

[Cite as *State v. Johnson*, 2010-Ohio-5387.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23781
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-656
v.	:	
	:	(Criminal Appeal from
HAMPTON JOHNSON III	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 5th day of November, 2010.

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BROGAN, J.

{¶ 1} Appellant Hampton Johnson III appeals from his conviction for possession of crack cocaine in violation of R.C. 2925.11(A). Johnson argues that it is unacceptable that the police asked him out of his car after a traffic stop, which led to the discovery of drugs in plain view inside his vehicle. During a traffic stop, police

have the authority to ask anyone out of their vehicle, and therefore, the police acted within their authority. For the following reasons, we affirm the judgment of the trial court.

I

{¶ 2} On February 25, 2009, after 2:00 in the morning, Dayton Police Officer Gregory Orick witnessed Johnson driving up to an apartment on Santa Clara Avenue, about which complaints had been received regarding high drug activity. Orick observed Johnson exit his vehicle and step into an apartment. Orick witnessed Johnson enter and then leave the apartment in the span of a couple of minutes. Orick decided to further investigate the situation. Officer Orick went back to his cruiser and radioed to Dayton Police Officer Spielman for assistance. Orick got back into his cruiser and caught up to Johnson and witnessed Johnson make a turn without engaging his turn signal. Orick contacted Officer Spielman again by radio, alerting him to Johnson's traffic violation. Officer Spielman, in his cruiser, witnessed Johnson make an illegal right-hand turn from the center lane, and Officer Spielman proceeded to pull Johnson over for the traffic violation. Officer Orick then pulled up in his cruiser behind Officer Spielman and told Spielman to ask Johnson to get out of his vehicle. Officer Spielman ordered Johnson out of his vehicle, proceeded to pat Johnson down, and placed him in the back of the police cruiser. After Officer Spielman placed Johnson in the cruiser, Officer Orick approached Johnson's vehicle at the front driver's door, which had been left open. Looking inside the car from the open door, Orick noticed in plain view what he thought to be

crack cocaine in a compartment in the driver's side door. Orick removed the cocaine and tested the substance with a cobalt reagent, which confirmed his suspicion that it was crack cocaine.

{¶ 3} Johnson moved to suppress the drugs, which the trial court overruled. Johnson pled no contest to the charge and was sentenced to five years of community control sanctions and a suspended driver's license for six months.

II

{¶ 4} Although Johnson does not officially set forth an assignment of error, we have been able to glean that he has one assignment of error, which is as follows:

{¶ 5} "THE TRIAL COURT ERRED IN OVERRULING JOHNSON'S MOTION TO SUPPRESS BECAUSE JOHNSON WAS UNLAWFULLY ORDERED OUT OF HIS VEHICLE."

{¶ 6} In his appeal, Johnson argues that the police had a "hunch," which led them to order Johnson out of the car. Johnson contends that the police had no right to order him out of the car for a traffic violation.

{¶ 7} The United States Supreme Court has held that the police are allowed to ask the driver who is pulled over for a traffic stop to exit his or her vehicle. *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 111, 98 S.Ct. 330, 54 L.Ed.2d 576. While the Court was aware of the small inconvenience this is for the person being pulled over, it is minimal compared to the legitimate concern for the police officer's safety. *Id.*

{¶ 8} Johnson also makes an argument that the police might have been the

ones who opened Johnson's door after Johnson exited the vehicle, speculating, "(h)ow often do you exit an automobile without shutting the door automatically from years of habit"? (Brief of Appellant, page 2). However, Johnson offers no evidence that he shut the door and an officer opened it, violating the plain view doctrine.

{¶ 9} Johnson's assignment of error is overruled.

III

{¶ 10} Appellant's assignment of error having been overruled, the judgment of the trial court is affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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