[Cite as *State v. White*, 2009-Ohio-5557.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92229

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SCOTT WHITE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. 512756

BEFORE: Cooney, A.J., Stewart, J., and Dyke, J.

RELEASED: October 22, 2009

JOURNALIZED:

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COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, Scott White ("White"), appeals the trial court's denial of his motion to suppress evidence. Finding no merit to the appeal, we affirm.

{¶ 2} This case arose in July 2008, when White was charged with carrying a concealed weapon and possessing a weapon while under disability. White moved to suppress evidence of the handgun found in his vehicle, and after a hearing on the matter, the trial court denied the motion. Thereafter, White pled no contest to both charges and the trial court found him guilty of both. The trial court sentenced him to two years of community control sanctions.

{¶ 3} White appeals, arguing in his sole assignment of error that the trial court erred in denying his motion to suppress.

Facts

{¶ 4} The following facts were adduced during the motion to suppress hearing. On the morning of May 10, 2008, Officer Ron Haines ("Haines") was patrolling an area of the Cleveland Lakefront State Park known as Gordon Park. At about 11:30 a.m., he observed a vehicle parked facing the lake. He observed White reclining in the driver's seat. He checked the license plate through the police database and pulled in behind the vehicle. He noticed that White had a jacket covering his head. Haines testified that he felt concerned for White's well-being, suspecting a possible suicide

attempt. Haines visually scanned the vehicle. He saw no weapons but observed a green, leafy substance on the back seat. He could see White breathing and knocked on the window to wake him up. He motioned for White to roll down the window and asked him if he was all right. White replied that he had been "kicked out" of his sister's house the night before and had driven to the park to get some sleep before he went to see his mother.

{¶ 5} When Haines asked White for identification, White presented an Ohio identification ("I.D.") card. Haines testified that an individual may not legally possess such a card as well as an Ohio driver's license. Haines pointed to the green, leafy substance and asked him if there were any drugs in the car. White brushed the substance off the seat, denying that it was marijuana but admitting his friends had been in the car the night before.

{¶ 6} Haines checked White's identification card in the police database, and found that White's driver's license had been suspended. Haines informed White that he would have to arrest him for driving under suspension. He asked White whether there were any weapons in the car, and White replied that he thought there was a gun in the car. Haines had White exit the car and handcuffed and searched him. He then placed him in the back of the police vehicle. Haines asked where the gun was located, and White told him that his mother had placed it in the center console or the glove box. Haines located the gun with one round in the magazine. Haines called

White's mother to inform her that White had been arrested and asked her to retrieve the vehicle. When he asked her what type of gun she owned, she denied having a gun.

Standard of Review

{¶ 7} The Ohio Supreme Court explained the standard of review for a motion to suppress in *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8, as follows:

> "Appellate review of a motion to suppress presents a mixed question of law and fact. 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. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539."

{¶ 8} The United States Supreme Court has identified three types of police-citizen encounters: (1) consensual encounters, (2) investigatory stops, and (3) arrests. *Lakewood v. McLaughlin* (Oct. 28, 1999), Cuyahoga App. No. 75134, citing *Florida v. Royer* (1982), 460 U.S. 491, 501-507, 103 S.Ct. 1319, 75 L.Ed.2d 229.

{¶ 9} Consensual encounters do not trigger Fourth Amendment protections. *Florida v. Bostick* (1991), 501 U.S. 429, 434, 111 S.Ct. 2382, 115

L.Ed.2d 389. During a consensual encounter, a law enforcement officer need not articulate reasonable suspicion and may approach an individual to ask questions, engage in conversation, check identification, ask for consent to search luggage, and so on. Id. So long as a reasonable person would feel free to ignore the law enforcement officer, the encounter is consensual. Id.

{¶ 10} In the instant case, Haines and White engaged in a consensual encounter. Haines approached White in a public park, asked about his well-being, and learned why he had slept in the park. This was a friendly exchange, and White was free to refuse to answer. Then Haines asked for White's identification, which White voluntarily provided.

{¶ 11} On appeal, White argues that Haines violated his Fourth Amendment rights when he asked for identification. He claims that once Haines ascertained that White was all right, Haines should have ended the inquiry. But according to *Bostick*, a law enforcement officer may ask for identification during a consensual encounter. White bore the burden to end the consensual encounter by refusing to provide identification.

{¶ 12} Upon learning that White had an Ohio I.D. card, Haines could articulate reasonable suspicion that criminal activity was afoot. Individuals who possess an Ohio I.D. card may not also possess a driver's license, and Haines found White in the driver's seat, alone, in an apparently operational vehicle he claimed to have driven to the park. Haines investigated the

matter and learned that White's license had been suspended. At that point, Haines had probable cause to arrest White.

{¶ 13} "Probable cause is defined as 'reasonable grounds for belief, supported by less than prima facie proof but more than mere suspicion.'" *Smith v. Thornburg* (C.A.6 1998), 136 F.3d 1070, 1074, quoting *U.S. v. Bennett* (C.A.6 1990), 905 F.2d 931, 934. Probable cause to arrest a suspect exists when an officer is aware of facts that would lead a reasonable person to believe that the suspect has committed or is committing a crime, however minor. See *Atwater v. Lago Vista* (2001), 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed.2d 549; *Beck v. Ohio* (1964), 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142.

{¶ 14} We next consider the search of the vehicle for the gun. We conclude that the search was lawful. "Under the automobile exception, police officers may conduct a warrantless search of a vehicle if they have probable cause to believe that the vehicle contains evidence of a crime." *Smith* (internal citations and quotations omitted).[1] Once Haines placed White under arrest, White informed him that there might be a gun in the vehicle, located in the glove box or center console. This gave Haines probable

[1] Previously, *New York v. Belton* (1981), 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768, would have allowed Haines to search White's vehicle under the "search incident to lawful arrest" exception to the warrant requirement. But in *Arizona v. Gant* (2009), __ U.S. __, 129 S.Ct. 1710, 173 L.Ed.2d 485, the U.S. Supreme Court held that after law enforcement has secured the arrestee so that he or she cannot access the interior of the vehicle, courts should not read *Belton* as authorizing a search of that vehicle.

cause to believe that White had violated R.C. 2923.12, which requires that if a law enforcement officer stops an individual who is carrying a concealed handgun, then the person must promptly inform the officer of the handgun and the required permit. R.C. 2923.12(B)(1). The handgun constitutes evidence of a crime, and the automobile exception permitted Haines to conduct a warrantless search of the vehicle.

{¶ 15} On these facts, White has not shown that the evidence was obtained illegally. Accordingly, the trial court properly denied the motion to suppress, and we overrule the sole assignment of error.

{¶ 16} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MELODY J. STEWART, J., CONCURS;
ANN DYKE, J., CONCURS IN JUDGMENT ONLY