[Cite as *State v. Ramey*, 2016-Ohio-607.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26705
	:	
v.	:	Trial Court Case No. 2015-CR-104
	:	
CHARLES J. RAMEY, JR.	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 19th day of February, 2016.

. . . . . .

MATHIAS H. HECK, JR., by ANN M. GRABER, Atty. Reg. No. 0091731, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

J. ALLEN WILMES, Atty. Reg. No. 0012093, 7821 North Dixie Drive, Dayton, Ohio 45414
Attorney for Defendant-Appellant

. . . . . .

WELBAUM, J.

{¶ 1} Defendant-appellant, Charles J. Ramey, Jr., appeals from his conviction in the Montgomery County Court of Common Pleas after he pled no contest to possessing heroin and cocaine. Specifically, Ramey challenges the trial court's decision overruling his motion to suppress the drugs at issue and the statements he made to police. For the reasons outlined below, the judgment of the trial court will be affirmed.

Facts and Course of Proceedings

{¶ 2} On January 22, 2015, the Montgomery County Grand Jury indicted Ramey for one count of possessing heroin in an amount equaling or exceeding 100 unit doses, but less than 500 unit doses, in violation of R.C. 2925.11(A), as well as one count of possessing cocaine in an amount less than five grams, also in violation of R.C. 2925.11(A). The charges arose after an officer discovered a baggie of the aforementioned drugs lying on the ground in an area where Ramey had been standing.

{¶ 3} Ramey initially pled not guilty to the charges and thereafter filed a motion to suppress. In the motion, Ramey sought to suppress the drugs and his statements to police. On March 11, 2015, the trial court held a hearing on the motion, during which Officer Christopher Savage of the Dayton Police Department was the only witness to testify. Savage provided the following information.

{¶ 4} On January 12, 2015, at approximately 7:15 p.m., Savage was on duty working with Officer Jason Rillo. At that time, both officers were dressed in their uniforms and were traveling in a marked police cruiser driven by Rillo. Savage and Rillo are members of the Dayton Police Department's Community Problem Response Team, which

focuses on locations in Dayton where drug activity has either been reported or is known to occur. On the day in question, Savage and Rillo were specifically focused on Gina's Liquor Store ("Gina's") located at 2229 Germantown Avenue, an area where drinking, drug use, and drug trafficking are known to occur.

{¶ 5} Dayton Police Sergeant John Riegel was also near Gina's on the day in question. Riegel, who was also dressed in uniform, was traveling in a marked police SUV. As part of his patrol, Riegel advised Savage and Rillo that an individual, later identified as Ramey, was loitering in front of Gina's. Riegel requested Savage and Rillo to travel to Gina's so that they could assist in investigating Ramey's activities. Following this request, Savage and Rillo positioned their cruiser behind Gina's in the back parking lot while Riegel parked his SUV in front of the store.

{¶ 6} After they were parked, Riegel advised Savage and Rillo that he observed Ramey go inside Gina's upon seeing his SUV. Riegel also advised that he observed Ramey milling about the store for a few minutes and looking out the store's front windows at him before eventually making a purchase. After making his purchase, Ramey exited the building and walked towards Gina's back parking lot. Savage testified that as Ramey turned the corner of the building, Ramey noticed their police cruiser and gave them a look of surprise. Ramey then walked past the cruiser, entered an alley that was located behind Gina's, and started walking west toward Adelite Avenue.

{¶ 7} In continuing their investigation, Savage and Rillo began to follow Ramey down the alley in their police cruiser. When Ramey arrived at Adelite, he crossed the street midblock walking from the east side to the west side of the street. It is undisputed that at the point where Ramey crossed Adelite, there was no marked crosswalk or a traffic

control signal at either adjacent intersection. Despite this, Savage and Rillo believed that Ramey had committed a jaywalking offense. As a result, the officers decided to stop Ramey in order to issue him a citation.

{¶ 8} After Ramey crossed Adelite, the officers observed him walk through the yard of a house that was located at the corner of Adelite and Lakeview Avenues. At that time, it appeared that Ramey was going to walk to the front yard of the house, which faces Lakeview. The officers then traveled to the intersection of Adelite and Lakeview in order to continue following Ramey. However, upon arriving at the intersection, Ramey was nowhere to be seen. At that point, Savage exited the cruiser to search for Ramey on foot. Savage looked between the houses along Lakeview in an effort to determine Ramey's location. In doing so, Savage observed Ramey walking west on the same alley where he had been seen walking previously.

