[Cite as *State v. Bowman*, 2011-Ohio-4734.]

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

State of Ohio — Court of Appeals No. H-10-026

Appellee — Trial Court No. CRI-2010-0344

v.

Quran W. Bowman — **DECISION AND JUDGMENT**

Appellant — Decided: September 2, 2011

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, and
Jennifer L. DeLand, Assistant Prosecuting Attorney, for appellee.

Thomas H. Freeman, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals his conviction for cocaine possession following a jury trial in the Huron County Court of Common Pleas. For the reasons that follow, we affirm.

{¶ 2} On March 29, 2010, police responded to a domestic violence complaint at the Norwalk, Ohio apartment of Leticia Gonzales. Gonzales told police that appellant, Quran Bowman, had been drinking all day, became intoxicated and struck her during an argument. Gonzales declined to press assault charges, but wanted appellant to leave.

{¶ 3} Police described appellant that night as exceptionally intoxicated: unresponsive, unable to walk without assistance and unable to follow instructions during an attempt at a field sobriety test. His speech was so slurred that he was almost unintelligible. Police charged appellant with disorderly conduct by intoxication, a minor misdemeanor, but elected to take him into custody on an assessment that he was too drunk to care for himself.

{¶ 4} Appellant was transported to the Norwalk Police station. In the booking area, an officer removed appellant's belt and items from his pockets. When appellant was asked to remove his shoes he began to remove his pants, but was stopped. He then sat down to remove his shoes. When he stood, officers found a baggie containing a white powdery substance on the floor.

{¶ 5} The substance in the baggie proved to be cocaine. Appellant was charged with a single count of drug possession, a fifth degree felony.

{¶ 6} Appellant entered a not guilty plea and moved to suppress the cocaine found during his booking search. Following a hearing, the trial court denied appellant's suppression motion. The matter continued to a trial before a jury that resulted in a guilty verdict. The trial court sentenced appellant to a 12 month term of imprisonment.

{¶ 7} From this judgment of conviction, appellant now brings this appeal. Appellant sets forth the following single assignment of error:

{¶ 8} "The trial court erred in denying defendant's motion to suppress[.]"

{¶ 9} Appellate review of a trial court's decision on a motion to suppress evidence presents a mixed question of law and fact. *State v. McNamara* (1997), 124 Ohio App.3d 706, 710. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The appellate court must then accept the trial court's findings of fact provided that they are supported by competent, credible evidence. *State v. Durnwald*, 163 Ohio App.3d 361, 2005-Ohio-4867, ¶ 28, citing *Burnside*, supra. Next, the appellate court, conducting a de novo review, determines independently whether the facts in the case satisfy the applicable legal standard. *State v. Claytor* (1993), 85 Ohio App.3d 623, 627; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594.

{¶ 10} Appellant argues that he should have been issued a citation and not taken into custody for the minor misdemeanor. Since he should not have been arrested, he insists, the search incident to arrest, during which the cocaine was found, was in violation of the Fourth Amendment and the evidence should have been suppressed.

{¶ 11} "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.' The state bears the burden of establishing that a

warrantless search, which is per se unreasonable, is nevertheless reasonable pursuant to one or more exceptions to the Fourth Amendment's warrant requirement. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, paragraph two of the syllabus.

{¶ 12} "A search incident to arrest is an exception to the general rule that warrantless searches are per se unreasonable. *State v. Mims*, 6th Dist. No. OT-05-030, 2006-Ohio-862, ¶ 23. Nevertheless, police may only conduct a search of the arrestee's person incident to a lawful arrest. *State v. Dillion*, 10th Dist. No. 04AP-12111, 2005-Ohio-4124, ¶ 31. Evidence obtained as a result of an illegal arrest is inadmissible at trial. *State v. Henderson* (1990), 51 Ohio St.3d 54, 56, citing *Wong Sun v. United States* (1963), 371 U.S. 471." *State v. Graves*, 173 Ohio App.3d 526, 2007-Ohio-4904, ¶ 10-11.

{¶ 13} "Notwithstanding any other provision of the Revised Code, when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation, unless one of the following applies:

{¶ 14} "(1) The offender requires medical care or is unable to provide for his own safety. * * *" R.C. 2935.26(A).

{¶ 15} At the suppression hearing, each of the three officers who were at Leticia Gonzales' apartment testified that appellant was so intoxicated that he appeared unable to provide for his own safety. This is sufficient competent, credible evidence to support the trial court's finding that his arrest was warranted. Since this factual determination is supported, the evidence appellant seeks to suppress was obtained during a search

conducted incident to a proper arrest. Consequently, the trial court did not err in denying appellant's motion to suppress. Appellant's sole assignment of error is not well-taken.

{¶ 16} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE