[Cite as *State v. Skillern*, 2009-Ohio-3138.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. John W. Wise, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008CA00262
SIDNEY HARRISON SKILLERN	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas Case No. 2008-CR-0707
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	June 22, 2009

APPEARANCES:

For Plaintiff-Appellee:

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Assistant Prosecuting Attorney
(Counsel of Record)

For Defendant-Appellant:

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200 W. Tuscarawas Street, Ste. 200
Canton, Ohio 44702

Delaney, J.

{¶1} Defendant-Appellant Sidney Skillern appeals from his conviction of one count of trafficking in marijuana and one count of possession of marijuana. Appellant pled no contest to the charges following the trial court's denial of his motion to suppress. The State of Ohio is Plaintiff-Appellee.

{¶2} On April 12, 2008, Canton Police Officer Joseph Mongold was working special duty for the Ridgewood Apartment Complex in Canton, Ohio, when he observed Appellant approaching the door of an apartment known to be a drug residence in the apartment complex. Officer Mongold was specifically hired as a special duty officer in the complex because of the high volume of drug trafficking, criminal trespassing and weapons offenses occurring at the complex.

{¶3} At approximately 2:00 p.m. on April 12, Officer Mongold was patrolling the apartment complex on foot, with his partner, Officer Overdorf, when they observed Appellant approach one of the apartment buildings that was known to be a source of repeated drug activity.

{¶4} The officers approached Appellant and asked him how he was doing. Appellant replied that he was fine and that he was at the apartment to visit his friend Chris. Officer Mongold advised Appellant that they were aware that Chris was involved in drug trafficking in the complex. At that point, Appellant turned away from knocking at the door and placed his left hand in his jacket pocket.

{¶5} Officer Mongold then asked Appellant if he could take his hand out of his pocket for officer safety. According to Officer Mongold, Appellant just stared at him but did not comply with the officer's request. Officer Mongold repeated his request several

times, but Appellant refused to take his hand out of his pocket. At that point, Officer Mongold asked Appellant to turn around and place his hands on the wall. Appellant partially complied, turning around and placing his right hand on the wall. He did not take his left hand out of his pocket. When Officer Mongold asked him to take his left hand out of his pocket and put that hand on the wall, Appellant reluctantly did so, but pressed his body up against the wall at that time.

{¶6} Officer Mongold then requested Appellant to take a couple of steps back from the wall. As Appellant did so, Officer Mongold began patting Appellant down. When he reached the area of Appellant's jacket pockets, a large bag of marijuana fell out of Appellant's coat pocket. As the officer was handcuffing Appellant and placing him under arrest, Appellant stated that he knew this was a set up and that Chris set him up.

{¶7} After he was advised of his *Miranda* rights, Appellant agreed to speak with the officer and stated that he was transporting marijuana to the apartment for Chris and that it had come from his brother and that he had never done this before. Appellant stated that he had fallen on hard financial times and that he needed extra money.

{¶8} The trial court took the matter under advisement and issued a written judgment entry, stating that Officer Mongold had a reasonable, articulable suspicion to pat Appellant down for officer safety pursuant to *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1503. Specifically, the court held:

{¶9} "In the present action Officer Mongold observed the defendant in an area known for drug activity and crime with which he was very familiar. Further, Officer Mongold observed the defendant knock on a residence that was known for marijuana trafficking. Pursuant to *Terry v. Ohio*, Officer Mongold was able to approach the

defendant for the purpose of investigating possible criminal behavior. Upon approaching the defendant, the defendant refused to remove his hand from a coat pocket. This conduct taken together with the fact that the defendant was outside a residence known for drug trafficking and in a high crime area gave Officer Mongold reasonable articulable suspicion to conduct a pat down of the defendant. This Court finds, under the totality of the circumstances, that Officer Mongold had reasonable and articulable suspicion to conduct a pat down of the defendant and was certainly justified in conducting a pat down search of the defendant for officer safety."

{¶10} After the trial court's ruling, Appellant entered a no contest plea to the charges. The trial court accepted Appellant's plea and found him guilty. The court sentenced Appellant to a three-year term of community control.

{¶11} Appellant raises one Assignment of Error:

{¶12} "I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS ILLEGALLY OBTAINED EVIDENCE."

I.

{¶13} In his sole assignment of error, Appellant argues that the trial court erred in denying his motion to suppress. We disagree.

{¶14} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 328, 713 N.E.2d 1. During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks* (1996), 75 Ohio St.3d 148, 661 N.E.2d 1030. A reviewing court is bound to accept the trial court's findings of fact if they are supported

by competent, credible evidence. *State v. Metcalf* (1996), 111 Ohio App.3d 142, 675 N.E.2d 1268. Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶15} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 Ohio B. 57, 437 N.E.2d 583; and *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. Second, an appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 623, 620 N.E.2d 906.

{¶16} The trial court determined, and this Court agrees, that the pat down search of Appellant was valid. Officer Mongold testified that upon approaching Appellant, he began acting suspiciously when he placed his hand in his coat pocket and refused to remove it, even once the officer had requested that he do so repeatedly.

When Officer Mongold instructed Appellant to place his hands on the wall, Appellant only partially complied and still refused to take his hand out of his pocket. He finally did so, but then pressed his body up against the wall. When he finally complied with Officer Mongold's request and was patted down, a large bag of marijuana fell out of his coat pocket.

{¶17} Officer Mongold was within his purview to approach Appellant and engage him in conversation. As Appellee notes, police officers are permitted to approach an individual, even without any basis to conclude that the person is suspicious. *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, 776 N.E.2d 26. Moreover, once the suspect begins acting suspiciously and the officer fears for his safety or the safety of those around him, he is permitted to conduct a pat down search pursuant to *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1503, (holding that an officer is authorized to perform a limited pat down search for weapons as a safety precaution if there is a reasonable suspicion that the person stopped may be armed and dangerous).

{¶18} Where a defendant acts suspiciously, refuses to take his hand out of his pocket after repeated requests from the officer and an officer is familiar with the area as a high crime area for guns and drugs, the officer acts appropriately in patting down the suspect for officer safety and has a reasonable articulable suspicion to do so. See *State v. Dave*, 5th Dist. No. 2008CA00109, 2008-Ohio-6840.

{¶19} Based on the foregoing, we find Appellant's claim to be without merit. Appellant's assignment of error is overruled. The decision of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J.

Wise, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. JOHN W. WISE

HON. JULIE A. EDWARDS

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-vs-	:	JUDGMENT ENTRY
	:	
SIDNEY HARRISON SKILLERN	:	
	:	
Defendant-Appellant	:	Case No. 2008CA00262
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

_____
HON. PATRICIA A. DELANEY

_____
HON. JOHN W. WISE

_____
HON. JULIE A. EDWARDS