{¶ 9} Meanwhile, Rillo continued driving west on Lakeview Avenue. When Rillo's cruiser drove by, Savage observed Ramey suddenly change his direction and begin walking north from the alley back towards Lakeview. In doing so, Ramey was walking along a fence line and through a vacant lot between two houses. Savage then observed Ramey stop, turn toward the fence, and place his left hand on the fence.

{¶ 10} Upon seeing this, Savage feared that Ramey had spotted him and was attempting to jump the fence and flee. As a result, Savage walked under a street light and asked Ramey what he was doing. Ramey then stumbled against the fence and replied "I just fell." In response, Savage told Ramey that is not what he had asked, and then asked Ramey where he was going. Ramey replied that he was going to his family's home nearby. Savage then asked Ramey where his family lived, to which Ramey

responded "Hilltop."

{¶ 11} During this initial encounter, Savage approached Ramey at the fence and radioed Rillo with their location. Once Rillo arrived at the scene, Savage placed Ramey inside the police cruiser so that he could be cited for the alleged jaywalking offense. Savage testified that he did not advise Ramey of the offense when he first made contact with him because he did not know whether something else was amiss. Rather, Savage believed it was Rillo who advised Ramey of the jaywalking offense.

{¶ 12} After escorting Ramey to the cruiser, Savage informed Rillo that he thought Ramey may have done something back at the fence and proceeded back to the area where Ramey had been standing. It was snowing on the day in question; therefore, Savage went to the area where the snow had been disturbed from Ramey stumbling. When Savage reached that area, he observed a clear, plastic baggie containing gel capsules on the west side of the fence lying atop the fresh snow. Savage testified that the capsules appeared to be contraband, which proved correct, as the capsules contained the drugs at issue. Savage also observed that there was only one set of footprints in the snow leading to the area where the baggie of drugs was discovered.

{¶ 13} Following the discovery of the drugs, Savage returned to Rillo's cruiser to speak with Ramey. A DVD recording of their discussion was played at the suppression hearing, which showed Savage asking Ramey a few rudimentary and identifying questions before reading him his *Miranda* warnings. Ramey freely provided responses to these initial questions and further volunteered that "I had nothing on me. I did not even get close to that fence." Savage then read the *Miranda* warnings to Ramey and Ramey indicated that he understood his rights. Savage, however, did not obtain a specific

waiver of *Miranda* rights from Ramey. Instead, Savage began to interrogate Ramey with Ramey freely responding to each of Savage's questions.

{¶ 14} In ruling on Ramey's motion to suppress, the trial court noted that the foregoing facts created the following issues: (1) the lawfulness of the stop; and (2) whether there was an actual *Miranda* waiver. With regards to the lawfulness of the stop, the trial court determined that the officers lacked a reasonable, articulable suspicion to stop and detain Ramey for jaywalking because, pursuant to section 75.05(a) and (c) of Dayton's Revised Code of General Ordinances, Ramey's conduct did not constitute a violation of the jaywalking ordinance.[1] Specifically, the trial court found that there was no marked crosswalk or a traffic control signal at either adjacent intersection of Adelite Avenue where Ramey crossed, and that there was no evidence of Ramey failing to yield to oncoming traffic.

{¶ 15} However, the trial court's analysis did not end there. The trial court further concluded that Ramey was not seized by Savage at the time he discarded the baggie of drugs. Specifically, the trial court found that Ramey discarded the drugs when Savage made his presence known and asked him what he was doing at the fence. During that time, the trial court found that Savage never: (1) commanded Ramey to stop; (2) displayed

---

[1] Section 75.05 of the Dayton Revised Code of General Ordinances provides the following, in pertinent part:

Sec. 75.05 - Right-of-way yielded by pedestrian

(A) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles, trackless trolleys, or streetcars upon the roadway.

* * *

(C) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

his weapon; (3) touched Ramey; or (4) engaged in any aggressive police conduct. Accordingly, the trial court found that no seizure had occurred at that point in time. As a result of this finding, the trial court held that the Fourth Amendment protections did not apply to the drugs at issue since they were abandoned before Ramey was seized. Therefore, the trial court overruled Ramey's motion to suppress the baggie of drugs discovered by the fence.

{¶ 16} In analyzing the *Miranda* warnings issue, the trial court concluded that Ramey's pre-*Miranda* statements were not subject to suppression because the statements were either basic identifying information or not in response to any question posed by Savage. The trial court also held that despite Savage not obtaining a specific waiver of *Miranda* rights from Ramey, under the circumstances, a waiver could be reasonably inferred because Ramey acknowledged that he understood his rights and thereafter freely responded to Savage's questions. Accordingly, the trial court also overruled Ramey's motion to suppress his statements to police.

{¶ 17} Following the trial court's suppression ruling, Ramey entered a no contest plea to both possession charges. Thereafter, the trial court sentenced Ramey to an aggregate prison term of two years. Ramey now appeals from the trial court's decision overruling his motion to suppress, raising one assignment of error for review.

Assignment of Error

{¶ 18} Ramey's sole assignment of error is as follows:

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY REFUSING TO SUPPRESS EVIDENCE SEIZED DURING AN ILLEGAL STOP.

{¶ 19} Under his single assignment of error, Ramey contends that the trial court erred in overruling his motion to suppress. Specifically, Ramey challenges the trial court's decision finding that he was not seized at the time he allegedly abandoned the baggie of drugs. Ramey contends that he was unlawfully seized within the meaning of the Fourth Amendment at the moment Savage initiated contact with him at the fence because Savage had no reasonable, articulable suspicion of criminal activity to justify the detention. Therefore, Ramey maintains that all the evidence recovered from his unlawful seizure, including his statements to police, should be suppressed. We note that Ramey does not challenge the trial court's ruling on the *Miranda* issues; rather, he contends that his statements should be suppressed pursuant to the fruit of the poisonous tree doctrine since his statements arose from an unlawful seizure. We disagree with Ramey's claims.

{¶ 20} In ruling on a motion to suppress, the trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994); *State v. Knisley*, 2d Dist. Montgomery No. 22897, 2010-Ohio-116, ¶ 30. Accordingly, when we review suppression decisions, we must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Retherford* at 592. "Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." *Id*.

{¶ 21} The Fourth Amendment to the United States Constitution as well as Article I, Section 14, of the Ohio Constitution guarantees the right to be free from unreasonable searches and seizures. However, not every encounter with the police constitutes a

seizure implicating the Fourth Amendment. (Citation omitted.) *State v. Baker*, 2d Dist. Montgomery No. 26547, 2015-Ohio-4709, ¶ 9. "The United States Supreme Court has delineated three types of contact to be utilized in determining whether an individual's Fourth Amendment rights are implicated. These include consensual encounters, investigatory detentions known as *Terry* stops, and seizures equivalent to arrest." (Citation omitted.) *Id.*

{¶ 22} Seizures in the nature of an arrest may occur only if the police have probable cause to arrest a person for a crime. *Retherford* at 595, citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). (Other citation omitted.) A *Terry* stop is a seizure that amounts to a temporary, investigative detention of an individual, and such a seizure does not violate the Fourth Amendment as long as the police have a reasonable, articulable suspicion of criminal activity. *State v. Taylor*, 106 Ohio App.3d 741, 748-749, 667 N.E.2d 60 (2d Dist.1995), citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

{¶ 23} In contrast, consensual encounters are not seizures and do not implicate the Fourth Amendment. *State v. Aufrance*, 2d Dist. Montgomery No. 21870, 2007-Ohio-2415, ¶ 12-13; *State v. Helmick*, 9th Dist. Summit No. 27179, 2014-Ohio-4187, ¶ 9. "Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and to walk away." (Citations omitted.) *State v. Cosby*, 177 Ohio App.3d 670, 2008-Ohio-3862, 895 N.E.2d 868, ¶ 12 (2d Dist.).

{¶ 24} The specific test for determining whether a person has been seized within the meaning of the Fourth Amendment is whether "in view of all of the circumstances

surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). "As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification." *Id*.

{¶ 25} "The focus of the inquiry is on the police officer's conduct, not the subjective state of mind of the person stopped. The crucial test for a seizure is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." (Citation omitted.) *State v. Satterwhite*, 2d Dist. Montgomery No. 15357, 1996 WL 156881, *3 (Apr. 5, 1996). "The police conduct must consist of either the application of physical force, or, where that is absent, an officer's show of authority to restrain a person's liberty." *Id*., citing *California v. Hodari D.,* 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991).

{¶ 26} "The question of whether a particular police encounter with a citizen is an investigative stop, as opposed to a consensual encounter, is fact-sensitive." *Id*. "Factors that might indicate a seizure include the threatening presence of several police officers, the display of a weapon, some physical touching of the person, the use of language or tone of voice indicating that compliance with the officer's request might be required, approaching the person in a nonpublic place, and blocking the citizen's path." *Cosby*, 177 Ohio App.3d 670, 2008-Ohio-3862, 895 N.E.2d 868 at ¶ 13, citing *Mendenhall*. (Other citation omitted.)

