

[Cite as *State v. Crowder*, 2002-Ohio-4963.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO
STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19064
vs. : T.C. CASE NO. 01CR1281
DAVID H. CROWDER : (Criminal Appeal from
Common Pleas Court)
Defendant-Appellant :

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O P I N I O N

Rendered on the 20th day of September, 2002.

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GRADY, J.

{¶1} Defendant, David Crowder, appeals from his conviction and sentence for possessing crack cocaine.

{¶2} Defendant was indicted for possessing one gram or less of crack cocaine. R.C. 2925.11(A). Defendant filed a motion to suppress the evidence. Following a hearing, the trial court overruled Defendant's motion to suppress. This matter proceeded to a jury trial, which resulted in a verdict of guilty. The trial court sentenced Defendant to

ten months imprisonment.

{¶3} Defendant has timely appealed to this court from his conviction and sentence. He presents one assignment of error, challenging the trial court's order denying his motion to suppress the evidence.

ASSIGNMENT OF ERROR

{¶4} "THE TRIAL COURT ERRED IN OVERRULING THE DEFENDANT'S MOTION TO SUPPRESS WHEN THE POLICE SEIZED DEFENDANT IN VIOLATING OF HIS FOURTH AMENDMENT RIGHTS."

{¶5} The only witness to testify at the suppression hearing was Dayton police officer Edmund Trick. He testified that he worked road patrol in Dayton's central business district for eight years.

{¶6} On April 17, 2001, while on routine patrol, Officer Trick observed Defendant and an unknown man standing on the corner of Fifth and Wilkinson Streets, in front of the apartment building located at 211 S. Wilkinson. For the past two or three months a security guard at that apartment building, Eugene Karnes, had supplied Officer Trick with information about drug transactions involving Defendant that had occurred both inside and outside the building. Officer Trick had used Mr. Karnes as an informant in the past, and his information had led to arrests.

{¶7} On this occasion, as Officer Trick approached the apartment building in his marked police cruiser, he observed that the man with the Defendant had a five dollar bill in

his hand. Defendant held a white object in his hand. Officer Trick was then approximately twenty feet away and was using his cruiser's spotlight for illumination. Based upon his experience as a police officer, Officer Trick believed he had come upon a drug transaction in progress. When the two men spotted Officer Trick they looked shocked. The unknown man dropped his five dollar bill on the ground. Defendant stuck the white object he was holding in the waistband of his pants, behind his back. This conduct reaffirmed Officer Trick's suspicion that he had come upon a drug transaction.

{¶8} Officer Trick decided to arrest Defendant based upon what he observed. Officer Trick then exited his police cruiser and asked Defendant what he had hidden in his pants. Defendant immediately began walking away. Meanwhile, the unknown man picked up his five dollar bill, jumped on his bicycle, and fled. Officer Trick physically restrained Defendant and removed two suspected rocks of crack cocaine from the waistband area of Defendant's pants. With assistance from another security guard at the apartment building, Officer Trick handcuffed the resisting Defendant and informed him he was under arrest for possession of drugs.

{¶9} In overruling Defendant's motion to suppress the cocaine recovered from his person by police, the trial court made these findings of fact and law:

{¶10} "That there was information about the Defendant

perhaps being involved in drug transactions. The officer observed an apparent exchange about to take place of money for an object that probably was contraband. The officer observed a white object in the hand of the Defendant.

{¶11} "Furthermore, upon the officer observing the two individuals, there were movements which would indicate that something of a criminal nature was confirmed by that action; meaning the dropping of the five dollars and also the - the flight of the other it - unidentified subject and also the hiding of the object, meaning the white object, by the Defendant.

{¶12} "In short, I believe that the officer had probable cause to believe that he had observed a drug transaction in progress and because of that probable cause, he had probable cause to arrest the Defendant and the search incident to that arrest resulted in the object that was retained." (Supp.H. Tr. at 22.

{¶13} Defendant argues that his Fourth Amendment rights were violated by the seizure and search of his person that occurred in this case. We disagree.

{¶14} A warrantless arrest is constitutional if it is supported by probable cause. *State v. Jones* (1996), 112 Ohio App.3d 206. Whether probable cause exists is determined from the totality of the facts and circumstances. *State v. Hill* (October 26, 2001), Montgomery App. No. 18569, 2001-Ohio-1649. The question is whether, at the moment the arrest was made, the facts and circumstances within the

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arresting officer's knowledge, or of which the officer had reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the suspect had committed or was committing a criminal offense. *Jones, supra; Beck v. Ohio* (1964), 379 U.S. 89, 85 S.Ct. 223.

{¶15} The right of police officers to conduct a full search of an arrestee's person incident to a lawful arrest is a well recognized exception to the Fourth Amendment's warrant requirement. *Chimel v. California* (1969), 395 U.S. 752, 89 S.Ct. 2034; *United States v. Robinson* (1973), 414 U.S. 218, 94 S.Ct. 467; *State v. Jones, supra*. The arrest need not precede the search so long as the fruits of that search are not used to establish probable cause for the arrest. *Rawlings v. Kentucky* (1980), 448 U.S. 98, 100 S.Ct. 2556; *Smith v. Ohio* (1990), 494 U.S. 541, 110 S.Ct. 1288; 108 L.Ed.2d 464; *Jones, supra*.

{¶16} At the time Officer Trick restrained Defendant by use of physical force, intending to place him under arrest, Officer Trick had sufficient probable cause to arrest him. Officer Trick then had information from a reliable informant about Defendant's involvement in drug activity for the past two or three months at that same location. Additionally, Officer Trick observed what he understood from his experience as a police officer was a drug transaction in progress. Defendant's conduct in attempting to conceal the contraband when he saw Officer Trick reaffirmed that Officer Trick had interrupted a drug transaction. After seeing

Officer Trick, the unknown man immediately fled. Defendant attempted to do the same.

{¶17} The totality of these facts and circumstances are sufficient to warrant a prudent man in believing that Defendant was committing a drug offense. Thus, Officer Trick had probable cause to arrest Defendant even before he retrieved the two pieces of crack cocaine from the waistband area of Defendant's pants. Moreover, it matters not that Officer Trick searched Defendant and discovered this contraband before actually telling Defendant that he was under arrest. The contraband Officer Trick discovered was not necessary to establish probable cause for Defendant's arrest. That probable cause existed before the search of Defendant's person took place.

{¶18} The arrest of Defendant was supported by probable cause and was lawful. The search of his person incident to that lawful arrest did not violate Defendant's Fourth Amendment rights.

{¶19} The assignment of error is overruled. The judgment of the trial court will be affirmed.

WOLFF, P.J. and FAIN, J., concur.

Copies mailed to:

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