

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2011-T-0075</b>
FREDERICK D. JOHNSON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 61.

Judgment: Affirmed.

*Dennis Watkins*, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

*Jay Blackstone*, Summit Professional Center, 6600 Summit Drive, Canfield, OH 44406-9510; and *Scott R. Cochran*, Atway & Cochran, L.L.C., 19 East Front Street, Suite 1, Youngstown, OH 44503 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Frederick D. Johnson, appeals the judgment of the Trumbull County Court of Common Pleas overruling an oral motion to suppress evidence, which was made on behalf of his co-defendant outside the presence of the jury during trial. For the reasons that follow, the judgment is affirmed.

{¶2} The Trumbull Ashtabula Geauga drug task force (“TAG”) became aware of drug-trade activity in Warren, Ohio, involving appellant and his companion Brandi

Watson. A confidential informant ("CI") made several controlled buys under surveillance, working in conjunction with TAG. The CI soon learned that appellant and Watson were planning a trip to Detroit, Michigan, to purchase a large quantity of drugs. As appellant and Watson had previously been observed preparing drugs for distribution out of an auto body shop, TAG agents set up surveillance around the shop in anticipation that, at some point, the duo would return to break down the product from Detroit. Surveillance was additionally set up at a residence on Wallace Street where the two were also previously observed.

{¶3} Appellant was driving back from Detroit in a gold Oldsmobile sedan registered in Watson's name. Watson was a passenger. Upon returning to Warren, however, appellant got the sense he was being followed. Indeed, an unmarked TAG enforcement cruiser was watching and following the sedan. Appellant soon increased his speed and began maneuvering the vehicle in a reckless fashion. Other TAG enforcement cruisers joined the pursuing suspect with their flashing headlamps on. Soon, Warren police officers in marked cruisers with flashing lights and blaring sirens joined what had become a full police chase. Items, identified as a gun and a packet of cocaine, were observed flying out of the window of the fleeing automobile and were later recovered. The chase became too dangerous for officers to pursue; the Oldsmobile had rammed several police vehicles, driven on the sidewalk, and cut through back yards in residential areas.

{¶4} Soon after officers disengaged pursuit, the Oldsmobile was found abandoned nearby. The officers followed footprints in the snow to where they found a

gun and a large bag filled with heroin. The police searched the Oldsmobile and also executed warrants on the auto body shop and the residence on Wallace Street.

{¶5} Officers were able to locate Watson, who was taken to the Trumbull County Jail. TAG Detective Fred Raines and Alcohol, Tobacco, and Firearms (“ATF”) Agent Matt Harrell interviewed Watson at the jail. Watson made statements implicating herself and appellant in the drug operation, the chase, and the disposal of evidence. Thereafter, appellant turned himself in.

{¶6} On March 18, 2010, a five-count indictment was filed charging appellant with possession of cocaine with firearm and forfeiture specifications; possession of heroin with firearm, forfeiture, and major drug offender specifications; tampering with evidence; having weapons while under disability; and failure to comply with the order or signal of a police officer.

{¶7} The matter was set for trial. Appellant and Watson filed a motion for joint trials, which was granted. Appellant filed a motion to suppress the discarded evidence found near the street, as well as the evidence uncovered at the auto body shop and at the Wallace Street residence. The motion was either overruled by the court by its failure to rule, or withdrawn by the defense (as the prosecutor stated).

{¶8} A jury trial began on March 28, 2011. During trial, both Detective Raines and Agent Harrell testified to the incriminating comments made by Watson during their interview which implicated appellant. On April 1, 2011, the trial was continued for one week while Agent Harrell’s report was obtained. The report was deemed “critical” by the defense as it could reveal inconsistencies in Agent Harrell’s testimony about what Watson said during the interview.

{¶9} On April 7, 2011, the parties returned, having reviewed Agent Harrell's report and Watson's comments therein. Counsel for Watson moved for a mistrial on the basis that there should have been a suppression motion filed. The court allowed a suppression hearing to take place with Agent Harrell as a witness. The focus of the hearing was what Harrell had already testified to on direct examination: the interview with Watson. Watson challenged whether proper *Miranda* rights were timely given and sought to suppress any statements given when she had not been properly advised. During the hearing, the parties questioned Harrell on what was done before and during Watson's statement being taken. The court concluded that there was no constitutional violation and denied Watson's motion to suppress.

{¶10} Appellant was convicted on all counts and ordered to serve 32 years in prison. Appellant timely appeals and raises one assignment of error:

{¶11} "The trial court committed prejudicial error in overruling the motion to suppress the statements given by Co-Defendant Watson to law enforcement officials both prior to and after the *Miranda* warnings were given to Co-Defendant Watson while she was in custody."

{¶12} Appellant argues the court erred in denying co-defendant Watson's oral motion to suppress her statements given during the interview with police.

{¶13} Crim.R. 12(C) expressly states that motions to suppress evidence on the ground that the evidence was illegally obtained, including statements, must be made before trial. Specifically, the motion "shall be made within 35 days after arraignment or seven days before trial, whichever is earlier. Crim.R. 12(D). The court has discretion to extend the time for making a motion to suppress when in the interest of justice. *Id.*

Failure to abide by Crim.R. 12(C) or Crim.R. 12(D) constitutes waiver of the defenses or objections, though the court for good cause shown may grant relief from the waiver in its discretion. Crim.R. 12(H). Here, the trial court exercised its discretion, granted relief from the waiver, and allowed Watson's suppression hearing to proceed outside the presence of the jury in the middle of trial, even though there were multiple opportunities to previously raise the issue. However, the record in this case indicates that this matter concerns Watson's suppression motion based on Watson's constitutional rights. Appellant failed to make a suppression motion concerning Watson's statements thereby waiving the issue on appeal.

{¶14} Pursuant to Crim.R. 47, a motion shall state with particularity the grounds upon which it is made. While appellant filed a motion to suppress prior to trial, his motion did not make mention of any statements given by his co-defendant even though he was aware of those statements. The state's answer to discovery states that appellant had been provided a copy of a written report detailing oral statements made by co-defendant Watson. Instead of seeking to suppress Watson's statements, appellant's pre-trial motion sought to suppress the evidence found at the auto body shop, the Wallace Street residence, and inside the Oldsmobile. He also sought to suppress the abandoned evidence found near the Oldsmobile and recovered from the street. Thus, appellant waived the issue concerning Watson's statements by not including it in his own suppression motion and not joining Watson's motion at trial.

{¶15} Even if appellant had attempted to join Watson's motion or include Watson's statements in his own motion, he would lack standing to assert someone else's constitutional rights. "[A]s a general proposition, the issue of standing involves

two inquiries: first, whether the proponent of a particular legal right has alleged ‘injury in fact,’ and, second, whether the proponent is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties.” *Rakas v. Illinois*, 439 U.S. 128, 139 (1978). Here, appellant is arguing that co-defendant Watson’s Fifth Amendment right to be free from self-incrimination was violated when she gave incriminating statements during a custodial interrogation without first being Mirandized. See generally *State v. Serafin*, 11th Dist. No. 2011-P-0036, 2012-Ohio1456, ¶32, citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). (Statements obtained during a custodial interrogation of a defendant are inadmissible unless the police have used the requisite procedural safeguards to secure the defendant’s Fifth Amendment privilege against self-incrimination.)

{¶16} However, the United States Supreme Court has weighed in on this issue, continuously concluding that the Fifth Amendment privilege against compulsory self-incrimination is a personal one: “By its very nature, the privilege is an intimate and personal one. It respects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation.” *Couch v. United States*, 409 U.S. 322, 327. The Court went on to reiterate that “the Fifth Amendment privilege is a *personal* privilege: it adheres basically to the person, not to information that may incriminate him.” (Emphasis sic.) *Id.* Thus, appellant is unable to assert any violation of his co-defendant’s Fifth Amendment right arising out of the failure to Mirandize.

{¶17} While appellant could not object to the constitutionality of his co-defendant’s statements, he could have still objected to the statements on some other basis. He failed to do so. In fact, the direct-examination testimony of Detective Raines

and Agent Harrell regarding these statements were not objected to at all by appellant during trial.

{¶18} Further, even if appellant had not waived the issue and even if he had standing to assert Watson's Fifth Amendment rights, nothing in this record substantiates the claim that there was any constitutional violation in this case. The evidence indicates that Watson voluntarily gave statements after she was informed of her rights. Not even Watson assigned the trial court's denial of her suppression motion as error in her pending appeal before this court in *State v. Watson*, 11th Dist. No. 2011-T-0053.

{¶19} Thus, appellant waived the issue by failing to include it in any motion to suppress. Even if the issue had been included, appellant lacked standing to assert any *Miranda* rights violation of his co-defendant. If this were to be treated as an evidentiary issue, there is still no objection to review. Appellant did not object to the testimony at trial in any manner and has thus waived any error. Even if this court were to address the merits by ignoring the legal principles of waiver and standing, this record does not reveal any constitutional infraction of Watson's rights.

{¶20} The judgment of the Trumbull County Court of Common Pleas is therefore affirmed.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.