{¶ 27} In *Michigan v. Chesternut*, 486 U.S. 567, 108 S.Ct. 1975, 100 L.Ed.2d 565 (1988), the United States Supreme Court applied the *Mendenhall* test to a set of facts similar to the present case. In *Chesternut*, four officers were in a police cruiser on routine patrol when they observed the defendant begin to run after observing their cruiser. *Id*. at 569. The officers followed the respondent to see where he was going. *Id*. After catching up with him and driving alongside him for a short distance, the officers observed the defendant discard a number of packets, which were later determined to contain drugs. *Id*. The Court analyzed whether the officers' conduct of following the defendant amounted to a seizure implicating the Fourth Amendment. *Id*. at 575. In finding no seizure, the Court stated the following:

> Contrary to respondent's assertion that a chase necessarily communicates that detention is intended and imminent, * * * the police conduct involved here would not have communicated to the reasonable person an attempt to capture or otherwise intrude upon respondent's freedom of movement. * * * The record does not reflect that the police activated a siren or flashers; or that they commanded respondent to halt, or displayed any weapons; or that they operated the car in an aggressive manner to block respondent's course or otherwise control the direction or speed of his movement. * * * While the very presence of a police car driving parallel to a running pedestrian could be somewhat intimidating, this kind of police presence does not, standing alone, constitute a seizure. * * * *United States v. Knotts*, 460 U.S. 276, 103 S.Ct. 1081, 75 L.Ed.2d 55 (1983) (holding that continuous surveillance on public thoroughfares by visual observation and electronic "beeper" does not

> constitute seizure); *Florida v. Royer*, 460 U.S., at 497, 103 S.Ct., at 1323–24 (plurality opinion) (noting that mere approach by law enforcement officers, identified as such, does not constitute seizure). Without more, the police conduct here—a brief acceleration to catch up with respondent, followed by a short drive alongside him—was not "so intimidating" that respondent could reasonably have believed that he was not free to disregard the police presence and go about his business. * * * The police therefore were not required to have "a particularized and objective basis for suspecting [respondent] of criminal activity," in order to pursue him. * * *

Chesternut at 575.

{¶ 28} Similarly, we found a consensual encounter in *State v. Springer*, 2d Dist. Montgomery No. 24353, 2011-Ohio-4724. In *Springer*, an officer noticed that an individual walking on a roadway put his head down and turned in a different direction as the officer's cruiser was approaching the individual's general vicinity. *Id*. at ¶ 8. The officer then drove up toward the individual, got out of the vehicle, and walked on foot to approach him. *Id*. at ¶ 9. The officer did not order the individual to stop and he did not draw his service revolver. *Id*. at ¶ 11. The officer asked for the individual's name and whether he lived in the apartment complex. *Id*. at ¶ 12-13. The individual responded to the officer's questions in a cooperative manner and consented to a pat-down search. *Id*. at ¶ 13-15. Based on those facts, this court held that the transaction preceding the consent to search was a consensual encounter because the officer did nothing that would cause a reasonable person to believe the individual was not free to leave. *Id*. at ¶ 64.

{¶ 29} In contrast, we found that a seizure had occurred during an initial police

encounter in *Cosby*, 177 Ohio App.3d 670, 2008-Ohio-3862, 895 N.E.2d 868. In that case, a pedestrian threw a baggie of drugs on the ground as the officer was approaching. As the officer approached the pedestrian, the officer had the emergency overhead lights on his cruiser flashing and a white spotlight aimed at the pedestrian. *Id*. at ¶ 14. In addition, the officer commanded the pedestrian to stop. *Id*. Under those circumstances, we held the encounter was not consensual because no reasonable person would have felt free to walk away and ignore the officer's order. *Id*. at ¶ 15.

{¶ 30} The facts of the instant case are more similar to that of *Chesternut* and *Springfield* than *Cosby*. During the initial encounter with Ramey, Savage did not order Ramey to stop. Rather, Savage merely asked Ramey what he was doing and where he was going. In addition, Savage did not display his weapon, flash any light on Ramey, touch Ramey, or engage in any aggressive police conduct. Instead, Savage, a single officer, initiated a conversation with Ramey while Ramey was standing by a fence in a vacant lot. As noted in *Chesternut*, the fact that the officers followed Ramey may have been intimidating, but that conduct alone does not amount to a seizure. Therefore, under the circumstances of this case, we do not find that Savage's conduct would have made a reasonable person feel as though he was not free to leave and terminate the conversation. Accordingly, we find that Savage's initial encounter with Ramey was consensual.

