[Cite as *State v. Kreuz*, 2012-Ohio-1990.]

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

State of Ohio — Court of Appeals No. WD-11-015

Appellee — Trial Court No. 2010CR0321

v.

Greg Kreuz — **DECISION AND JUDGMENT**

Appellant — Decided: May 4, 2012

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney, and David E. Romaker, Jr., Assistant Prosecuting Attorney, for appellee.

Neil S. McElroy, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Greg Kreuz, appeals from a decision of the Wood County Court of Common Pleas wherein he was convicted on two counts of aggravated possession of drugs with specifications, one count of illegal manufacture of drugs, one count of

possession of drugs, and one count of trafficking in drugs with specifications. For the reasons that follow, we affirm.

{¶ 2} Acting on information from an anonymous source who alleged that appellant was engaged in the illegal manufacturing and trafficking of anabolic steroids, Perrysburg, Ohio police officers executed a search warrant at appellant's home. The search resulted in appellant's indictment for six felony drug offenses. On September 7, 2010, appellant filed a motion to suppress evidence seized from the search of his home arguing that police unlawfully seized items that were not specified in the warrant. A suppression hearing commenced on September 9, 2010.

{¶ 3} Detective Patrick Jones of the Perrysburg Police Department testified that in 2009, he received a nuisance complaint through the Wood County Crime Stoppers program that appellant was selling and using anabolic steroids. An investigation of appellant was launched. While he was under surveillance, police went through his trash. They found syringes, vials and the specific labels that appellant was reported to use on the vials he allegedly sold.

{¶ 4} On July 6, 2010, Detective Jones submitted an affidavit in support of a search warrant for appellant's home. Consequently, a search warrant was issued allowing the seizure of:

> [A]ny and all anabolic steroids; any and all controlled substances; drug abuse instruments; sterile vials; computer; printer; printer labels; "EAS" labels; cell phones; documents showing information related to the

purchase, manufacture or sale of illegal drugs or items related to the purchase, manufacture or sale of illegal drugs, either in paper form or digital form on the computer, hard drive, flash drives, or other removable memory; communications regarding the purchase, manufacture or sale of illegal drugs, either in paper or electronic form, including cell phone text messages; packaging related to the purchase, manufacture or sale of illegal drugs; any and all other items related to the purchase, manufacture or sale of illegal drugs, US or Foreign currency.

{¶ 5} Detective Jones testified that the search warrant was executed on July 7. Numerous vials labeled "EAS," thousands of oral anabolic steroids, steroids in powder form, the drugs Oxycodone and Ritalin, and a large amount of cash were seized from the home. In appellant's car the police found more vials of anabolic steroids and syringes.

{¶ 6} In addition, the police seized the following items: (1) 2 flat screen TVs, (2) a camera, (3) a snow blower, (4) a stereo, (5) a dvd player, (6) a refrigerator, (7) an electric range, (8) a washer and dryer, (9) a receiver, (10) a stun gun, and (11) a bicycle. Detective Jones acknowledged that none of the above items were listed in the search warrant. He testified, however, that based on what he knew of appellant's financial situation, the above high end items could only have been purchased from proceeds appellant received through drug trafficking. Detective Jones cited appellant's properly subpoenaed bank and tax records which showed that appellant was unemployed and receiving weekly unemployment benefits in the approximate amount of $250 a week.

This appeared to be appellant's only income. However, a large amount of cash, $42,799, was found in the home. Appellant was also making a mortgage payment of approximately $1,000 a month. Receipts found for some of the items listed above showed that appellant paid for those items with either cash or gift cards. After relaying his impressions to the Wood County prosecutor, he was advised to seize the above listed items.

{¶ 7} On October 12, 2010, the court denied appellant's motion to suppress. Pursuant to a plea agreement, on January 4, 2011, appellant entered no contest pleas to five felony drug counts. He was sentenced to serve ten years in prison. Appellant now appeals setting forth the following assignment of error:

I. The trial court erred to the prejudice of Mr. Kreuz when it denied defendant's motion to suppress.

{¶ 8} In his assignment of error, appellant contends that the police unlawfully seized items from his house that were not specifically listed on the search warrant. As a consequence of this unlawful seizure, appellant contends, the entire search was tainted and thus, his motion to suppress all evidence seized from his house should have been granted.

{¶ 9} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of the trier of fact and is,

therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills,* 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992); *State v. Hopfer,* 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996). As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger,* 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). The reviewing court must then review the trial court's application of the law de novo. *State v. Russell,* 127 Ohio App.3d 414, 416, 713 N.E.2d 56 (9th Dist.1998).

{¶ 10} Crim.R. 41(B) states:

> A warrant may be issued under this rule to search for and seize any: (1) evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

{¶ 11} Pursuant to the Fourth Amendment and Ohio Constitution, Article I, Section 14, only warrants "particularly describing the place to be searched and the person or things to be seized" may issue. "The manifest purpose of this particularity requirement was to prevent general searches. * * * [T]he requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison,* 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987). In determining whether a search warrant satisfies the Fourth Amendment's particularity requirement,

reviewing courts employ a standard of practical accuracy rather than technical precision. *United States v. Otero*, 563 F.3d 1127 (10th Cir.2009).

{¶ 12} Appellant contends that only items specifically described in the warrant should have been seized. In this case, the warrant allowed the seizure of "* * * any and all other items related to the purchase, manufacture or sale of illegal drugs * * *." Given the fact that Crim.R. 41(B) permits the seizure of "fruits of the crime" and based on appellant's financial records and Detective Jones' testimony establishing that the property seized was most likely purchased with drug money, we do not find that the police exceeded the scope of the warrant in seizing the above listed items.

{¶ 13} Alternatively, assuming arguendo that the above listed items were illegally seized, this would not result in the suppression of the most incriminating evidence properly seized in appellant's home. In such cases, courts have severed the offending parts of warrants and have refused to suppress evidence for which probable cause exists. *State v. Hale*, 2d Dist. No. 23582, 2010-Ohio-2389, citing *State v. Armstead*, 9th Dist. No. 06CA0050-M, 2007-Ohio-1898. Accordingly, appellant's assignment of error is found not well-taken.

{¶ 14} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the 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.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE