[Cite as *State v. Wilson*, 2009-Ohio-3833.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 08-CA-38
TRAVUS L. WILSON	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Ashland Municipal Court of Case No. 08-CRB-584AB
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	July 23, 2009

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant, Travus Wilson, appeals the judgment of the Ashland Municipal Court, convicting him of one count of possession of marijuana. The facts giving rise to Appellant's conviction are as follows:

{¶2} On June 14, 2008, Patrolman Michael Garn of the Ashland Police Department was dispatched to 316 Vine Street, Ashland, Ohio, on a report of a fight in progress. Upon arriving at the scene, Patrolman Garn was met by a woman in the front yard who waved him over and informed him that the fight was in the back yard.

{¶3} When Patrolman Garn exited his car and approached the scene, he asked a group of approximately ten people who were at the residence for a small party, who was involved in the fight. Appellant, who was sitting on the porch drinking a beer, immediately stated, "well, they've left so you can just fucking leave."

{¶4} Patrolman Garn responded to the crowd that he needed to know who was in the fight to see if there was anyone injured and stated that he was not leaving. Appellant again immediately responded "they've already left, I don't know where they went." Patrolman Garn told Appellant that he could "lose his attitude" and that he "need[ed] to know where these people went to make sure they were okay" and told Appellant "if he kept lying to me I was going to arrest him for obstruction."

{¶5} Appellant responded, "well, they're in Cleveland and I don't know who they are."

{¶6} At that time, Patrolman Garn arrested Appellant for obstructing official business, in violation of R.C. 2921.31, a misdemeanor of the second degree. As he was patting Appellant down in a search incident to arrest, he discovered a baggie of

marijuana on Appellant's person and Appellant was also charged with possession of drugs, in violation of Ashland Ordinance 513.03(A), a misdemeanor of the fourth degree.

{¶7} Patrolman Garn testified at the suppression hearing that he then found out from Barbara Wilson that the two people involved in the fight jumped into their vehicles and left the scene out of the back driveway as soon as they heard sirens approaching. Barbara Wilson stated that the two men who were fighting were intoxicated and that they fled down Ohio Street.

{¶8} Patrolman Garn testified that he arrested Appellant because Appellant kept interrupting him when he was trying to talk to the group to find out who was involved and if he needed a squad for any injured people. He stated that Appellant would immediately "pipe up" as soon as he finished asking the group a question and that Appellant did not give anyone else a chance to answer his questions. Patrolman Garn determined that Appellant's interruptions were impeding his ability to investigate. Additionally, Patrolman Garn testified that based upon Appellant's statement that the people who were involved in the fight were "in Cleveland", he believed that Appellant was lying to him since he was aware that the people involved in the fight had just left the scene.

{¶9} After hearing the testimony of Patrolman Garn at the suppression hearing, wherein no other testimony was presented, the trial court determined that there was sufficient evidence to cause Patrolman Garn to believe that he was being obstructed in his official capacity by Appellant. The court determined that Appellant's statements such as "well they left and I don't know who they are or where they went," and "well,

they are in Cleveland and I don't know who they are" provided probable cause for Appellant's arrest.

{¶10} After the suppression hearing, Appellant pled no contest to the charge of possession of marijuana.

{¶11} Appellant raises one Assignment of Error:

{¶12} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY OVERRULING THE APPELLANT'S MOTION TO SUPPRESS EVIDENCE WHERE THE APPELLANT WAS ARRESTED AND SEARCHED FOR MAKING STATEMENTS IN RESPONSE TO AN OFFICER'S QUESTIONS, WHICH RESPONSES WERE ALLEGED TO BE FALSE EVEN THOUGH THE OFFICER DID NOT KNOW IF THEY WERE FALSE OR NOT."

I.

{¶13} In his sole assignment of error, Appellant argues that the trial court erred in failing to suppress evidence obtained as the result of his arrest. Specifically, Appellant argues that the officer lacked probable cause to arrest him and that the evidence obtained as a result of the search incident to arrest should have been suppressed as fruit of the poisonous tree.

{¶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 Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507. A search incident to arrest is one of those exceptions. *State v. Matthews* (1976), 46 Ohio

St.2d 72, 73-74, 346 N.E .2d 151. A search incident to arrest must be based upon probable cause since a police officer needs probable cause in order to effectuate the arrest. If the arrest is unlawful because the police do not have probable cause to arrest, then the search is also unlawful. *State v. Traore*, 1st Dist. No. C-060802, 2007-Ohio-6334, ¶ 8.

{¶17} A warrantless arrest is valid if the arresting officer possessed probable cause to believe that the suspect committed an offense. *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223; *State v. Otte* (1996), 74 Ohio St.3d 555, 559, 660 N.E.2d 711. The test for determining probable cause to justify an arrest is "whether at that moment the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [arrestee] had committed or was committing an offense." *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142. In determining whether probable cause to arrest existed, a reviewing court must examine the "totality of the circumstances." *Illinois v. Gates* (1983), 462 U.S. 213, 230-231, 103 S.Ct. 2317, 76 L.Ed.2d 527. Probable cause is a lesser standard of proof than that required for a conviction, such as proof beyond a reasonable doubt or by a preponderance of the evidence. *State v. Young* (2001), 146 Ohio App.3d 245, 254, 2001-Ohio-4284, 765 N.E.2d 938.

