[Cite as *State v. McKenzie,* 2011-Ohio-5851.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-250
v.	:	(C.P.C. No. 10CR-11-6497)
Brandon J. McKenzie,	:	(ACCELERATED CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 10, 2011

Ron O'Brien, Prosecuting Attorney, and Sheryl L. Prichard, for appellee.

Paul L. Wallace, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} Brandon J. McKenzie, defendant-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, in which the court denied his motion to suppress evidence.

{¶ 2} On May 2, 2010, appellant was in his vehicle in the parking lot of a store when Columbus police officers, D.L. Worthington and R. Porter, witnessed him passing a plastic bag to another person standing outside the vehicle. After approaching appellant and finding a plastic baggie with white powder under the vehicle, Worthington and Porter

called Officer Greg Parini to the scene, and Worthington told him that appellant was under arrest for possession of drugs. Parini then searched appellant, at which time he found heroin in appellant's pants pocket. Appellant was subsequently indicted on one count of possession of heroin, in violation of R.C. 2925.11, which is a fourth-degree felony. On January 20, 2011, appellant filed a motion to suppress the discovery of the drugs on his person, as well as any statements made by him. A suppression hearing was held on March 9, 2011, after which the trial court denied appellant's motion to suppress. Appellant then pled no contest to the charge. On March 15, 2011, the trial court issued a judgment finding appellant guilty of possession of heroin, and sentenced appellant to three years of community control. Appellant appeals the judgment of the trial court, asserting the following assignment of error:

> THE TRIAL COURT ERRED WHEN IT FAILED TO GRANT THE APPELLANT'S MOTION TO SUPPRESS ANY EV[ID]ENCE OF CONTRAB[AN]D FOUND ON APPELLANT'S PERSON AS WELL AS ANY [STATEMENTS] MADE BY APPELLANT TAKEN AS A RE[SU]LT OF THE WARRANTLESS SEARCH BY POLICE[.]

{¶ 3} Appellant argues in his assignment of error that the trial court erred when it denied his motion to suppress. The standard of review with respect to a motion to suppress is limited to determining whether the trial court's findings are supported by competent, credible evidence. *State v. Lattimore*, 10th Dist. No. 03AP-467, 2003-Ohio-6829, ¶5. In a hearing on a motion to suppress, the trial court assumes the role of trier of fact, and, because the court is in the best position to resolve questions of fact and evaluate the credibility of witnesses, a reviewing court "must accept the trial court's factual findings and the trial court's assessment of witness credibility." Id. However, while

"[a]ccepting those facts as true, an appellate court must independently determine, as a matter of law, without deference to the trial court's conclusion, whether the facts meet the applicable legal standard." Id. The state bears the burden of establishing that a warrantless search, which is per se unreasonable, is nevertheless reasonable pursuant to one or more exceptions to the Fourth Amendment's warrant requirement. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, paragraph two of the syllabus.

{¶ 4} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them, per se, unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507. The Supreme Court of Ohio has explicitly recognized the following seven exceptions to the requirement that a warrant be obtained prior to a search: (a) a search incident to a lawful arrest; (b) consent signifying waiver of constitutional rights; (c) the stop-and-frisk doctrine; (d) hot pursuit; (e) probable cause to search, and the presence of exigent circumstances; (f) the plain-view doctrine; or (g) an administrative search. See *State v. Price* (1999), 134 Ohio App.3d 464, 468. The ultimate touchstone of the Fourth Amendment is reasonableness. *Flippo v. West Virginia* (1999), 528 U.S. 11, 13, 120 S.Ct. 7, 8. Generally, actions taken by the police are deemed reasonable under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify the action. *Brigham City v. Stuart* (2006), 547 U.S. 398, 404, 126 S.Ct. 1943, 1948, citing *Scott v. United States* (1978), 436 U.S. 128, 138, 98 S.Ct. 1717, 1723. Accordingly, the officer's subjective motivation is irrelevant to the analysis. See id.

{¶ 5} In the present case, appellant's argument is that the trial court erred when it permitted the use of hearsay testimony to establish the basis for the arrest. Specifically, appellant contends that only Officer Parini testified at the suppression hearing, and he testified as to what Officers Worthington and Porter told him they had witnessed appellant doing in the parking lot. Appellant asserts that, with only Parini's testimony available, the trial court was forced to speculate what Worthington and Porter were thinking with respect to what they saw and how their observations factored into the arrest of appellant.

{¶ 6} At the hearing, Parini testified that Worthington told him he had witnessed appellant hand drugs to another individual in a clear plastic baggie, the individual then tossed the baggie under the vehicle when he saw Worthington and Porter approaching, and they arrested appellant. Before placing appellant in his cruiser to transport, Parini searched appellant and emptied his pockets. During the search, Parini found ten balloons inside a pill bottle. It was subsequently determined that the balloons contained heroin. Parini testified he had no other knowledge of the events leading to appellant's arrest because he was not present at that time.

{¶ 7} We find appellant's arguments without merit. The interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself. *United States v. Raddatz* (1980), 447 U.S. 667, 679, 100 S.Ct. 2406, 2414. It is well-established that, at a suppression hearing, the court may rely on evidence even though that evidence would not be admissible at trial. *Maumee v. Weisner*, 87 Ohio St.3d 295, 298, 1999-Ohio-68, citing *Raddatz* at 679, 100 S.Ct. at 2414. The Rules of Evidence do not apply to suppression hearings. *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, ¶17, citing Evid.R. 101(C)(1) and 104(A). Therefore, a trial court may rely upon hearsay at a

suppression hearing. See *State v. Edwards*, 107 Ohio St.3d 169, 2005-Ohio-6180, ¶14; *State v. Scruggs*, 12th Dist. No. CA2006-11-042, 2007-Ohio-6416, ¶12-15 (even though the testifying police officer at the suppression hearing did not observe critical portions of the drug transaction, the trial court may rely upon the officer's hearsay testimony regarding information provided by a second officer who witnessed the drug transaction to determine whether probable cause to stop and arrest the defendant existed). For these reasons, in the present case, the trial court did not err when it relied upon Parini's testimony relating to what Worthington and Porter told him to establish facts occurring prior to Parini's arrival at the crime scene.

{¶ 8} Appellant also argues under this assignment of error that the trial court erred when it did not allow him to confront Worthington and Porter at the suppression hearing regarding what prompted their suspicion of illegal activity that promoted the stop of appellant, in violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution, which states that "[i]n all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him." We disagree with appellant's contention. The United States Supreme Court has repeatedly distinguished between the scope of a defendant's right to confrontation in trial and pretrial proceedings. See *Pennsylvania v. Ritchie* (1987), 480 U.S. 39, 54, 107 S.Ct. 989, 999; *State v. Williams* (1994), 97 Ohio App.3d 289, 291. The right to confrontation, which includes the right to physically face and cross-examine witnesses, is not a constitutionally compelled rule of pretrial proceedings. See *Ritchie* at 52-53, 107 S.Ct. at 998-99; see also *Raddatz* at 679, 100 S.Ct. at 2414; *Williams* at 291; *State v. Saunders*, 2d Dist. No. 22621, 2009-Ohio-1273, ¶13 (no denial of right to confrontation at suppression hearing when police

officer testified as to the statement of a witness). Thus, appellant's right to confrontation was not violated when Worthington and Porter did not testify at the suppression hearing. For the foregoing reasons, the trial court did not err when it denied appellant's motion to suppress, and appellant's assignment of error is overruled.

{¶ 9} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and DORRIAN, JJ., concur.

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