[Cite as *State v. Vanhoose,* 2015-Ohio-1728.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- PAUL VANHOOSE Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. Sheila G. Farmer, J. Hon. Patricia A. Delaney, J. Case No. 14 CAA 08 0050 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 14-CR-I-03-0115 A
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 4, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
CAROL HAMILTON O'BRIEN Delaware County Prosecutor AMELIA BEAN-DEFLUMER Assistant Prosecuting Attorney Delaware County Prosecutor's Office 140 North Sandusky Street Delaware, Ohio 43015	THOMAS R. WALDECK 61 N. Sandusky St., 2nd Floor Delaware, Ohio 43015

Hoffman, P.J.

{¶1} Defendant-appellant Paul VanHoose appeals the July 11, 2014 Judgment Entry entered by the Delaware County Court of Common Pleas denying his motions to suppress evidence and statements and his subsequent conviction on four counts of receiving stolen property and nine counts of forgery. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 22, 2012, officers from five separate police agencies arrived at Appellant's home to investigate facts surrounding thefts of credit cards at various stores in northern and central Ohio. When Appellant answered the door to Ashland County detectives, he was using a cane the detectives recognized from surveillance video of the crimes. Appellant then propped the cane against the wall. The officers identified themselves, and Appellant invited them inside. The detectives spoke with Appellant, informing him it was a voluntary interview. Appellant did not ask the officers to stop or to leave. Appellant admitted he recognized himself on surveillance video of the incidents.

{¶3} While inside the home, the detectives requested permission to search the residence. Appellant consented to the search. The detectives observed the cane used by Appellant in the surveillance video and in answering the door propped against the wall. The cane was then seized.

{¶4} On March 21, 2014, the Delaware County Grand Jury indicted Appellant on four counts of receiving stolen property, in violation of R.C. 2913.51, all felonies of

the fifth degree, and twelve counts of forgery, in violation of R.C. 2913.31, all felonies of the fifth degree.

{¶5} Appellant filed motions to suppress evidence and statements. On July 10, 2014, the trial court conducted a hearing on the motions to suppress. Via Judgment Entry of July 11, 2014, the trial court overruled the motions to suppress evidence and statements.

{¶6} Appellant entered a plea of no contest to four counts of receiving stolen property and nine counts of forgery, after which the trial court imposed sentence.

{¶7} Appellant appeals, assigning as error:

{¶8} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN OVERRULING THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS EVIDENCE AND HOLDING THAT THE WARRANTLESS SEARCH OF THE DEFENDANT-APPELLANT'S HOME, AND SEIZURE OF EVIDENCE, WAS BASED ON THE CONSENT OF THE DEFENDANT-APPELLANT, AND THAT THE EVIDENCE SEIZED WAS WITHIN THE 'PLAIN VIEW' EXCEPTION TO THE WARRANT REQUIREMENT.

{¶9} "II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN OVERRULING THE DEFENDANT'S-APPELLANT'S MOTION TO SUPPRESS THE STATEMENT OF THE DEFENDANT-APPELLANT TAKEN BY POLICE OFFICERS AT THE HOME OF THE DEFENDANT-APPELLANT, THE STATEMENT BEING TAKEN WITHOUT THE BENEFIT OF AND ACKNOWLEDGEMENT AND WAIVER OF CONSTITUTIONAL RIGHTS, HOLDING THAT THE DEFENDANT-APPELLANT WAS

NOT IN POLICE CUSTODY AND THAT THE STATEMENT HAD BEEN MADE VOLUNTARILY."

I.

{¶10} In the first assignment of error, Appellant maintains the trial court erred in denying his motion to suppress seizure of his cane from his residence.

{¶11} 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.* As the United States Supreme Court held in *Ornelas v. U.S.,* 517 U.S. 690, 116 S.Ct. 1657, 1663 (1996), “... as a general matter

determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶12} 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).

{¶13} It has been said that "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576. One exception to the warrant requirement is the "plain view" doctrine, first expressly established in *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564. In essence, the plain view doctrine allows police officers, under particular circumstances, to seize an "article of incriminating character" which is not described in their search warrant. The doctrine "is grounded on the proposition that once police are lawfully in a position to observe an item first-hand, its owner's privacy interest in that item is lost * * *." *Illinois v. Andreas* (1983), 463 U.S. 765, 771, 103 S.Ct. 3319, 3324.

{¶14} In *State v. Halczyszak,* 25 Ohio St.3d 301, 496 N.E.2d 925, (1986), paragraphs three and four of the syllabus, the Supreme Court of Ohio held the following:

{¶15} 3. The "immediately apparent" requirement of the "plain view" doctrine is satisfied when police have probable cause to associate an object with criminal activity.

{¶16} 4. In ascertaining the required probable cause to satisfy the "immediately apparent" requirement, police officers may rely on their specialized knowledge, training and experience;* * *

{¶17} Officer David Blake testified at the July 10, 2014 Suppression Hearing,

Q. Did you conduct a search of the house?

A. Yes,

Q. Did you ask Mr. Vanhoose if you could search?

A. Yes.

Q. And what was his response?

A. Go ahead.

Q. Was he present during the search?

A. Yes.

Q. Did he ever ask you to stop searching?

A. Never.

Q. Was the defendant arrested that day?

A. Yes. But he was arrested by a warrant from adult parole authority.

Q. He was not arrested by you?

A. No.

Q. Did you seize any property that day?

A. Yes, I did.

Q. What was that property?

A. That was the walking cane that he had.

Q. Where did you find that cane?

A. It was propped up against a wall where he sat down because he used it to come to the door and then when he went back to sit down, he propped it up against the wall there.

Q. Why did you seize the cane?

A. Because it was evidence that we could clearly identify him in the videos with that cane and his walk.

Q. So you - - did you recognize that cane?

Yes.

Tr. at 15-16.

{¶18} Upon review of the foregoing evidence and the other testimony presented during the hearing, we find Appellant consented to the search, the cane seized by the officers was in plain view and the nature of the evidence was immediately apparent.

{¶19} The first assignment of error is overruled.

II.

{¶20} In the second assignment of error, Appellant maintains the trial court erred in overruling his motion to suppress statements made to law enforcement officers at his home.

{¶21} Upon review of the evidence and testimony presented, we find Appellant was not under custodial interrogation which would trigger constitutional warnings against self-incrimination.

{¶22} Pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, constitutional warnings are only required when a suspect is in custody and subject to interrogation. Custodial interrogation has been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Miranda* at 444. The relevant inquiry is whether a reasonable person under those circumstances would have felt they were under arrest. *State v. Schlupp*, Coshocton No. 2012CA0007, 2012-Ohio-6072.

{¶23} The record reveals Appellant invited the officers into his home, and consented to the search of his residence. He was informed the interview was voluntary, and he moved about his home freely. At no point did he ask the officers to stop or to leave.

{¶24} Officer David Blake testified at the July 10, 2014 Suppression Hearing as follows:

Q. Did you say anything to Mr. Vanhoose?

A. Yes, we did. We started questioning him about why we were there, talking to him about the use of the credit cards and the breaking into the vehicles.

Q. Did you enter his house?

A. Yeah. He invited us in.

Q. For what purpose?

A. Because of his dis, disability that he has, he couldn't stand for a long period of time. He wanted to go back and sit down, so he invited us in.

Q. Where in the house did you go?

A. Immediately inside in the living room where he sat on the couch.

Q. Who interviewed Mr. Vanhoose?

A. Charlie Massie did most of the interviewing.

Q. And were you present?

A. On and off, yes.

Q. Was the defendant read his Miranda rights?

A. No, he was not.

Q. Why not?

A. Because we weren't there to arrest him. We were there just to interview him.

Q. Was he told that he was not under arrest?

A. No. But he was told this was a voluntary interview. We did not tell him that.

Q. He was told he didn't have to talk to you?

A. I don't remember those exact words being used.

Q. But you did tell him that it was a voluntary interview?

A. Yes. Detective Massie was the one that told him we were there to talk to him and it was a voluntary interview.

Q. Was he told that he could leave?

A. I don't remember those words being used.

Q. Did he ever leave - -

A. No.

Q. - - During the Interview?

A. No. The only other time that he left that couch area, he wanted to go out on the porch, so we went out there for a period of time. He moved freely through the house at his will.

Q. About how long did the interview last?

A. We were there for probably an hour, maybe a little longer.

Tr. at 12-14.

{¶25} Based upon the above, we find Appellant's statements to the officers were consensual and did not require constitutional warnings. The fact multiple officers from various law enforcement agencies were present in the house, with one or more being in uniform, does not automatically make the interview custodial. The trial court did not err in overruling Appellant's motion to suppress.

{¶26} The second assignment of error is overruled.

{¶27} The judgment of the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Delaney, J. concur