

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

State of Ohio

Court of Appeals No. E-15-008

Appellee

Trial Court No. 2012-CR-473

v.

Lucas A. Reed

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2015

* * * * *

Dean Holman, Special Prosecuting Attorney, and Matthew A.
Kern, Assistant Special Prosecuting Attorney, for appellee.

Samuel A. Sidoti, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a September 18, 2014 judgment of the Erie County Court of Common Pleas, denying appellant's motion to suppress. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Lucas Reed, sets forth the following single assignment of error:

The trial court erred in failing to suppress the evidence seized from appellant's person.

{¶ 3} The following undisputed facts are relevant to this appeal. During the early morning hours of October 31, 2012, police were summoned to the Walmart store located on Milan Road in Perkins Township, Erie County, Ohio. Officers were informed that a suspect who had been observed in the store appeared to be intoxicated, was observed by an off-duty police officer reaching for what was believed to be a weapon, attempted to buy ammunition, and attempted to steal five cartons of cigarettes. Following these observations, the police were notified.

{¶ 4} Upon arrival at the scene, the responding officers were directed to appellant who was seated on a bench at the front of the store. The officers observed appellant to be disheveled, sweaty, and appeared to be under the influence of alcohol. A breathalyzer test conducted confirmed appellant to have consumed alcohol. It reflected an alcohol level of .031.

{¶ 5} While commencing a safety search of appellant, the officers inquired of appellant if he had any weapons or sharp objects on his person. Appellant falsely replied in the negative. Thereafter, the officers recovered a stolen semi-automatic weapon from appellant's lower pant leg.

{¶ 6} On December 12, 2012, appellant was indicted on one count of burglary, in violation of R.C. 2911.12(A)(2), a felony of the second degree, one count of theft from the elderly, in violation of R.C. 2913.02(A)(1), a felony of the fifth degree, one count of

carrying a concealed weapon, in violation of R.C. 2923.12(A)(2), a misdemeanor of the first degree, and one count of possessing a weapon while under disability, in violation of R.C. 2923.13(A)(3), a felony of the third degree.

{¶ 7} On February 28, 2013, appellant was arraigned on the charges. In the intervening months, multiple pretrial conferences were conducted in an effort to negotiate a voluntary plea agreement. They were unsuccessful.

{¶ 8} On November 5, 2013, appellant filed a motion to suppress. On September 11, 2014, the motion to suppress hearing was conducted. On September 18, 2014, the motion was denied. Following the adverse suppression determination, a plea agreement was reached.

{¶ 9} On November 14, 2014, appellant entered a plea of no contest to one count of possessing a weapon while under disability, in violation of R.C. 2923.13(A)(3), a felony of the third degree. In exchange, the three remaining charges and the firearm specification associated with the possession of a weapon while under disability charge were all dismissed.

{¶ 10} On January 2, 2015, appellant was sentenced to a term of two and one-half years of incarceration. This appeal ensued.

{¶ 11} In the sole assignment of error, appellant asserts that the trial court erred in denying the motion to suppress. In support, appellant concedes the propriety of his investigative detention, but maintains that the accompanying search of his person was nevertheless unlawful.

{¶ 12} Appellant suggests that because no one definitively observed the gun that had been concealed in his pant leg, the responding officers lacked the requisite reasonable suspicion to justify the search of appellant's person. We do not concur.

{¶ 13} It is well-established that appellate review of a disputed trial court motion to suppress decision must grant deference to the trial court's findings of fact so long as they are supported by competent, credible evidence, and makes that determination pursuant to the de novo standard of review. *State v. May*, 6th Dist. Lucas No. L-14-1212, 2015-Ohio-1334, ¶ 8.

{¶ 14} In addition to the above-governing standard of review, we must further evaluate the suppression judgment within the parameters delineated in *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), which held in pertinent part, "[W]here a police officer, during an investigative stop, has a reasonable suspicion that an individual is armed based on the totality of the circumstances, the officers may initiate protective search for the safety of himself and others."

{¶ 15} We have reviewed the record of evidence in this matter and considered it in the context of the above-described controlling legal principles. The record reflects that late one night the local police were summoned to a Walmart store in response to a patron being observed in the store who appeared under the influence of alcohol, was observed by an off-duty police officer to be concealing upon his person what was believed to be a weapon, had attempted to purchase ammunition, and subsequently attempted to steal five cartons of cigarettes from the store.

{¶ 16} The record reflects that upon arrival, the responding officers directly observed appellant to be disheveled, sweaty, and behaving in a way that caused the officers to believe that he was under the influence of alcohol. A breathalyzer test conducted did yield a positive reading for alcohol. Significantly, the record further reflects that as the officers commenced the search of appellant's person, appellant attempted to pull away. Appellant was then advised that he was being detained and placed in handcuffs. Subsequent to securing appellant, the officers resumed their search of appellants' person and recovered what was later determined to be a stolen semi-automatic weapon from appellant's lower pant leg.

{¶ 17} Based upon these facts and circumstances evidenced in the record, we find that the trial court's determination that the officers possessed a reasonable suspicion regarding appellant so as to warrant a safety search of his person for their own protection and the protection of the public at a large retail business was supported by competent and credible evidence. Our independent review of this matter reveals nothing that suggests that the underlying trial court determination was in some way compromised or in breach of the applicable legal standards.

{¶ 18} Wherefore, we find appellant's assignment of error not well-taken. The judgment of the Erie County Court of Common Pleas is hereby affirmed. Appellant is ordered to 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, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

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>
