

[Cite as *State v. Love*, 2011-Ohio-1287.]

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

STATE OF OHIO :
 :
 Plaintiff-Appellee : Appellate Case No. 23902
 :
 v. : Trial Court Case No. 08-CR-1801
 :
 LASHAE A. LOVE : (Criminal Appeal from
 : Common Pleas Court)
 :
 Defendant-Appellant :
 :

OPINION

Rendered on the 18th day of March, 2011.

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FAIN, J.

{¶ 1} Defendant-appellant Lashae Love appeals from her conviction and sentence for Possession of Cocaine (crack, greater than ten grams but less than twenty-five grams). Love contends that the police improperly conducted a pat-down search of her person without any

reliable indicia, or reasonable suspicion, of criminal activity. Therefore, she claims the trial court erred by denying her motion to suppress evidence obtained during the pat-down.

{¶ 2} We conclude that there is evidence in the record supporting a finding that, under the totality of the circumstances, the arresting officers had a reasonable basis for conducting the pat-down. Therefore, we conclude that the trial court did not err in denying the motion to suppress. The judgment of the trial court is Affirmed.

I

{¶ 3} In May 2008, Dayton Police Officer Patrick Bell was assigned to the Narcotics Unit of the Special Investigations Division. Bell had received “several messages” from the manager of an apartment building located at 57 East Riverview Drive regarding the manager’s claim that “drugs were taking over his building and it was getting out of control, and he was hoping that [the police department] could do something about it.” The messages also indicated that the manager believed that a woman “dressed somewhat like a male” was selling drugs from the building. Bell also spoke by telephone with the manager. There had also been a complaint made to the police “drug hotline” indicating that “drugs were being sold from the basement [of this building] throughout the daytime hours and into the evening.”

{¶ 4} On May 2, 2008, at about 4:30 in the afternoon, Bell was dispatched, along with Officer Ponichtera, to investigate the complaints. Upon arriving at the building, the officers went straight down to the basement, which was empty except for a small table and a small stereo. After about a minute, Love was observed coming down the stairs on the opposite side of the basement from the staircase utilized by the officers. According to Bell, Love was

dressed in what he considered “a male type outfit,” with a long shirt covering her waistband area and the pockets of her jeans.

{¶ 5} According to Bell, Love “froze in her stride” when she observed the officers. Bell observed that Love had a fork and cup in her hand. When Love started to “slowly” back up the staircase, Bell asked her whether she lived in the building. According to Bell, Love was “blading,” or attempting to shield the left side of her body from his view. Bell then asked to speak with her for a moment, and Love stopped.

{¶ 6} Bell again asked her whether she lived in the building. He stated that she stuttered in her answer, but responded that she did live there in apartment seventeen and was just coming down the stairs to visit a friend. He stated that she appeared “startled and confused.” When he asked her to drop the fork, he stated that she only “dropped it down a little bit to her waistband area.”

{¶ 7} According to Bell, in his experience the building was in a high crime and drug area in which “with drug sales almost always comes weapons.” He further stated that Love’s expression was “one of the most startled nervous looks” he had ever seen in his seven years with the Dayton Police Department. Bell testified that given the area and Love’s demeanor, he became nervous for his safety and decided to conduct a pat-down for weapons. When the officers started the pat-down, they again asked Love to drop the fork, but she failed to comply. The officers had to “forcibly” remove the fork from Love’s hand.

{¶ 8} During the pat-down, Bell “immediately felt an irregular shaped hard object that [he] knew to be crack cocaine” located in her left pants pocket. Bell stated that the object was “very large, just smaller than a golf ball.” He testified that he was also able to feel that the

object was in a plastic bag, which he stated was common. According to Bell, his experience led him to immediately conclude that he was feeling crack cocaine.

{¶ 9} Love was arrested, and subsequently indicted on one count of Possession of Cocaine, in violation of R.C. 2925.11(A). Love moved to suppress the evidence and statements obtained at the time of her arrest. Following a hearing, the motion was denied. The case proceeded to a bench trial, following which Love was found guilty of the charged offense. She was sentenced to a mandatory three-year prison term.

{¶ 10} From her conviction and sentence, Love appeals.

II

{¶ 11} Love's sole assignment of error is as follows:

{¶ 12} "THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO SUPPRESS."

{¶ 13} Love contends that the trial court should have granted her motion to suppress evidence gained as a result of the pat-down. She notes that the police were in the apartment building pursuant to an anonymous tip, and an unverified tip, regarding drug sales occurring in the basement of the apartment building. Love argues that the police were acting on these unverified tips without any reliable indicia of criminal activity and that they therefore lacked any reasonable suspicion of criminal activity sufficient to justify a warrantless search of her person.

{¶ 14} In the case of *In re D.W.*, 184 Ohio App.3d 627, 2009-Ohio-5406, we opined:

{¶ 15} "At a suppression hearing, the state bears the burden of proving that a

warrantless search or seizure meets Fourth Amendment standards of reasonableness. In the case of an investigative stop, this typically requires evidence that the officer making the stop was aware of sufficient facts to justify it.

{¶ 16} “The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. Not all interactions between citizens and the police, however, constitute a seizure. Rather, the interactions between citizens and law enforcement officers can fall within three distinct categories: a consensual encounter, an investigative detention, and an arrest.

{¶ 17} “ * * *

{¶ 18} “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. [P]olice 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. 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. 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.” Id. at ¶ 13 - 16, internal citations omitted.

{¶ 19} In addressing Love’s motion to suppress, the trial court, as the trier of fact,

determines the credibility of the witnesses and weighs the evidence presented at the hearing. *State v. Morgan*, Montgomery App. No. 18985, 2002-Ohio-268. When reviewing the ruling of a trial court on a suppression issue, an appellate court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. *Id.* However, “the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard.” *Id.*

{¶ 20} In the case before us, the police department had received complaints regarding drug sales at the apartment building – specifically, complaints that a woman dressed like a man was selling drugs from the basement of the building. In addition, Bell had personal contact with the manager of the building, who asked him to deal with the drug problem.

{¶ 21} Bell and Ponichtera arrived at the building and found the basement empty until Love descended the stairs. Bell noted that Love matched the general description of the individual noted in the complaints. He further noted that her demeanor and movements were suspicious. The record supports the finding that the apartment building was located in an area known by the police department for a high incidence of crime, including drug sales.

{¶ 22} From this record, it does not appear that Bell ordered Love to stop until he decided to pat her down for weapons. I.e., until that time, this was a consensual encounter, involving no intrusion upon Love’s protected liberty interests. The issue, then, is whether all of the matters reported to Bell, and observed by him, up to that time, justified a pat-down search for weapons.

{¶ 23} Although the issue is close, we conclude that Bell was justified in concluding that Love was involved in criminal drug activity, based upon: the one anonymous report of

drug sales in the basement; the non-anonymous report by the manager that drugs were being sold in the basement (albeit without any indication of his basis for so concluding); the prior record of drug sales at that address; the fact that Love did appear to Bell to be dressed in clothing usually worn by men (Bell testified he had not seen women so dressed), which fit the description of the person selling drugs out of the basement; the fact that Love appeared to have been more startled, and almost “frightened,” upon seeing uniformed police officers in the basement than Bell had ever previously seen anyone become upon encountering uniformed police officers; the fact that Love immediately began backing up the steps, while keeping one side away from Bell’s view; the fact that she stuttered in responding to Bell’s questions; the fact that she did not immediately respond to Bell’s question about whether she lived there; and the fact that she did not comply with Bell’s request to put down the fork in her hand (beyond lowering it to her side).

{¶ 24} No one of these facts would have been sufficient, but the totality of them supported a reasonable, articulable suspicion sufficient to justify a brief, investigative stop. See *State v. Bobo* (1988), 37 Ohio St.3d 177. Bell testified concerning the fact that persons involved in criminal drug transactions are frequently armed. He was therefore justified in patting down Love for weapons. The pat-down resulted in Bell’s finding, by “plain feel,” crack cocaine, of a size almost as big as a golf ball, on Love’s person.

{¶ 25} Love’s sole assignment of error is overruled.

III

{¶ 26} Love’s sole assignment of error having been overruled, the judgment of the trial

court is Affirmed.

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GRADY, P.J., and DONOVAN, J., concur.

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