{¶18} Appellant was originally arrested for violating R.C. 2921.31(A), which provides:

{¶19} "No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the

public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties."

{¶20} Appellant argues that he did not engage in any affirmative act that would constitute obstructing official business under R.C. 2921.31, and therefore, the evidence obtained as a result of the search incident to arrest must be suppressed. Appellant also argues that, even if it was determined that he committed acts which hampered or impeded the officers, those acts were not committed with a purpose to prevent, obstruct, or delay the officers.

{¶21} "The intent of an accused person dwells in his mind. Not being ascertainable by the exercise of any or all of the senses, it can never be proved by the direct testimony of a third person, and it need not be. It must be gathered from the surrounding facts and circumstances under proper instructions from the court." *State v. Huffman* (1936), 131 Ohio St. 27, 1 N.E.2d 313, paragraph four of the syllabus.

{¶22} "The purpose with which a person does an act is determined from the manner in which it is done, the means used, and all the other facts and circumstances in evidence." *State v. Hardin* (1984), 16 Ohio App.3d 243, 245, 475 N.E.2d 483, 486.

{¶23} Accordingly, Appellant's purpose can be ascertained by the facts and circumstances surrounding his statements and actions.

{¶24} Patrolman Garn testified that when he approached the group of people at the scene of the fight and asked them where the people involved in the fight were, Appellant immediately responded by stating "well, they've left so you can just fucking leave." Patrolman Garn stated that he knew the gathering of people was a small family gathering and nothing in the record contradicts this statement.

{¶25} When Patrolman Garn again asked the crowd where the participants in the fight were so that he could see if anyone needed medical assistance, Appellant again piped up, “they’ve already left, I don’t know where they went.” Patrolman Garn told Appellant to “lose the attitude” and “if he kept lying to me I was going to arrest him for obstruction.” Patrolman Garn again inquired as to the whereabouts of the people involved in the fight, to which Appellant again interjected, “Well, they’re in Cleveland and I don’t know who they are.”

{¶26} Patrolman Garn stated that because of Appellant’s interruptions, he was unable to speak to anyone else in the group about what had occurred. As soon as Patrolman Garn took Appellant into custody, another witness, Barbara Wilson, was able to inform Patrolman Garn that the two participants in the fight were males who were intoxicated. She told him that as soon as the men heard the sirens, they jumped in their cars and fled the scene towards Ohio Street.

{¶27} Based on Appellant’s interruptions and lies of “they’re in Cleveland” and “I don’t know who they are” and “I don’t know where they are”, Patrolman Garn was unable to provide information to assist other patrol units in locating the participants in the fight, even though they had just left the scene.

{¶28} There is no doubt that Appellant’s statement of “they’re in Cleveland” was a lie, as they had just left the scene in Ashland, Ohio. Moreover, Appellant’s repeated interruptions while Patrolman Garn attempted to obtain information as to the whereabouts of the men involved in the fight, one of whom was discovered to be Appellant’s father, hindered Patrolman Garn in investigating the case and carrying out his duties as a law enforcement officer.

{¶29} "The General Assembly has adopted legislation intended to discourage individuals from purposely giving false information that hinders public officials in the performance of their duties. Complete and honest cooperation with the law enforcement process by all citizens is essential to the effective operation of the justice system. *Columbus v. New* (1982), 1 Ohio St.3d 221, 227, 1 OBR 244, 249, 438 N.E.2d 1155, 1160. Therefore, we hold that the making of an unsworn false oral statement to a public official with the purpose to mislead, hamper or impede the investigation of a crime is punishable conduct within the meaning of R.C. 2921.13(A)(3) and 2921.31(A)." *State v. Lazzaro* (1996), 76 Ohio St.3d 261, 266, 667 N.E.2d 384.

{¶30} Appellant's statements in the case at bar can be seen as impeding or hampering the officer's ability to fully investigate the case in such a way as to prevent the officer from finding the people involved in the fight. See e.g., *State v. Lazzaro* (1996), 76 Ohio St.3d 261, 667 N.E.2d 384.

{¶31} Based upon the foregoing, we find that under the totality of the circumstances, there was probable cause for the officer to arrest Appellant for obstructing official business. Since probable cause existed for the arrest, the search incident to arrest and the discovery of the marijuana was valid. Therefore, we find that the trial court did not err in denying Appellant's motion to suppress. Appellant's assignment of error is overruled and the judgment of the Ashland Municipal Court is affirmed.

By: Delaney, J.

Gwin, P.J. and

Farmer, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

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IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
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-vs-	:	JUDGMENT ENTRY
	:	
TRAVUS L. WILSON	:	
	:	
Defendant-Appellant	:	Case No. 08-CA-38
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Ashland Municipal Court is affirmed. Costs assessed to Appellant.

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HON. PATRICIA A. DELANEY

_____
HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER