

[Cite as *State v. Longshaw*, 2010-Ohio-2781.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93676

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CARL LONGSHAW

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-518369

BEFORE: Sweeney, J., Boyle, P.J., and Jones, J.

RELEASED: June 17, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Carl Longshaw (“defendant”), appeals his drug possession and related weapons convictions. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} According to East Cleveland Police Detective William Mitchell, on October 28, 2008, at 4:45 a.m., he observed a vehicle turn twice without activating a signal and drive left of center in the East 125th Street and Superior Avenue area. Det. Mitchell initiated a traffic stop, and upon approaching the vehicle, smelled marijuana. Det. Mitchell ordered the driver of the vehicle and defendant, who was sitting in the front passenger seat, to put their hands where he could see them.

{¶ 3} The driver put her hands on the steering wheel and defendant kept his hands in his pockets. Det. Mitchell asked to see defendant’s hands again, and defendant complied. By this time, back-up police officers had arrived and Det. Mitchell ordered the driver and defendant out of the car.

{¶ 4} Det. Mitchell began to pat-down defendant and discovered a handgun in defendant’s jacket pocket. Defendant was arrested for carrying a concealed weapon. Det. Mitchell asked defendant if he had anything else on him, and defendant replied that he had crack cocaine. Det. Mitchell found a pill bottle with defendant’s name on it that contained crack cocaine and a glass pipe with cocaine residue.

{¶ 5} On November 26, 2008, defendant was indicted for possessing less than one gram of crack cocaine, having a weapon while under disability, carrying a concealed weapon, and possessing criminal tools. Defendant filed a motion to suppress the evidence, which the court denied. Defendant pled no contest to all charges and was sentenced to a mandatory one year in prison.

{¶ 6} Defendant appeals and raises one assignment of error for our review, which states:

{¶ 7} “1. The trial court erred in its denial of appellant’s motion to suppress as its conclusion that there was probable cause to stop, detain, and arrest the appellant was not supported by competent, credible evidence.”

{¶ 8} Specifically, defendant argues that there was no probable cause to stop the vehicle and no reasonable suspicion to conduct a pat-down search of him. Defendant testified at the suppression hearing, and his version of the events in question differed from Det. Mitchell’s. Defendant argues that “the matter of suppression comes down to the credibility of the witnesses in this case.”

{¶ 9} According to defendant, Det. Mitchell approached the vehicle he was in when it was stopped at a red light. Det. Mitchell never asked him to put his “hand on the dash,” and defendant never refused. There was no marijuana smoke, or any other kind of smoke, in the car.

{¶ 10} Additionally, defendant testified that the driver of the vehicle told him that a police officer questioned her just before defendant got into her car. On re-direct examination, Det. Mitchell testified that he stopped and interacted with

the driver approximately five to ten minutes before pulling her over for traffic violations, something he did not testify to during his direct examination.

{¶ 11} Defendant argues that this was an illegal drug stop based on a hunch, because the car was in a high-drug activity area at 4:45 in the morning. Defendant argues that there was not reasonable suspicion to stop the vehicle. In addition to the inconsistencies between Det. Mitchell and defendant's testimony, defendant notes that no traffic citations were issued to the driver of the car.

{¶ 12} "Appellate review of a trial court's ruling on a motion to suppress presents mixed questions of law and fact. An appellate court is to accept the trial court's factual findings unless they are clearly erroneous. We are, therefore, required to accept the factual determinations of a trial court if they are supported by competent and credible evidence. The application of the law to those facts, however, is subject to de novo review." (Internal citations omitted.) *State v. Polk*, Cuyahoga App. No. 84361, 2005-Ohio-774, at ¶2.

{¶ 13} Warrantless searches are presumptively unconstitutional, subject to a limited number of specific exceptions. One of the exceptions is that a police officer may stop a vehicle based on probable cause that a traffic violation has occurred. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 665 N.E.2d 1091. Furthermore, "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." *Maryland v. Wilson* (1997), 519 U.S. 408, 415, 117 S.Ct. 882, 137 L.Ed.2d 41.

{¶ 14} A second exception to the rule requiring warrants is found in *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, which stands for the proposition that “a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior * * *.” *Id.* at 22. To warrant a *Terry* investigatory stop, the police “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21. The Ohio Supreme Court additionally stated that an investigatory stop “must be viewed in light of the totality of the surrounding circumstances.” *State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044.

{¶ 15} *Terry* also held that “[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous” the officer may conduct a protective search for weapons. *Terry*, *supra* at 24. See, also, *State v. Williams* (1990), 51 Ohio St.3d 58, 554 N.E.2d 108.

{¶ 16} In *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, the Ohio Supreme Court analyzed several factors used to determine whether a stop under *Terry* was reasonable, including, inter alia: (1) whether the actions occurred in a heavy drug activity area; (2) the experience level of the officers involved, particularly their knowledge of drug transactions and other weapons-related offenses; (3) the time of day or night and whether weapons could be easily hidden; (4) whether the officer was out of his or her vehicle and

away from protection; and (5) whether the defendant engaged in furtive gestures or movements.

{¶ 17} In the instant case, the court found that Det. Mitchell's pulling the vehicle over was "a perfectly good stop of a vehicle. Seeing two turns without the use of a turn signal followed by a super-wide turn is certainly enough to give the police officer a reasonable suspicion of criminal activity." The court also found that Det. Mitchell "had every reason to take [defendant] out of the car, and also frisking him in view of what I consider to be his failure to obey the officer's instructions."

{¶ 18} In reviewing the court's findings, we conclude that they are supported by competent, credible evidence in the record. "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 the witnesses." *State v. Burnside*, 100 Ohio St.3d 152, 154-55, 2003-Ohio-5372, 797 N.E.2d 71.

{¶ 19} Det. Mitchell testified that he observed the vehicle in question commit multiple traffic violations. This is probable cause to stop the vehicle and order defendant out of the car. Additionally, Det. Mitchell testified that he could smell marijuana in the vehicle and that defendant initially ignored the order to show his hands. "[H]e was hesitant to show me his hands for some reason or another. I have no idea why, but that's unusual behavior because I have

conducted hundreds of traffic stops and people are usually very compliant when you ask them to place their hands where you can see them.”

{¶ 20} Det. Mitchell testified that it poses a danger when an officer cannot see a person’s hands, and in this case, he conducted a pat-down of defendant “for officer safety.” He further testified that this offense took place in a high drug activity area and that although he did not issue traffic citations to the driver that day, she was arrested on an outstanding felony warrant.

{¶ 21} After applying the law to this factual scenario, we find that the court did not err by denying defendant’s motion to suppress the evidence and his sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its 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 Court of Common Pleas 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.

JAMES J. SWEENEY, JUDGE

MARY J. BOYLE, P.J., and
LARRY A. JONES, J., CONCUR