[Cite as *State v. Trainer*, 2015-Ohio-2792.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 2014-CA-83
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2014-CR-311
v.	:	
	:	(Criminal Appeal from
BRIAN TRAINER	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 10th day of July, 2015.

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FAIN, J.

{¶ 1} Defendant-appellant Brian Trainer appeals from his conviction and sentence,

following a no-contest plea, for Aggravated Possession of Drugs, in violation of R.C. 2925.11(A), a felony of the fifth degree. Trainer contends that the trial court erred by overruling his motion to suppress.

{¶ 2} We conclude that the trial court did not err in overruling the motion to suppress. When a police officer climbed up on a toilet seat in an adjacent stall to look over the partition at Trainer in a public restroom, the police officer had probable cause to believe that a drug offense had occurred, or was occurring, and Trainer's ability to flush evidence gave rise to exigent circumstances dispensing with the need for a warrant. Accordingly, the judgment of the trial court is Affirmed.

I. The Search

{¶ 3} Upon the report of Larry Zimmer, a loss-prevention officer at a Wal-Mart store in Springfield, that a man in the store was exhibiting slurred speech and appeared to be impaired, based upon the way he was walking, Springfield police officers Benjamin Mast and Roger Jenkins were dispatched to the store. They arrived about five to ten minutes after being dispatched. Upon their arrival, they talked to Zimmer, who told them that the suspicious man had entered a public restroom in the store, and was in the last stall of the restroom, which was a larger stall designed to accommodate individuals with disabilities.

{¶ 4} Both officers testified to their familiarity, based upon their training and experience, with the use of restroom stalls for the injection of heroin. They entered the restroom with Zimmer. Two individuals in the restroom quickly left. From outside the stall Trainer was in, Officer Jenkins could see that Trainer's pants were up, and that Trainer was standing near the door to the stall, with his back to the door. From what

Jenkins could see, it did not appear to him that Trainer was using the stall for its intended purpose. From his vantage point three to four inches from the gap between the stall door and the partition, Jenkins "saw * * * a person standing in front of the, there's a, there's a metal toilet paper dispenser on the wall underneath that hand bar, and that person was faced away from me leaning over the toilet paper dispenser and moving his hands about, appeared to be placing something on the toilet paper dispenser, but I couldn't see what that was at that point."

{¶ 5} At this point, Officer Jenkins entered the adjacent stall, stood on the toilet seat, looked over the partition, "and what I saw was a large silver kitchen spoon with quite a bit of yellowish powdery substance already on it and a syringe that had some kind of liquid already on it." Jenkins then left his stall, told Mast what he had seen, drew his firearm, forced his way into Trainer's stall, and took Trainer into custody.

II. The Course of Proceedings

{¶ 6} Trainer was charged by indictment with Aggravated Possession of Drugs, in violation of R.C. 2925.11(A), a felony of the fifth degree. He moved to suppress evidence, contending that the evidence was obtained as the result of an unlawful search.[1]

{¶ 7} After a hearing, Trainer's motion to suppress was overruled. Thereafter, he pled no contest to the charge, and was sentenced accordingly. From his conviction and sentence, Trainer appeals.

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[1] Trainer also sought to suppress statements made after his arrest, but the statements are not at issue in this appeal.

III. The Officer Had Probable Cause for the Search

{¶ 8} Trainer's sole assignment of error is as follows:

> THE TRIAL COURT ERRED BY OVERRULING APPELLANT'S MOTION TO SUPPRESS A WARRANTLESS SEARCH WHEN THE EVIDENCE SHOWED THAT THE POLICE OFFICERS IN THIS CASE CLIMBED UP ON A TOILET SEAT TO PEER OVER THE TOP OF A PARTITION INTO THE STALL THAT APPELLANT OCCUPIED, THUS INVADING APPELLANT'S OBJECTIVE EXPECTATION OF PRIVACY.

{¶ 9} Trainer cites *Lorenzana v. Superior Court*, 9 Cal.3d 626, 634, 108 Cal.Rptr. 585, 511 P.2d (1973), and *State v. Peterson*, 173 Ohio App.3d 575, 2007-Ohio-5667, 879 N.E.2d 806, ¶ 13 (2d Dist.), for the proposition that: "[O]bservations of things in plain sight made from a place where a police officer has a right to be do not amount to a search in a constitutional sense. On the other hand, when observations are made from a position to which the officer has not been expressly or implicitly invited, the intrusion is unlawful * * * ." We agree with Trainer that when Officer Jenkins stepped up on the adjacent toilet seat to peer over the partition, he was no longer observing from a position where he had a right to observe, without violating the objectively reasonable expectations of a person in the adjacent stall. Therefore, Jenkins' conduct in looking over the partition was a search, for which probable cause was required.

{¶ 10} " 'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' * * * . And this 'means less than evidence which would justify condemnation' or conviction, * * * : Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably

trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175-176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

{¶ 11} When Officer Jenkins peered over the partition, he had Zimmer's report that Trainer had been speaking and walking in a manner consistent with being under the influence of drugs. He had his own knowledge, based upon his training and experience, that public restroom stalls are frequently used for the injection of heroin. He also had his own observation of Trainer standing near the door of the stall, with his back against the door, "leaning over the toilet paper dispenser and moving his hands about, appear[ing] to be placing something on the toilet paper dispenser." These facts fall short of proof of guilt beyond reasonable doubt, since there are plausible innocent explanations for all of them. Nevertheless, in their totality, they warranted a man of reasonable caution in the belief that a drug offense had been, or was being, committed. *See People v. Mercado*, 68 N.Y.2d 874, 877, 508 N.Y.S.2d 419, 501 N.E.2d 27 (1986). Therefore, Officer Jenkins had probable cause for the search.

{¶ 12} It is commonly recognized that drugs are amenable to being flushed down a toilet. This possibility gave rise to an exigent circumstance, dispensing with the requirement that Jenkins first obtain a warrant before conducting the search.

{¶ 13} The trial court did not err in overruling Trainer's motion to suppress. Trainer's sole assignment of error is overruled.

IV. Conclusion

{¶ 14} Trainer's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

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