[Cite as *State v. Vaughn*, 2015-Ohio-828.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

STATE OF OHIO,	:	
		CASE NO. CA2014-05-012
Plaintiff-Appellee,	:	
		O P I N I O N
	:	3/9/2015
- vs -		
	:	
DWIGHT R. VAUGHN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 13CRI00288

Jess C. Weade, Fayette County Prosecuting Attorney, John M. Scott, Jr., 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

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S. POWELL, P.J.

{¶ 1} Defendant-appellant, Dwight R. Vaughn, appeals from the decision of the Fayette County Court of Common Pleas denying his motion to suppress. For the reasons outlined below, we affirm.

{¶ 2} On September 6, 2013, the Fayette County Sheriff's Office received several anonymous tips from callers reporting an active methamphetamine lab at Vaughn's home

located at 1428 Pearl Street, Union Township, Fayette County, Ohio. At least one of these anonymous callers provided the sheriff's office with Vaughn's name and address. The address was then verified by the sheriff's office as the same address Vaughn provided to his probation officer resulting from a misdemeanor conviction in the Washington Court House Municipal Court. It is undisputed that as a condition of his probation, Vaughn was required to submit to random searches of his person, motor vehicle, and home by his probation officer or other law enforcement officials.

{¶ 3} After receiving these anonymous tips, Gene Ivers, the Chief Probation Officer with the Washington Court House Municipal Court, as well as several deputies with the Fayette County Sheriff's Office, conducted a search of Vaughn's home. During this search, the deputies discovered evidence of an active "one pot" methamphetamine lab within the home. Vaughn was also seen exiting the house when the deputies arrived at the scene. Vaughn was subsequently arrested and charged with, among other crimes, illegal manufacture of drugs in violation of R.C. 2925.04(A) and (C)(3), a second-degree felony.

{¶ 4} On March 14, 2014, Vaughn filed a motion to suppress, which, after holding a hearing on the matter, the trial court denied. In so holding, the trial court found the "search was reasonable and lawful search of a probationer's residence by his probation officer and not otherwise constitutionally infirm." The matter then proceeded to a jury trial. Vaughn was ultimately found guilty and sentenced to serve a mandatory five-year prison term and ordered to pay a mandatory $7,500 fine.

{¶ 5} Vaughn now appeals from the trial court's decision denying his motion to suppress, raising a single assignment of error for review.

{¶ 6} THE TRIAL COURT ERRED BY DENYING THE DEFENDANT-APPELLANT'S PRE-TRIAL MOTION TO SUPPRESS.

{¶ 7} In his single assignment of error, Vaughn argues the trial court erred by denying

his motion to suppress. We disagree.

{¶ 8} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Gray*, 12th Dist. Butler No. CA2011-09-176, 2012-Ohio-4769, ¶ 15, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility. *State v. Johnson*, 12th Dist. Butler No. CA2012-11-235, 2013-Ohio-4865, ¶ 14; *State v. Eyer*, 12th Dist. Warren No. CA2007-06-071, 2008-Ohio-1193, ¶ 8. In turn, when reviewing the denial of a motion to suppress, this court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Durham*, 12th Dist. Warren No. CA2013-03-023, 2013-Ohio-4764, ¶ 14; *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." *State v. Cochran*, 12th Dist. Preble No. CA2006-10-023, 2007-Ohio-3353, ¶ 12.

{¶ 9} On appeal, Vaughn argues the search of his home was improper because the search was "done without the necessary reasonable grounds required by R.C. § 2951.02 and the United States and Ohio Constitutions." However, Vaughn never raised this issue to the trial court as part of his motion to suppress, nor did he present this argument during the suppression hearing. Rather, Vaughn merely argued the search of his home was unlawful in that the search was "done primarily for purposes of a criminal investigation and was thus not a lawful probation search." It is well-established that "issues not raised in the trial court may not be raised for the first time on appeal because such issues are deemed waived." *State v. Johnson*, 10th Dist. Franklin No. 13AP-637, 2014-Ohio-671, ¶ 14; *State v. Graham*, 12th Dist. Warren No. CA2013-07-066, 2014-Ohio-1891. Therefore, as Vaughn failed to raise this

issue with the trial court, such issue is waived and may not be raised for the first time on appeal.