{¶ 31} Nevertheless, the consensual encounter transformed into a seizure when Savage escorted Ramey to the police cruiser for purposes of citing him for the mistaken jaywalking offense. However, by that point in time, Ramey had already discarded the baggie containing drugs, as the trial court found that Ramey had discarded the drugs at

the moment Savage initiated contact with him while Ramey was turned toward the fence. This finding is supported by competent, credible evidence in the record, as Savage testified on cross-examination that he did not see anything come from Ramey's hands during their encounter. Moreover, the baggie of drugs was discovered lying atop fresh snow in the area where Ramey had stumbled on the fence with only his set of footprints leading to that area.

{¶ 32} "When a person abandons property that he owns or possesses, the act of abandonment operates to relinquish any reasonable expectation of privacy he had in the property which the Fourth Amendment protects." (Citation omitted.) *State v. Deloach*, 2d Dist. Montgomery No. 18072, 2000 WL 1133168, *1 (Aug. 11, 2000). "In other words, abandonment of the property removes any protections afforded by the Fourth Amendment that the person who has abandoned it has the standing to assert." (Citations omitted.) *State v. Blackshear*, 2d Dist. Montgomery No. 15812, 1997 WL 104622, *1 (Feb. 14, 1997).

{¶ 33} When there is merely a consensual encounter before drugs are abandoned, the argument on the issue of whether the police had sufficient indicia of reliability to justify a stop, is irrelevant. *State v. Gay*, 2d Dist. Montgomery No. 18970, 2002 WL 628622, *3 (Apr. 19, 2002). This is because there is no Fourth Amendment issue when a defendant abandons drugs prior to being seized. *Id*. at *2. However, "[w]hen a person disposes of or abandons property in response to illegal police conduct, such as an illegal seizure or search, that person is not precluded from challenging the admissibility of the evidence because his act of abandonment is not voluntary and is a product or fruit of that illegal police conduct." (Citations omitted.) *Cosby*, 177 Ohio App.3d 670, 2008-Ohio-3862,

895 N.E.2d 868 at ¶ 33. "Police pursuit or the existence of a police investigation does not of itself render abandonment involuntary." (Citations omitted.) *State v. Freeman*, 64 Ohio St.2d 291, 297, 414 N.E.2d 1044 (1980).

{¶ 34} In this case, Ramey did not abandon the drugs in response to any illegal police conduct. We have already determined that Ramey discarded the baggie of drugs during the initial, consensual encounter with Savage. Therefore, Ramey's argument that Savage had no reasonable, articulable suspicion of criminal activity to justify the detention is irrelevant. Thus, the trial court correctly determined that the Fourth Amendment protections did not apply to the baggie of drugs because the drugs were abandoned by Ramey, and the abandonment was not in response to unlawful police conduct. Accordingly, it was appropriate for the trial court to not suppress the drugs.

{¶ 35} Ramey also contends that the statements he made to police should be suppressed based on the fruit of the poisonous tree doctrine, claiming that his statements derived from the police unlawfully detaining him without having a reasonable suspicion of criminal activity. The record indicates that Ramey made statements to Savage during the consensual encounter and while he was in the police cruiser with Savage. Because the protections of the Fourth Amendment are not implicated in consensual encounters, any voluntary statements made by Ramey during that encounter are admissible against him. *Taylor*, 106 Ohio App.3d at 749, 667 N.E.2d 60, citing *Mendenhall*, 446 U.S. at 559-560, 100 S.Ct. 1870, 64 L.Ed.2d 497. Furthermore, when Ramey made the statements in the cruiser, Savage had already lawfully discovered the drugs that Ramey abandoned and thus had probable cause to arrest Ramey for drug possession. Accordingly, Ramey was lawfully seized in the nature of an arrest when he made the statements in the cruiser.

Therefore, the fruit of the poisonous tree doctrine does not apply to bar his statements from being entered as evidence, as he made the statements while lawfully detained.

{¶ 36} Because Ramey does not challenge the admissibility of his statements on the basis of *Miranda*, we need not address that issue.

{¶ 37} For the foregoing reasons, the trial court did not err in overruling Ramey's motion to suppress. Accordingly, his sole assignment of error is overruled.

Conclusion

{¶ 38} Having overruled Ramey's sole assignment of error, the judgment of the trial court is affirmed.

. . . . . .

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

Copies mailed to:

Mathias H. Heck, Jr.
Ann M. Graber
J. Allen Wilmes
Hon. Michael Tucker