[Cite as *State v. Grant*, 2015-Ohio-2464.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-12-014
	:	O P I N I O N
- vs -		6/22/2015
	:	
GREGORY W. GRANT,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 14CR11443

Martin P. Votel, Preble County Prosecuting Attorney, Eric E. Marit, Preble County Courthouse, 101 East Main Street, Eaton, Ohio 45320, for plaintiff-appellee

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HENDRICKSON, J.

{¶ 1} Defendant-appellant, Gregory W. Grant, appeals from his convictions for possession of drugs following his no contest plea in the Preble County Court of Common Pleas. Grant argues the trial court erred in overruling his motion to suppress evidence obtained from an illegal search and seizure. For the reasons set forth below, we overrule Grant's arguments and affirm his convictions.

{¶ 2} On December 31, 2013, Grant was a passenger in a car driven by Amber Hickman. Hickman crashed her car after fleeing from a village of Camden police officer. Deputies Terri Stephenson and Paul Plaugher with the Preble County Sheriff's Office were dispatched to the scene to aid in the investigation. After Hickman received a citation, Deputy Stephenson offered to drive Hickman and Grant back to Eaton, Ohio. Stephenson conducted a pat-down of both individuals prior to transporting them in order to check for weapons. During Stephenson's pat-down of Grant, she felt a soft lump in Grant's left sock and heard a crinkling sound. Stephenson pulled a cellophane wrapper containing Xanax and Valium pills out of Grant's sock. Grant was unable to produce prescriptions for the pills, and he was arrested. While being transported to the Preble County Sheriff's Office by Deputy Plaugher, Grant told Plaugher that one set of pills was his and that the other set of pills had been given to him by a family member.

{¶ 3} On January 7, 2014, Grant was indicted on one count of possession of drugs in violation of R.C. 2925.11(A)(C)(2)(a) (Xanax) and one count of possession of drugs in violation of R.C. 2925.11(A)(C)(1)(a) (Valium), both felonies of the fifth degree as Grant had a prior conviction for a drug abuse offense. Grant filed a motion to suppress, arguing that Stephenson's conduct in removing the pills from his person was unconstitutional under the Fourth Amendment. He sought suppression of "all evidence obtained as a result of the search of Defendant just prior to being placed in the police cruiser to be transported * * * [which] should include the exclusion of all contraband and statements made by Defendant Grant as fruit of the poisonous tree."

{¶ 4} A hearing on Grant's motion was held on July 8, 2014. The state presented testimony from Stephenson and Plaugher. Stephenson explained that pursuant to the sheriff department's policy, she conducted a pat-down of Hickman and Grant to ensure that they did not have weapons on their persons before allowing them into her police cruiser. Stephenson

testified that using open hands, she rubbed over both individuals' bodies, including around their waist bands, shoes, and socks. Stephenson did not find any weapons on Hickman. When patting down Grant, Stephenson felt a lump in Grant's sock and heard the crinkling of cellophane. She testified that she has done "thousands" of pat-downs in her 20-year career and had "found drugs in people's sock areas many times." She also testified that it was immediately apparent that Grant had pills in his sock and that a cellophane wrapper from a cigarette package was being used to store the pills. Stephenson explained that a cellophane wrapper has a distinct sound that she is familiar with and, in her experience, people commonly use cellophane wrappers to store drugs and contraband. She further explained that it is "not common" for people to store legal items in their socks and, in her experience, when items are found in a person's sock, it is "more often than not contraband."

{¶ 5} Stephenson testified that she removed the cellophane wrapper from Grant's sock and discovered that the wrapper contained Xanax and Valium pills. She asked Grant to identify the pills, and Grant told her they were his "medication." Grant did not, however, produce a prescription for the drugs.

{¶ 6} Plaugher testified that he arrested and transported Grant to jail following the discovery of the Xanax and Valium. While being transported, Grant made unsolicited statements to Plaugher that "one of the pills was his, and the other was given to him by a family member." Plaugher instructed Grant to stop speaking and read Grant his *Miranda* rights. Grant later repeated his story regarding where he obtained the pills.

{¶ 7} On July 14, 2014, the trial court denied Grant's motion to suppress, stating the following:

> Within the context of this case, the question is whether Deputy Stephenson immediately knew that she was feeling contraband when she conducted the pat down of [Grant's] left ankle. Clearly the search of that area of [Grant's] body was justified.

> The Court finds that Deputy Stephenson knew immediately that she had found contraband. She heard the cellophane wrapper and felt the bulky contents. While she clearly could not know what controlled substance was located in the cellophane wrapper, she knew form her experiences and the circumstances that she was feeling contraband.
>
> In addition, the Court is convinced that the pat down for weapons was not a mere pretext for an exploratory search.

{¶ 8} Following the denial of his motion, Grant entered a no contest plea to the charges set forth in the indictment. Grant was subsequently sentenced to three years of community control, his driver's license was suspended for six months, and he was ordered to pay a $500 fine.

{¶ 9} Grant appealed, raising as his sole assignment of error the following:

{¶ 10} THE TRIAL COURT ERRED [TO] THE PREJUDICE OF DEFENDANT-APPELLANT IN DENYING APPELLANT'S MOTION TO SUPPRESS.