{¶ 10} Nevertheless, even if he had not waived this issue, after a thorough review of the record, we find Vaughn's argument to be without merit. As noted above, it is undisputed that Vaughn was on probation resulting from a misdemeanor conviction in the Washington Court House Municipal Court. It is also undisputed that as a condition of his probation, Vaughn was required to submit to random searches of his person, motor vehicle, and home by his probation officer or other law enforcement officials. As the Ohio Supreme Court stated in *State v. Benton*, 82 Ohio St.3d 316 (1998), "[a] warrantless search performed pursuant to a condition of [probation] requiring a [probationer] to submit to random searches of his or her person, motor vehicle, or place of residence by a [probation] officer at any time is constitutional." *Id.* at 321. Therefore, "[o]nce a probationer has agreed to the warrantless search of his residence as a condition of supervision," as is the case here, "evidence from such a search cannot be suppressed as being the result of an illegal search or as 'fruit of the poisonous tree.'" *State v. McBeath*, 2d Dist. Montgomery No. 23929, 2010-Ohio-3653, ¶ 21; *see, e.g., State v. Burns*, 4th Dist. Highland No. 11CA14, 2012-Ohio-1529 (affirming a trial court's decision denying appellant's motion to suppress where "the search was conducted pursuant to appellant's consent obtained as a condition of his probation").

{¶ 11} In addition to the consent exception, another well-recognized exception to the warrant requirement occurs within the context of a so-called "probation search." *State v. Norman*, 12th Dist. Warren No. CA2014-02-033, 2014-Ohio-5084, ¶ 28. The General Assembly has enacted valid regulations governing probationers and probation searches for misdemeanor offenders through the passage of R.C. 2951.02(A). That statute provides, in pertinent part:

> During the period of a misdemeanor offender's community

> control sanction * * *, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the offender, [or] the place of residence of the offender * * * if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the misdemeanor offender's community control.

{¶ 12} "Thus, a warrantless search, pursuant to R.C. 2951.02(A), complies with the Fourth Amendment if the officer who conducts the search possesses 'reasonable grounds' to believe that the probationer has failed to comply with the terms of their probation." *State v. Helmbright*, 10th Dist. Franklin Nos. 11AP-1080 and 11AP-1081, 2013-Ohio-1143, ¶ 20. The reasonable grounds standard does not mandate the level of certainty required to establish probable cause. *State v. Karnes*, 196 Ohio App.3d 731, 2011-Ohio-6109, ¶ 33 (5th Dist.). Rather, the reasonable grounds standard is satisfied if the officer's information establishes the "likelihood" that contraband will be found in the probationer's home, thereby justifying the search. *Id.*, citing *Helton v. Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 00AP-1108, 2001 WL 709946, * 6 (June 26, 2001) and *State v. Howell*, 4th Dist. Jackson No. 97CA824, 1998 WL 807800, * 5 (Nov. 17, 1998).

{¶ 13} Relying on these principles, Vaughn argues the search of his home was improper as the state failed to establish reasonable grounds to justify the search when it was based solely upon a single tip from an anonymous caller. However, as noted above, Vaughn consented to the search of his home as a condition of his probation. Moreover, contrary to Vaughn's claim otherwise, the sheriff's office did not receive a single tip, but rather, multiple calls reporting an active methamphetamine lab within Vaughn's home. At least one of these calls provided the sheriff's office with Vaughn's name and address. The address was then verified by deputies as same address Vaughn provided to his probation officer. Vaughn was also seen exiting the house when the deputies arrived.

{¶ 14} "Anonymous tips, when corroborated by other factors, events or circumstances, may provide the requisite reasonable grounds to justify the warrantless entry." *State v. Baker*, 9th Dist. Summit No. 23713, 2009-Ohio-2340, ¶ 7. Again, even if Vaughn had not consented to the search, deputies were not required to have probable cause in order to justify the warrantless entry into the home. Instead, the warrantless entry was justified so long as the deputies' information establishes the "likelihood" that Vaughn's home contained an active methamphetamine lab. Such is the case here. Therefore, although the search was also valid based on Vaughn's consent, because the state provided evidence establishing reasonable grounds to justify the search of his home pursuant to R.C. 2951.02(A), the trial court did not err by denying Vaughn's motion to suppress. Accordingly, Vaughn's single assignment of error is overruled.

{¶ 15} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.