[Cite as *State v. Hale*, 2010-Ohio-3306.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92856

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ALVIN HALE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-501772

BEFORE: Cooney, J., Dyke, P.J., and Jones, J.

RELEASED: July 15, 2010

JOURNALIZED:
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COLLEEN CONWAY COONEY, J.:

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

{¶ 2} In October 2007, Hale, along with codefendants, Kevin Porter ("Porter"), Gary Queen ("Gary"), and Suzanne Queen ("Suzanne"), were charged with drug possession, two counts of drug trafficking, and possessing criminal tools.[1] Hale moved to suppress the evidence obtained from the initial stop and subsequent arrest. The following evidence was adduced at the suppression hearing.

{¶ 3} Detective Brian Byard ("Byard") of the Bedford Heights Police Department received a tip from a confidential reliable informant ("CRI") that the CRI could purchase large quantities of marijuana from Gary.[2] Byard arranged a controlled buy, in which the CRI was to purchase three pounds of marijuana from Gary. The buy was to take place on August 30, 2007 at 1:30 p.m. The CRI learned from Gary that his dealer was not going to arrive

[1] Each of Hale's charges carried forfeiture specifications for $295, three cell phones, and four firearms.

[2] Byard is assigned to the SEALE Narcotics Task Force, which is a multi-jurisdictional drug task force.

until approximately 5:00 p.m. So Byard and other officers set up surveillance on Gary's home at 4:30 p.m.

{¶ 4} At approximately 5:00 p.m., Byard observed a black SUV driven by Hale drive up to Gary's mobile home. The passenger, Porter, exited the vehicle with a black garbage bag in his hand, while Hale remained in the vehicle. Byard testified that the corner of the bag was consistent with the shape of three pounds of marijuana. Gary's wife, Suzanne, arrived about the same time as the SUV, and she carried a bag that was a little bigger than a normal-sized purse. Byard described it as either a "bingo bag" or a small bowling bag. Suzanne spoke with Porter and then entered the mobile home with Porter following her. Porter was inside the mobile home for approximately four minutes before he exited empty-handed. He got back into the SUV, and the SUV proceeded to exit the trailer park.

{¶ 5} At that point, Byard decided to stop the vehicle. Hale and Porter were ordered out of the vehicle and placed in handcuffs. Byard testified that there was $3,300 and three cell phones in plain view on the center console of the vehicle. The police recovered an additional $295 in Hale's pockets. Within ten minutes of the stop, the CRI called Gary and asked him if the drugs were delivered yet. Gary replied, "Yes, they just got here." The CRI then went to Gary's mobile home and purchased the marijuana from Gary.

{¶ 6} The trial court denied Hale's motion to suppress, finding that Byard had probable cause to stop Hale's vehicle. Hale then pled no contest to the charges and reserved his right to appeal the trial court's denial of his motion to suppress. The trial court sentenced Hale to two years of community control sanction and ordered him to forfeit the $295, three cell phones, and four firearms.

{¶ 7} Hale appeals, raising one assignment of error, in which he argues that the trial court erred by denying his motion to suppress. He claims that Byard did not have probable cause and reasonable suspicion to arrest him, and the subsequent search and seizure violated his Fourth Amendment rights.

{¶ 8} In reviewing a trial court's ruling on a motion to suppress, the reviewing court must keep in mind that weighing the evidence and determining the credibility of witnesses are functions for the trier of fact. *State v. DePew* (1988), 38 Ohio St.3d 275, 277, 528 N.E.2d 542; *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. A reviewing court is bound to accept those findings of fact if supported by competent, credible evidence. See *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 564 N.E.2d 54. The reviewing court, however, must decide de novo whether, as a matter of law,

the facts meet the appropriate legal standard. Id.; see, also, *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906.

{¶ 9} Hale first attacks Byard's credibility by citing his testimony at Hale's preliminary hearing in Bedford Municipal Court. Hale claims that Byard's testimony at the preliminary hearing differed from his testimony at the suppression hearing. However, the testimony from the preliminary hearing was not before the trial court at the time of the suppression hearing. Because our review on appeal is limited to the evidence presented at the suppression hearing, we must disregard this evidence. Furthermore, we defer to the trial court in resolving any conflicts in the evidence because the trial court, during a suppression hearing, is in the best position to resolve questions of fact and evaluate the credibility of witnesses. See *State v. Fryer*, Cuyahoga App. No. 91497, 2008-Ohio-6290, ¶25, citing *State v. Ware*, Cuyahoga App. No. 89945, 2008-Ohio-2038.

{¶ 10} Hale also argues that the officers did not have probable cause to stop, arrest, and search him because there was no link between him and the CRI's subsequent drug purchase from Gary. He claims that the officers did not have articulable suspicion because they had no prior knowledge of the description of the drug dealer or the drug dealer's vehicle. Furthermore, he claims that Suzanne could have brought the drugs because she arrived at the

same time as Hale and Porter and was also carrying a bag that could have contained marijuana.

{¶ 11} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, with some exceptions. *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576. A warrantless arrest is unconstitutional unless the arresting officer has probable cause to make the arrest at that time. *State v. Timson* (1974), 38 Ohio St.2d 122, 127, 311 N.E.2d 16. Probable cause exists when officers have "'facts and circumstances within their knowledge and of which they [have] reasonably trustworthy information' that would sufficiently 'warrant a prudent man in believing that the [suspect] had committed or was committing an offense.'" *State v. Fannin*, Cuyahoga App. No. 79991, 2002-Ohio-6312, quoting *Beck v. Ohio* (1964), 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142.

{¶ 12} The Fourth Amendment allows a police officer to stop and detain an individual if the officer possesses a reasonable suspicion, based upon specific and articulable facts, that criminal activity "may be afoot." *Terry v. Ohio* (1968), 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889. In deciding whether reasonable suspicion exists, courts must examine the "'totality of the circumstances' of each case to determine whether the detaining officer has a

'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu* (2002), 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740, quoting *United States v. Cortez* (1981), 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621; *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, citing *State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044.

{¶ 13} In the instant case, Byard testified that a CRI ordered three pounds of marijuana from Gary, and it was to arrive at Gary's mobile home at 5:00 p.m. Although Suzanne arrived at approximately the same time as Hale and Porter with a bag in her hand, Byard testified that, based on his experience, he ordered the takedown of Hale and Porter because Hale drove up to Gary's mobile home and waited outside while Porter exited the vehicle with a black garbage bag in his hand. The corner of the bag was consistent with the shape of three pounds of marijuana. Porter was in the mobile home for approximately four minutes before he exited with nothing in his hands. He and Hale drove away from the trailer park, while Suzanne stayed inside the mobile home.

{¶ 14} Police officers then stopped the vehicle before it exited the trailer park, ordered Hale and Porter out of the vehicle, and placed them in handcuffs. Byard testified that there was $3,300 and three cell phones in

plain view on the center console of the vehicle. The police recovered an additional $295 in Hale's pockets. Within ten minutes after the takedown, the CRI called Gary to confirm the delivery of the drugs and the drug transaction was completed in Gary's mobile home.

{¶ 15} We find that this testimony provides competent, credible evidence to support the trial court's finding that probable cause existed to stop Hale's vehicle and that defense counsel's argument that probable cause was defeated because Suzanne entered the mobile home at the same time with a bag in her hand is not persuasive. The totality of the circumstances gave Byard a particularized and objective basis for suspecting legal wrongdoing and justify police stopping the vehicle and arresting Hale.

{¶ 16} Accordingly, the sole assignment of error is overruled.

{¶ 17} 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, JUDGE

ANN DYKE, P.J., and
LARRY A. JONES, J., CONCUR