

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

State of Ohio/City of Wauseon

Court of Appeals No. F-10-005

Appellee

Trial Court No. 09CRB00439W

v.

Taryn A. Sheffer

DECISION AND JUDGMENT

Appellant

Decided: October 22, 2010

* * * * *

Eric K. Nagel, Wauseon City Prosecutor, for appellee.

Chris Dreyer, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals a judgment of conviction for possession of drug paraphernalia entered on a finding of guilt, after a no contest plea in the Fulton County Court, Western District. For the reasons that follow, we affirm.

{¶ 2} Appellant is 24 year-old Taryn A. Sheffer. Shortly after noon on August 30, 2009, appellant's mother called police to a Wauseon parking lot to help find her

daughter. According to the responding officer, appellant's mother reported that she and her daughter argued while driving in the mother's van. The mother told police her daughter became agitated, "flailing her arms, kicking, flailing arms in the van." The daughter then left the van, apparently running into an adjacent corn field.

{¶ 3} The mother told the responding officer that appellant was prescribed the prescription drug "Adderol," but had not been taking her medication. The mother told police she was concerned for appellant's well-being. The responding officer later testified that when he asked the mother, "* * * what she thought would happen and she's like, I just, I don't know, I'm afraid for her well-being." The responding officer also testified that the mother told him that the mother "was in the process or going to take [appellant] up to the Health Center to be evaluated by the fifth floor." The trial court took judicial notice that the "fifth floor" is the location of the county's mental health facility.

{¶ 4} The responding officer used his car's P.A. system to attempt to persuade appellant to come out of the corn field. He also called a police canine unit to assist, as well as a medical helicopter. The search lasted about an hour, but was to no avail.

{¶ 5} Appellant's mother then advised the responding officer that a younger daughter called to report a call from appellant from the local store. Police examined the telephone at the local store, redialing the last called number which, on investigation, was discovered to be the home appellant shared with her husband.

{¶ 6} Police dispatched two officers to appellant's home. They were originally met by appellant's husband, who initially told police that his wife was not home. This statement, however, was corrected by appellant's four year-old son, who said, "Mommy's upstairs in bed." The officers told appellant's husband that they needed to go upstairs to verify her welfare. Although appellant's husband told police they were not permitted to enter, they came in and went to an upstairs bedroom, where they found appellant in a closet. Police reported that appellant was agitated.

{¶ 7} On entering appellant's bedroom, police noted a strong smell of marijuana and observed a glass pipe and what they believed to be marijuana. Police confiscated the pipe and marijuana and transported appellant to the health center for evaluation.

{¶ 8} Appellant and her husband were charged with possession of marijuana, two counts of child endangering and one count of drug paraphernalia possession, all misdemeanors. They pled not guilty and moved to suppress the items seized in the bedroom as having been obtained as the result of an unlawful warrantless search.

{¶ 9} Following a hearing, the trial court denied the motion to suppress. On the state's motion, the court dismissed the child endangering and marijuana possession charges. Both appellant and her husband then entered a no contest plea to the remaining paraphernalia possession offense. The court accepted the plea, found both appellant and her husband guilty, fined the pair and imposed community sanctions. From this judgment of conviction, appellant now brings this appeal.

{¶ 10} Appellant sets forth a single assignment of error:

{¶ 11} "The trial court committed prejudicial error by denying the Motion to Suppress of the Defendant/Appellant, by misapplying the 'Emergency Aid Exception' to the warrant requirement of the Fourth Amendment which justified a warrantless search of Defendant's/Appellant's [sic] home."

{¶ 12} The Fourth Amendment to the United States Constitution provides for "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A search conducted without a warrant is per se unreasonable, but there are exceptions to the rule. It is the state's burden to prove that one of these exceptions applies. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, paragraph two of the syllabus.

{¶ 13} At issue here is the emergency aid exception. The exception provides that the requirement for a warrant is negated when there is a reasonable belief that a person inside a residence is in need of immediate aid. *State v. Nields* (2001), 93 Ohio St.3d 6, 16, citing *Mincey v. Arizona* (1978), 437 U.S. 385, 391.

{¶ 14} "In an emergency situation when someone is in need of immediate aid, * * * police are not searching for evidence of a crime, but for victims. [T]he emergency aid exception allows officers to enter a dwelling without a warrant and without probable cause when they reasonably believe, based on specific and articulable facts, that a person within the dwelling is in need of immediate aid." *State v. Gooden*, 9th Dist. No. 23764, 2008-Ohio-178, ¶ 6, citing *Mincey* at 392. The exception does not depend on the officer's subjective intent or the seriousness of the crime being investigated. It requires only that

there be an objectively reasonable basis to believe that a person within the house is in need of immediate aid. *Michigan v. Fisher* (2009), ___ U.S. ___, 130 S.Ct. 546, 548. If an officer, lawfully in the house pursuant to the emergency aid exception, discovers contraband, he or she may properly seize it. *Minnesota v. Dickerson* (1993), 508 U.S. 366, 375-375.

{¶ 15} On review of a ruling on a motion to suppress, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. The court must then independently determine without deference to the trial court's legal conclusions whether, as a matter of law, evidence should be suppressed. *State v. Junk*, 6th Dist. No. H-07-27, 2008-Ohio-1564, ¶ 14.

{¶ 16} In the present matter, police had information from appellant's mother by which they could have reasonably inferred that appellant was agitated and possibly mentally disturbed. Certainly, appellant's behavior in running from the car into the corn field, would have supported that inference.

{¶ 17} When they went to appellant's home, they were advised by appellant's husband that she was not home. This assertion was almost immediately contradicted by the statement of a small child that mommy was upstairs in her bedroom. Given the question that appellant's prior behavior legitimately raised about her mental stability, her husband's false denial of her presence provided an objectively reasonable basis by which police came to believe that she was in need of medical assistance or otherwise at risk. Consequently, police entered appellant's home lawfully pursuant to the emergency aid

exception and the trial court properly denied appellant's motion to suppress.

Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 18} On consideration whereof, the judgment of the Fulton County Court, Western District, is affirmed. It is ordered that appellant pay court costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

Arlene Singer, J.

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

JUDGE

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