{¶ 11} Grant acknowledges that Stephenson was authorized to conduct a pat-down search for weapons prior to placing him in the police cruiser, pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). Nonetheless, Grant argues that the spirit of *Terry* was violated by Stephenson as the "totality of the surrounding circumstances" did not give Stephenson "probable cause to believe the bulge she felt during the 'pat-down' was contraband."

{¶ 12} Appellate review of a trial court's denial of a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, 12th Dist. Preble No. CA2006-10-023, 2007-Ohio-3353, ¶ 12. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. *Id*. Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, 12th Dist. Butler No. CA2005-03-074, 2005-Ohio-6038, ¶ 10. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without

deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶ 12.

{¶ 13} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution protect individuals from unreasonable governmental searches and seizures. *State v. Casey*, 12th Dist. Warren No. CA2013-10-090, 2014-Ohio-2586, ¶ 18; *State v. Thomas*, 12th Dist. Warren No. CA2012-10-096, 2013-Ohio-3411, ¶ 19. Generally, searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507 (1967). "One such exception was recognized in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968)." *Minnesota v. Dickerson*, 508 U.S. 366, 372-373, 113 S.Ct. 2130 (1993).

{¶ 14} Under *Terry* and its progeny, the police may search for weapons when conducting a pat-down of a suspect. *State v. Evans*, 67 Ohio St.3d 405, 414 (1993). In those instances where a police officer is placing a civilian in the officer's police cruiser, "the officer can lawfully perform a 'pat-down' weapons search, even in the absence of reasonable suspicion of criminal activity," in order to protect the officer's safety and to prevent an "ambush from the rear." *State v. Fleak*, 12th Dist. Clermont No. CA2003-07-056, 2004-Ohio-1371, ¶ 12, citing *Evans* at 410 and *State v. Lozada*, 92 Ohio St.3d 74, 79 (2001). However, the search for weapons, "must, like any other search, be strictly circumscribed by the exigencies which justify its initiation. * * * Thus it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby * * *." *Terry* at 25-26.

{¶ 15} As stated above, Grant does not challenge Stephenson's right to conduct a *Terry* pat-down prior to Grant being placed in the police cruiser. Rather, Grant challenges

Stephenson's removal, or seizure, of the items contained in his sock. Grant argues that Stephenson had no cause to relate the object she felt in Grant's sock to criminal activity prior to its seizure. He contends that Stephenson did not know that the items in his sock were contraband until *after* she removed the items, thereby violating his Fourth Amendment rights.

{¶ 16} In *Minnesota v. Dickerson*, the United States Supreme Court recognized that "[i]f a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons." 508 U.S. at 375. The Court reasoned that "if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context." *Id.* at 375-376.

{¶ 17} "The 'immediately apparent' requirement of the 'plain feel' doctrine is satisfied if the officer has probable cause to associate the object with criminal activity, based on the totality of the surrounding circumstances." *State v. Mullins*, 12th Dist. Butler No. CA2007-08-194, 2008-Ohio-3516, ¶ 14, citing *State v. Kursim*, 12th Dist. Clermont No. CA2002-04-034, 2002-Ohio-6880, ¶ 15. An officer may not manipulate the object to determine its incriminating nature. *State v. Rodriguez*, 12th Dist. Preble No. CA2009-09-024, 2010-Ohio-1944, ¶ 30, citing *Dickerson* at 375-376.

{¶ 18} Based upon the totality of the surrounding circumstances, we find that Stephenson had probable cause to believe that the cellophane-wrapped object in Grant's sock was contraband. The record demonstrates that Stephenson both heard the crinkling of cellophane when patting down Grant's sock and felt a lump in the sock. Stephenson testified that, in her experience, cellophane is commonly the manner in which drugs are stored, and that the incriminating nature of the lump in Grant's sock was immediately apparent. From conducting "thousands" of pat-downs over her 20-year career, Stephenson was able to

identify the lump in Grant's sock as pills without manipulating the object. She further knew from her experience and training that it was "not common" for people to store legal items in their socks. Stephenson, therefore, had probable cause to associate the lump in Grant's sock with criminal activity, namely the possession of contraband. *See, e.g., Mullins*, 2008-Ohio-3516 at ¶ 16 (upholding the denial of a motion to suppress where "[t]he officer testified that, given his experience with drug cases, plastic or cellophane is commonly the manner in which drugs are carried, and the incriminating nature of the bump was immediately apparent to him"); *Rodriguez*, 2010-Ohio-1944 at ¶ 31 (finding no Fourth Amendment violation in an officer's pat-down and subsequent seizure of contraband stored in the waistband of a defendant's pants where the officer stated that immediately upon feeling the object he knew it was "a weapon or some kind of contraband"). The fact that Stephenson could not specifically identify the pills as Xanax and Valium prior to removing them from Grant's sock does not mean that her seizure of the cellophane-wrapped pills was in violation of the Fourth Amendment. "The law did not require [Stephenson] to be certain that the bulge was contraband. The law required that [s]he have probable cause, based on the totality of the circumstances, to associate the bulge with criminal activity." *Kursim*, 2002-Ohio-6880, ¶ 17.

{¶ 19} As probable cause existed in this case, based on the totality of the circumstances, we find that the trial court did not err in denying Grant's motion to suppress. Grant's sole assignment of error is overruled.

{¶ 20} Judgment affirmed.

S. POWELL, P.J., and RINGLAND, J., concur.