

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 21805
v.	:	T.C. NO. 2005 CR 3043
DAVID JACKSON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 7th day of December, 2007.

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MICHELE D. PHIPPS, Atty. Reg. No. 0069829, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

JAMES C. STATON, Atty. Reg. No. 0068686, 5613 Brandt Pike, Huber Heights, Ohio 45424
Attorney for Defendant-Appellant

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DONOVAN, J.

{¶ 1} Defendant-appellant David Jackson appeals from a decision of the Montgomery County Court of Common Pleas which overruled Jackson's motion to suppress evidence as the fruit of an unlawful arrest.

I

{¶ 2} On Friday, January 7, 2005, Officer Troy Bodine of the Montgomery

County Sheriff's Office was dispatched to 2030 Palisades Drive, Harrison Township, in response to an alleged incident of domestic violence. When Officer Bodine arrived, he spoke with the victim, Ms. Russell. Ms. Russell complained that the father of her child, Appellant David Jackson, was making threatening phone calls to her over the phone.

{¶ 3} Appellant apparently called Ms. Russell forty times on January 7, 2005 – twenty-eight times to the house phone, and twelve times to her cell phone. Appellant demanded that Ms. Russell bring their child over to Appellant's sister's house so that he could visit with the child. Appellant also demanded that Ms. Russell pick him up on the way. When Ms. Russell refused this latter request, Appellant allegedly stated, "You better or I'm going to fuck you up along with your car. Remember what happened the last time bitch?"¹

{¶ 4} While Officer Bodine was on the scene, Ms. Russell received yet another call from the Appellant. Officer Bodine spoke with Appellant and informed him that Ms. Russell intended to file a Complaint; Appellant denied any wrongdoing. Thereafter, Ms. Russell executed a written statement and a criminal Complaint was sworn out and filed.

{¶ 5} On Monday, January 10, 2005, Officer Julie Stephens of the Montgomery County Sheriff's Office received and reviewed a copy of Officer Bodine's incident report. Officer Stephens subsequently took a copy of the report to Vandalia Municipal Court and requested a warrant be issued. Officer Stephens created an incident report

¹Ms. Russell informed Officer Bodine that Appellant had busted out the back window of her car on a previous occasion. This apparently gave credence to Appellant's threats, leading Ms. Russell to believe that Jackson would follow through with his threats.

documenting her actions, which was admitted into evidence as State's exhibit A. This report clearly indicates that a warrant was issued by 10:31:46 on Monday, January 10, 2005; the record contains no evidence that contradicts Officer Stephens' report.

{¶ 6} Around 12:00 noon on Monday, January 10, 2005, Officer Jay Vitali of the Montgomery County Sheriff's Office was dispatched to arrest Appellant in the area of 2030 Palisades Drive. He was informed that the suspect was wearing light blue pants, a blue coat, and a black hat. The Appellant was located in like clothing in front of 2030 Palisades Drive. Officer Vitali made contact, confirmed that the suspect was indeed the Appellant, and placed him under arrest. Appellant was transported to the Montgomery County Jail. During the inventory search in the receiving room, corrections officers found a small plastic bag containing crack cocaine on Appellant's person.

{¶ 7} Appellant was indicted for one count of possession of crack cocaine. Defense counsel moved to suppress the evidence obtained as the result of an unlawful arrest. After a sporadic debate, the trial court simply found that there was "trustworthy information and probable cause" for the arrest, and overruled Appellant's motion to suppress. It is from this decision that Appellant now appeals.

II

{¶ 8} A review of the denial of a motion to suppress involves mixed questions of law and fact. *State v. Burnside* (2003), 100 Ohio St. 3d 152, 154, 797 N.E.2d 71, 2003-Ohio-5372. When reviewing a ruling on a motion to suppress, deference is given to the trial court's findings of fact so long as they are supported by competent, credible evidence. *Id.* With respect to the trial court's conclusions of law, however, our

standard of review is de novo, and we must decide whether the facts satisfy the applicable legal standard. *Id.*

III

{¶ 9} We must initially note that “an illegal arrest does not invalidate a subsequent conviction which is otherwise proper.” *State v. Henderson* (1990), 51 Ohio St.3d 54, 554 N.E.2d 104. However, any evidence obtained as a result of an illegal arrest is inadmissible at trial. *Wong Sun v. United States* (1963), 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441. Thus, we must determine the legality of Appellant’s arrest in order to determine whether the seized contraband can be used against him at trial.

IV

{¶ 10} Appellant asserts one assignment of error as follows:

{¶ 11} “THE TRIAL COURT ERRED TO THE DEFENDANT-APPELLANT’S PREJUDICE IN OVERRULING DEFENDANT-APPELLANT’S MOTION TO SUPPRESS EVIDENCE.”

{¶ 12} The record in this case indicates that the alleged acts of domestic violence occurred on Friday, January 7, 2005. Ms. Russell reported the conduct to the police, and Officer Bodine responded to the situation. Upon arrival, Officer Bodine spoke with Ms. Russell and he subsequently obtained a signed Complaint and a written statement alleging that Appellant committed domestic violence. The record further reveals that the arresting officer, Vitali, knew there was a domestic violence complaint, but was uncertain as to the existence of an arrest warrant at the time he arrested Jackson three days later.

{¶ 13} The Supreme Court of Florida has held that “knowledge of the existence

of the warrant is imputed to all officers in departments working on the case from the moment the warrant is signed, without regard to actual knowledge, at least where the warrant is prompted by the crime identified by the warrant or its accompanying papers.

A delay in communication should not let a suspect go free when the State already has fully complied with the warrant clause, because there could be no remedial value in such a draconian penalty.” *State v. Johnson* (1995), 660 So.2d 648, 658.

{¶ 14} The particular error Defendant-Appellant assigns is that the trial court erred when it denied his Crim.R. 12(C)(3) motion to suppress evidence found on his person in a search incident to his arrest because his arrest was illegal. The arresting officer was a sheriff’s deputy, and sheriffs are authorized to arrest upon issuance of an order or warrant to arrest. R.C. 2317.07. The record before us, which contains Officer Stephens’ incident report, clearly indicates that a warrant was issued by 10:31:46 on Monday, January 10, 2005. Appellant was arrested approximately an hour and a half later – 12:00 – as a result of a dispatch requesting a domestic violence pickup. The record contains no evidence that contradicts Officer Stephens’ report.

{¶ 15} The rule of *State v. Johnson* applies, a warrant having issued for the offense for which he was arrested, Defendant-Appellant’s arrest was not illegal, and therefore the evidence obtained in a search performed incident to his arrest is not subject to suppression, absent a defect in the warrant. No such defect is argued. On this record, the trial court did not err when it denied the motion to suppress.

Judgment affirmed.

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GRADY, J. and VALEN, J., concur.

(Hon. Anthony Valen retired from the Twelfth District Court of Appeals sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Michele D. Phipps
James C. Staton
Hon. A. J. Wagner