[Cite as *State v. Purley*, 2012-Ohio-3734.]

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

State of Ohio — Court of Appeals No. L-11-1116

Appellee — Trial Court No. CR0201002798

v.

Roosevelt T. Purley — **DECISION AND JUDGMENT**

Appellant — Decided: August 17, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kevin A. Pituch, Assistant Prosecuting Attorney, for appellee.

Vijay K. Puligandla, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals his conviction for one count of attempted cocaine possession and one count of attempted trafficking in cocaine entered in the Lucas County Court of Common Pleas on a finding of guilt on a no contest plea after denial of a motion

to suppress. Because we conclude that traffic stops for impeding traffic and subsequent searches were proper, we affirm.

{¶ 2} On July 26, 2010, at 1:15 a.m., Toledo police officers on routine patrol encountered a car with two occupants parked in the middle of a street, wholly blocking the street. After waiting several seconds, police activated their overhead lights, following the car until it pulled into a driveway nearby. The officers later testified that when the car stopped, they observed a passenger moving from side to side and leaning forward. These "furtive" movements, the lateness of the hour and being in a "high crime" area suggested the occupants of the car might be armed.

{¶ 3} The passenger was a woman known to police for prior arrests for prostitution and drug abuse. The driver was appellant, Roosevelt T. Purley. Police ordered both occupants from the car and conducted a pat-down search for weapons. No weapons were found, but the officer searching appellant testified that when he felt appellant's "groin rear buttocks area" he detected what he believed was a baggie containing crack cocaine. With some aid from appellant, one of the officers pulled out two plastic bags containing rocks of crack cocaine from appellant's pants.

{¶ 4} On August 19, 2010, a Toledo police officer on patrol observed a car parked in the travel lane of a city street for a period of time during which a man came out of a house to the passenger side of the car and interacted with the driver, who then drove off. The officer testified during the suppression hearing that this exchange took from between a few seconds to a minute and that during this time vehicles wishing to go around had to

move into the active traffic lane in the other direction. The officer pulled the car over for impeding traffic. Appellant was the driver.

{¶ 5} Police found outstanding warrants on appellant and took him into custody. During a search incident to arrest, police found a quantity of crack cocaine in his pocket. Police also conducted an inventory search of appellant's car prior to impound and discovered a large amount of crack cocaine in the glove box.

{¶ 6} Appellant was arrested and eventually named in a three count indictment charging possession of crack cocaine in excess of ten grams, a second degree felony, for the crack cocaine found in his pants during the July 26 arrest. Appellant was also charged with possession in excess of 100 grams of crack cocaine and trafficking, both first degree felonies, for the crack cocaine discovered on his person and in his car on August 19.

{¶ 7} Appellant pled not guilty to all counts and moved to suppress the evidence obtained in both stops on the grounds that the arresting officers had no lawful cause to stop and/or search him. Moreover, appellant argued, the search that found drugs "behind his groin" was an illegal strip search and evidence obtained as a result should be suppressed.

{¶ 8} When, following a hearing, the trial court denied appellant's motion to suppress, he withdrew his not guilty plea and pled no contest to lesser included offenses of attempted possession of cocaine and attempted trafficking in cocaine, third and second degree felonies respectively. The trial court accepted the plea, found appellant guilty and ordered him to concurrently serve a three-year term of imprisonment for each count.

{¶ 9} From this judgment of conviction, appellant now brings this appeal. Appellant sets forth the following two assignments of error:

I. The trial court erred by failing to apply the correct law in denying Appellant's motion to suppress.

II. The trial court erred in finding the arresting officer had reasonable cause to stop the Appellant's vehicle for violating R.C. 4511.22(A).

{¶ 10} When considering a motion to suppress, the trial court assumes the role of the trier of fact and is, therefore, in the best position to resolve factual questions and evaluate the credibility of a witness. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). Consequently, in its review, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (1993). Accepting the facts as found by the trial court as true, the appellate court must then independently determine as a matter of law, without deferring to the trial court's conclusions, whether the facts meet the applicable legal standard. *State v. Klein*, 73 Ohio App.3d 486, 488, 597 N.E.2d 1141(1991).

{¶ 11} We shall discuss appellant's assignments of error in reverse order.

I. Traffic Stops

{¶ 12} The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures. This

includes unreasonable automobile stops. *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Nonetheless, in general, a traffic stop is reasonable when police have probable cause to believe that a traffic violation has occurred. *Id.*; *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 11.

{¶ 13} Probable cause exists when a police officer has a reasonable ground for suspicion supported by facts and circumstances sufficiently strong in themselves to warrant a prudent person to believe that an accused committed or was committing an offense. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). When an officer stops a vehicle on probable cause of a traffic violation, the stop is not constitutionally unreasonable, even if the officer has an ulterior motive for the stop. *Dayton v. Erickson*, 76 Ohio St.3d 3, 665 N.E.2d 1091 (1996), syllabus.

{¶ 14} Alternatively, it is constitutionally permissible for an officer to conduct a brief investigatory stop on reasonable articulable suspicion that an offense has been or is being committed. *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968).

{¶ 15} Although both parties in this matter devote substantial discussion of reasonable articulable suspicion, neither of these incidents was an investigatory stop. Both stops were based on probable cause of a violation of R.C. 4511.22(A). The statute provides that "[n]o person shall stop or operate a vehicle * * * at such an unreasonably slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law."

{¶ 16} The testimony of the officers is undisputed. On July 26, 2010, appellant's vehicle was stopped in the middle of a street, blocking the movement of any traffic, including the police cruiser. On August 19, 2010, appellant stopped his vehicle in such a manner as to impede the normal flow of traffic by forcing it into an oncoming lane. Appellant offered no explanation by which it could be found that these stops were necessary to comply with the law or for safe operation.

{¶ 17} The cases appellant cites for the proposition that a slight delay in travel is acceptable are inapposite. Each involved a slow start from a traffic control device, *State v. Starkey*, 183 Ohio App.3d 215, 2009-Ohio-3276, 916 N.E.2d 847 (5th Dist.) (stop sign); *State v. Beghin*, 5th Dist. No. 2003CA00297, 2004-Ohio-2654 (traffic light), or a stop to yield the right of way, *State v. Echols*, 11th Dist. No. 97-T-0101, 1998 WL 553500 (June 26, 1998) (stopped to allow officer to make a left turn when there was no legal obligation to do so). In this matter, officers saw appellant stop his vehicle in the middle of a block, resulting in either traffic disruption or wholly blocking the street. Accordingly, the officers had probable cause to stop appellant for a violation of R.C. 4511.22(A). Appellant's second assignment of error is not well-taken.

II. The Searches

{¶ 18} Searches conducted without a warrant are unreasonable under the Fourth Amendment. *Coolidge v. New Hampshire*, 403 U.S. 443, 454-455, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); *State v. Kessler*, 53 Ohio St.2d 204, 207, 373 N.E.2d 1252 (1978).

Exceptions to the rule include protective searches, searches incident to arrest and inventory searches.

{¶ 19} If during a traffic stop, an officer has a reasonable belief that his or her safety or that of others is in danger, the officer may initiate a protective pat down search for weapons. *Terry v. Ohio*, *supra*, at 27, *Ybarra v. Illinois*, 444 U.S. 85, 93, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979). If during such a search an officer feels something that when touched is immediately apparent to be incriminating, it is lawful for the officer to seize such contraband. *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993).

{¶ 20} When a police officer makes a lawful custodial arrest, a warrantless search of the person arrested is justified to discover any weapons that the arrestee might seek to use and to prevent the concealment or destruction of evidence. *State v. Murrell*, 94 Ohio St.3d 489, 491, 764 N.E.2d 986 (2002), *Chimel v. California*, 395 U.S. 752, 762-763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). When an individual with a motor vehicle is taken into custody and his or her vehicle is to be impounded, police, in order to protect property and ensure against frivolous claims, may conduct an inventory search of the vehicle so long as the search is in good faith and in accordance with reasonable standardized procedures or established routine. *State v. Hathman*, 65 Ohio St.3d 403, 604 N.E.2d 743 (1992), paragraph one of the syllabus, *South Dakota v. Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976).

{¶ 21} During the valid traffic stop on August 19, 2010, appellant was taken into custody on outstanding warrants. During a search incident to that arrest, crack cocaine was found on his person. During a standard inventory search of appellant's vehicle prior to being impounded, police found a greater quantity of crack cocaine. Both of these searches were conducted in conformity with long recognized exceptions to the warrantless search prohibition. As a result the trial court properly denied appellant's motion to suppress this evidence.

{¶ 22} The July 26, 2010 traffic stop occurred at 1:15 a.m. in what police characterized as a high crime area and police knew that appellant's passenger had a history of prostitution and drug abuse. In these circumstances, the trial court properly concluded that a protective pat down search for weapons was appropriate.

{¶ 23} The officer who conducted the pat down search of appellant was a veteran of the police vice squad and testified that, when he encountered the plastic bags in appellant's crotch area, he could tell by feel that the bags contained rock cocaine. Under such circumstances it is lawful to seize such contraband without a warrant. It is the manner in which this seizure was achieved that forms appellant's final argument for suppression.

{¶ 24} Appellant insists that the arresting officer's retrieval of the baggies from his pants constituted an unlawful strip search of his person and that the fruits of this search should be excluded from evidence. Appellant cites R.C. 2933.32 which defines "strip search" as:

> [A]n inspection of the genitalia, buttocks, breasts, or undergarments of a person that is preceded by the removal or rearrangement of some or all of the person's clothing that directly covers the person's genitalia, buttocks, breasts, or undergarments and that is conducted visually, manually, by means of any instrument, apparatus, or object, or in any other manner while the person is detained or arrested for the alleged commission of a misdemeanor or traffic offense. R.C. 2933.32(A)(2).

Strip searches may not ordinarily be conducted, R.C. 2933.32(B)(1), except when, inter alia, an officer has "probable cause to believe that the person is concealing evidence of the commission of a criminal offense, including fruits or tools of a crime, contraband, or a deadly weapon * * * that could not otherwise be discovered." R.C. 2933.32(B)(2).

{¶ 25} If there is cause to conduct a strip search, absent a medical reason police must obtain a warrant, R.C. 2933.32(B)(5), the person or persons conducting the search must be of the same sex as the person being searched, the search must be conducted out of sight of others, R.C. 2933.32(B)(6), and a written report specifying certain information about the search must be subsequently filed with the person in command of the law enforcement agency. R.C. 2933.32(C)(1). One who conducts a strip search without a warrant or equivalent statutory reason or fails to file a proper search report is guilty of a misdemeanor, R.C. 2933.32(E), and may be subject to a civil action. R.C. 2933.32(D)(3).

{¶ 26} Appellant contends that police action in retrieving the baggies containing cocaine from his pants meets the statutory definition of a strip search. The state responds

that the undisputed testimony of the officer who retrieved the baggies from appellant's pants demonstrates that there was no inspection of appellant's genitalia, buttocks or breasts. Appellant's genitalia, buttocks or breasts were not uncovered or displayed during retrieval. Indeed, appellant assisted in the retrieval which was accomplished without pulling down his pants or underwear.

{¶ 27} The strip search statute includes a manual inspection of the proscribed areas, so there is an arguable violation. This is not, however, dispositive of the issue before us. The exclusionary rule articulated in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), mandates the exclusion of evidence obtained in violation of constitutional rights. In Ohio, the rule has not been applied to violations of statutory rights that fall short of constitutional violations unless there is a legislative mandate requiring application of the exclusionary rule. *Kettering v. Hollen*, 64 Ohio St.2d 232, 234, 416 N.E.2d 598 (1980). No such mandate exists with respect to a violation of R.C. 2933.32. As a result the exclusionary rule will not be applied. *State v. Wesley*, 5th Dist. No. 1999CA00226, 2000 WL 329938 (Mar. 27, 2000). Accordingly, appellant's first assignment of error is not well-taken.

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

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE