[Cite as *State v. Swetnam*, 2015-Ohio-1003.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- PAUL B. SWETNAM Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. John W. Wise, J. Case No. 14-CA-57 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 2013CR00514
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 13, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
BRIAN T. WALTZ Assistant Prosecuting Attorney Licking County Prosecutor's Office 20 S. Second St., Fourth Floor Newark, Ohio 43055	ROBERT C. BANNERMAN PO Box 77466 Columbus, Ohio 43207-0098

Hoffman, P.J.

{¶1} Defendant-appellant Paul B. Swetnam appeals the June 4, 2014 Judgment Entry entered by the Licking County Court of Common Pleas denying his motion to suppress evidence. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 12, 2013, Ohio State Highway Patrol Trooper Ryan Mann patrolled State Route 661 southbound in a rural area of Licking County, Ohio. At approximately 10:54 p.m., Trooper Mann noticed another car swerve to avoid hitting a pedestrian who was walking northbound along the side of the road.

{¶3} Trooper Mann turned his vehicle around and approached the pedestrian to offer aid. He inquired of Appellant as to why he was walking on the side of the road. Appellant stated he had been in a fight with his father, his father had pulled over, and he had exited the vehicle.

{¶4} After ensuring Appellant did not require first aid medical treatment, Trooper Mann offered Appellant a ride home. Appellant accepted the offer.

{¶5} Trooper Mann explained to Appellant he would need to make sure Appellant did not have any weapons on his person prior to allowing him in the cruiser, and would need to conduct a pat-down for weapons. Appellant consented to the pat-down search.

{¶6} Upon performing the pat-down search, Trooper Mann felt a large bulge in Appellant's right front pants pocket. Trooper Mann asked Appellant what was in his pocket, and Appellant stated he did not know. Trooper Mann asked for permission to search, and Appellant consented. Upon searching Appellant's pant pocket, Trooper

Mann found a glass vial with a white powdery residue. The residue was later determined to be methamphetamine. The encounter lead to a search of a cigarette pack also containing drugs. Appellant later admitted to possession of the drugs.

{¶7} On August 29, 2013, Appellant was indicted on one count of aggravated possession of drugs, methamphetamine, in violation of R.C. 2925.11(A)(C)(1)(a), a fifth degree felony.

{¶8} On April 14, 2014, Appellant filed a motion to suppress the evidence obtained as a result of the claimed illegal search. The state filed a memorandum contra. The trial court conducted a hearing on the motion on May 27, 2014. The trial court denied the motion via Judgment Entry of June 4, 2014.

{¶9} On June 11, 2014, Appellant entered a plea of no contest to the charge contained in the indictment. The trial court found Appellant guilty of the charge, and imposed a prison term of eight months, consecutive to an unrelated Knox County Court of Common Pleas sentence.

{¶10} Appellant appeals, assigning as error:

{¶11} "I. THE TRIAL COURT ERRED BY FAILING TO GRANT APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED IN VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION."

{¶12} In the sole assignment of error, Appellant maintains the trial court erred in overruling the motion to suppress. We disagree.

{¶13} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said

findings of fact are against the manifest weight of the evidence. *State v. Fanning,* 1 Ohio St.3d 19 (1982); *State v. Klein,* 73 Ohio App.3d 486 (4th Dist.1991); *State v. Guysinger,* 86 Ohio App.3d 592 (4th Dist.1993). Second, an appellant may argue 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. *State v. Williams,* 86 Ohio App.3d 37 (4th Dist.1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the 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,* 95 Ohio App.3d 93 (8th Dist.1994); *State v. Claytor,* 85 Ohio App.3d 623 (4th Dist.1993); *Guysinger.*

{¶14} The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. Without a search warrant, a search is per se unreasonable unless it falls under a few established exceptions. *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Once the defendant shows the search was warrantless, the burden shifts to the state to show it was permissible under one of the exceptions. *Id.* Consent is one exception to the warrant requirement. If an individual voluntarily consents to a search, then no Fourth Amendment violation occurs. *Schneckloth v. Bustamante,* 412 U.S. 218, 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

{¶15} The law within the State of Ohio recognizes three types of police-citizen encounters. The three types of encounters are consensual encounters, *Terry* stops, and arrests. *State v. Stonier,* 5th Dist. Stark No.2012 CA 00179, 2013–0hio–2188, 41; *citing State v. Taylor,* 106 Ohio App.3d 741, 747–749, 667 N.E.2d 60 (2nd Dist.1995). A consensual encounter occurs when a police officer approaches a citizen in public, engages that person in conversation, requests information, and that person is free to refuse to answer and walk away. *Id.* A consensual encounter does not implicate the Fourth Amendment's protection unless the police officer has in some way restrained the person's liberty by a show of authority or force such that a reasonable person would not feel free to decline the officer's request or otherwise terminate the encounter. *Taylor,* at 747. An officer's request to examine a person's identification or search a person's belongings does not make an encounter nonconsensual. *Florida v. Rodriguez,* 469 U.S. 1, 4–6, 105 S.Ct. 308 (1984); *Florida v. Bostick,* 501 U.S. 429, 111 S.Ct. 2382 (1991). Additionally, the request to conduct a pat-down does not render an encounter nonconsensual. *State v. Hardin,* 2nd Dist. Montgomery No. 20305, 2005–0hio–130, 19–20.

{¶16} We find the encounter between Appellant and Trooper Mann was consensual, during which Appellant clearly consented to the pat-down search. The trooper's actions were limited to maintaining the security of his cruiser in offering Appellant a ride home. Appellant agreed to the ride home, and agreed to the search. We find, the trial court did not err in overruling the motion to suppress.

{¶17} The sole assignment of error is overruled.

{¶18} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur