordered out of the car by the police, Canter got out with a small backpack on his back. He was directed to return the backpack to the vehicle, which he did. Later, the backpack was searched and was found to contain a small amount of marijuana and a set of scales. Canter explained that he carried a digital scale when he was buying marijuana so he could weigh his purchase to assure himself that he was not being cheated by an unethical drug dealer.

{¶4} The first exception to the warrant requirement presented by these facts is a search incident to a lawful arrest. Clearly, the arrest of the driver of the car for driving without a valid license was a lawful arrest. The question then becomes whether the search of the car and its contents was a search incident to the lawful arrest.

{¶5} The United States Supreme Court has recently clarified the law in this area. In *Arizona v. Gant* (2009), ____ U.S. ____, the United States Supreme Court held that the search of Rodney Gant was not incident to a lawful arrest when Gant was handcuffed and locked in the back of a patrol car when his vehicle was searched. Under the circumstances, Gant could not have accessed his car to retrieve weapons or evidence at the time of the search. The United States Supreme Court also noted that, in the

automobile context, a search incident to arrest may also exist when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.

{¶6} In Canter's case, the driver had been arrested, handcuffed, and placed in a police patrol car before the search occurred. If the driver had been alone in the car, no search incident to the driver's arrest would be applicable. However, the driver, Canter, and three others, were in the vehicle when the vehicle was stopped. Although the driver could not access his vehicle, Canter and the other passengers could. The *Gant* case does not tell us what to do when this additional factor is present. Since the set of facts present in Canter's case do not yet fit into a well-defined, clearly delineated exception, *Katz* tells us that the search was per se unreasonable until another well-defined, well-delineated exception can be found.

{¶7} That exception is the so-called automobile exception, flowing from *Carroll v. United States* (1925), 267 U.S. 132, 45 S.Ct. 280. In the automobile exception, if police have probable cause to believe that a motor vehicle contains evidence of a crime, police can search the vehicle before obtaining a search warrant. The exception is based upon the fact that an automobile can readily be driven away before a search warrant can be obtained. If police impound the vehicle while the paperwork to obtain the search warrant is being processed, the intrusion on the individual is worse than if a quick search is conducted and the driver can be on his or her way, assuming the search produces no incriminating evidence.

{¶8} In Canter's case, both police officers involved in the stop and arrests smelled the odor of marijuana smoke coming from the vehicle. The distinctive odor provided probable cause to believe that marijuana was in the vehicle. The probable

cause to believe that evidence of drug abuse was in the vehicle made a search of the vehicle permissible and legal under the *Carroll* doctrine. As noted earlier, Canter originally got out of the car with a backpack on his back. One of the police officers who pulled the car over directed Canter to return the backpack to the motor vehicle. As a result of it being in the motor vehicle, the backpack was searched and found to contain marijuana and a set of scales. We do not find the police officer's directing Canter to put the backpack back in the car to be unreasonable. Police officers have the right to take reasonable steps to protect themselves. The backpack was large enough to contain a weapon and contain at least one hard object, the scales. In theory, the officers could have searched the backpack or at least conducted a pat-down of the bag. Upon finding a hard object in the backpack, they could have asked to see the hard object.

{¶9} The officers chose the less intrusive course of conduct, namely, directing Canter to put the backpack back in the car. This chore was reasonable, under the circumstances.

{¶10} Also, having smelled marijuana smoke emanating from the vehicle, the officers did not have to allow the driver or the passengers to simply walk away carrying an object which could contain marijuana. The officers could take reasonable steps to assure that any marijuana which was in the area stayed in the area.

{¶11} As a result of the above, we overrule the single assignment of error. We, therefore, affirmed the judgment of the Franklin County Municipal Court.

Judgment affirmed.

McGRATH and CONNOR, JJ., concur.

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