

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 3
v.	:	T.C. NO. 2007 CR 881
		2008 CR 300
CHE D. GLYNN	:	(Criminal appeal from
		Common Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 9th day of October, 2009.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Che D. Glynn, filed February 3, 2009. On October 31, 2008, Glynn pled no contest to a charge of possession of cocaine, in violation of R.C. 2925.11(A), a felony of the third degree with mandatory imprisonment, and to a second charge of possession of cocaine, a felony of the

fifth degree. The trial court had overruled Glynn's motion to suppress. Glynn was found guilty and sentenced to a definite term of five years on the first charge, and to a definite period of 11 months on the second charge, to be served concurrently. It is from this judgment that Glynn appeals.

{¶ 2} The events giving rise to the matter began on April 16, 2008, when Officer James Hern of the Fairborn Police Department, on routine patrol at the corner of Dayton-Yellow Springs and Kauffman Roads, observed "a black Grand Am traveling southbound on Kauffman approaching the light. The signal turned red and the vehicle entered through the red light and proceeded eastbound on Dayton-Yellow Springs Road."

{¶ 3} Hern initiated a traffic stop and approached the vehicle. As he approached, he "observed a black male * * * in the passenger seat. He was looking over his shoulder at me [and] with both hands, it appeared he was putting something under the passenger seat." Hern informed the driver of the reason for the stop, and upon looking inside the vehicle, recognized Glynn and "immediately called for a second unit." According to Hern, his department has "had numerous intell on Mr. Glynn over the past couple of years as far as drug activity." Hern stated he then stood back and watched the occupants of the vehicle, waiting for backup to arrive.

{¶ 4} Officer Bair arrived on the scene within approximately two to three minutes. After conferring, the officers approached the vehicle together. Bair stood on the passenger side, keeping an eye on Glynn, and Hern asked the driver to step out of the car so that he could speak with her. Hern asked the driver if the vehicle contained any weapons or contraband, and she told Hern that it did not. Hern then asked the driver for permission to

search the car, and she gave consent to Hern to conduct a search.

{¶ 5} Bair then asked Glynn to step out of the vehicle, patting him down for weapons. Hern searched under the driver's seat, finding nothing. He then searched under the passenger seat where he had observed Glynn place his hands. He located a purple Crown Royal bag which contained a large amount of crack cocaine, a digital scale and "some other items of contraband."

{¶ 6} Hern placed the driver in the backseat of his cruiser, and he returned to the vehicle where Glynn was located. According to Hern, "as I walked up, Mr. Glynn turned toward me and said, 'That was mine. She didn't know anything about it.'" Hern then read Glynn his rights and Glynn indicated that he understood them. When asked about the items in the car, according to Hern, Glynn replied, "it was cocaine." Glynn was placed in the back of Bair's vehicle, and Bair drove him to the Fairborn Police Department.

{¶ 7} While Bair was transporting Glynn, Hern cleared up the scene, citing the driver for the red light violation. Bair later informed Hern that during his patdown of Glynn he found a plastic baggie of crack cocaine in Glynn's right sock.

{¶ 8} In overruling Glynn's motion to suppress, the trial court determined that the vehicle in which Glynn was a passenger was lawfully stopped for a traffic violation. The court further found that the driver's consent to search the vehicle was valid, and that "all of the procedures followed by the Fairborn Police Department were proper and that there is no constitutional infirmity in the search of the motor vehicle."

{¶ 9} Glynn asserts one assignment of error as follows:

{¶ 10} "THE TRIAL COURT ERRED IN NOT ORDERING THE EVIDENCE

SUPPRESSED BECAUSE THE OFFICER PROLONGED THE STOP AND EXPANDED ITS SCOPE WITHOUT HAVING A REASONABLE SUSPICION THAT APPELLANT WAS INVOLVED IN CRIMINAL ACTIVITY.”

{¶ 11} According to Glynn, the stop for the traffic violation was improperly expanded in length and intensity, since Glynn’s furtive movements coupled with his reputation for drug activity do not establish reasonable, articulable suspicion.

{¶ 12} “Appellate courts give great deference to the factual findings of the trier of facts. (Internal citations omitted). At a suppression hearing, the trial court serves as the trier of fact, and must judge the credibility of witnesses and the weight of the evidence. (Internal citations omitted). The trial court is in the best position to resolve questions of fact and evaluate witness credibility. (Internal citations omitted). In reviewing a trial court’s decision on a motion to suppress, an appellate court accepts the trial court’s factual findings, relies on the trial court’s ability to assess the credibility of witnesses, and independently determines whether the trial court applied the proper legal standard to the facts as found. (Internal citations omitted). An appellate court is bound to accept the trial court’s factual findings as long as they are supported by competent, credible evidence. (Internal citations omitted).” *State v. Purser*, Greene App. No. 2006 CA 14, 2007-Ohio-192, ¶ 11.

{¶ 13} “The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio* (1968), 392 U.S. 1, 88S.Ct. 1868, 20 L.Ed.2d 889. * * *

{¶ 14} “An individual is subject to an investigatory detention when, in view of all the circumstances surrounding the incident, by means of physical force or show

of authority, a reasonable person would have believed that he was not free to leave or is compelled to respond to questions. (Internal citations omitted). Under *Terry*, police officers may briefly stop and/or temporarily detain individuals in order to investigate possible criminal activity if the officers have a reasonable, articulable suspicion that criminal activity may be afoot. (Internal citation omitted). ‘Reasonable suspicion entails some minimal level of objective justification for making a stop - that is, something more than an inchoate and unparticularized suspicion or “hunch,” but less than the level of suspicion required for probable cause.’ (Internal citation omitted). We determine the existence of reasonable suspicion by evaluating the totality of the circumstances, considering those circumstances ‘through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.’” (Internal citations omitted). *State v. Lewis*, Montgomery App. No 22726, 2009-Ohio-158, ¶ 20-23.

{¶ 15} “When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time to issue the motorist a citation, and to perform routine procedures such as a computer check on the motorist’s driver’s license, registration, and vehicle plates. The duration of a traffic stop may last no longer than is necessary to resolve the issue that led to the original stop, absent some specific and articulable facts that further detention was reasonable.” (Citation omitted). *State v. Alcorn*, Montgomery App. No. 21670, 2007-Ohio-3693, ¶ 9.

{¶ 16} Glynn does not challenge the validity of either the traffic stop or the driver’s consent to the search of her vehicle. While this detention began as a

legitimate traffic stop, its circumstances were altered by the furtive movements of Glynn, a suspected drug offender, giving the officers specific and articulable facts justifying further detention. See *State v. Sears*, Montgomery App. No. 20849, 2005-Ohio-3880. Backup arrived within minutes, certainly not prolonging a reasonable period of detention. The driver was removed from her vehicle shortly thereafter and she gave consent to the search, making the search and seizure of the Crown Royal bag which contained drugs, reasonable. See *Alcorn*.

{¶ 17} There being no merit to Glynn's sole assignment of error, the judgment of the trial court is affirmed.

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BROGAN, J. and FAIN, J., concur.

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