[Cite as *State v. White*, 2010-Ohio-521.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93109

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GREGORY WHITE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-517304

BEFORE: Sweeney, J., Dyke, P.J., and Celebrezze, J.

RELEASED: February 18, 2010

JOURNALIZED:

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JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Gregory White ("defendant"), appeals his drug possession and trafficking convictions. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On October 23, 2008, at approximately 11:30 a.m., defendant and three other males were standing in front of a vacant, boarded-up property on Linn Drive in Cleveland. This neighborhood is a high criminal activity area; specifically, drug related offenses and vandalism of vacant houses. Two undercover police vehicles were patrolling the area, and as the four males saw the vehicles approach, one male began to walk away and threw an object to the ground between two cars parked in the driveway of the property.

{¶ 3} Cleveland Police Officer Robert Taylor testified that, at this point, he was concerned with officer safety because the object thrown could have been a weapon. The police ordered the men to the ground and detained them for further investigation of criminal activity. Officer Taylor found six rocks of crack cocaine on the ground in the area where the object was thrown.

{¶ 4} Cleveland Police Officer Kennedy Jones found a small package of crack cocaine by defendant's leg. He asked defendant if he had any weapons or narcotics on him, and defendant replied that yes, he had marijuana. Officer Jones then patted defendant down and recovered 11 bags of marijuana from defendant's pants pocket.

{¶ 5} On November 4, 2008, defendant was charged with drug possession in violation of R.C. 2925.11, and drug trafficking in violation of R.C. 2925.03. Defendant filed a motion to suppress the evidence based on it being obtained during an illegal search. The court held a suppression hearing and on January 9, 2009, denied defendant's motion. On March 10, 2009, defendant pled no contest to the indictment and the court sentenced him to ten months in prison.

{¶ 6} Defendant appeals and raises one assignment of error for our review.

{¶ 7} "I. The trial court erred by denying appellant's motion to suppress evidence obtained as the result of an unreasonable seizure, in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 14 of the Ohio Constitution."

{¶ 8} Specifically, defendant argues that there was no reasonable suspicion that he was engaging in criminal activity to justify an investigative detention, nor was there a reasonable belief that he had a weapon to justify a limited protective search.

{¶ 9} "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.

{¶ 10} Warrantless searches are presumptively unconstitutional, subject to a limited number of specific exceptions. One of the exceptions is found in *Terry v. Ohio* (1968), 392 U.S. 1, 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 possibl[e] 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.

{¶ 11} *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. Id. at 24. See, also, *State v. Williams* (1990), 51 Ohio St.3d 58, 554 N.E.2d 108.

{¶ 12} 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 search 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; and 3) whether the defendant engaged in furtive gestures or movements.

{¶ 13} In the instant case, Officer Taylor testified that he saw one of the men throw an object to the ground with his right hand, but he was not able to see what was thrown. He testified that this is a high drug area and he was concerned about officer safety because the object could have been a weapon. The officer added that there was a problem in the city of Cleveland with "vacant homes being vandalized, copper being taken out, wire taken out." At that time, Officer Taylor had been with the Cleveland Police for over eight years, with half of that time handling "predominantly drugs."

{¶ 14} Officer Jones testified that he and his partner assisted Officer Taylor as he encountered the four males in the yard of the vacant property. He saw "a couple of males * * * making furtive gestures up between the cars and appeared to be throwing something under the cars. Not knowing whether it was drugs, weapons, whatever, we put them on the ground for our safety and for theirs." Officer Jones testified that his primary focus as a police officer is drug activity, and the address where defendant was arrested "has been a continuous trouble spot." Officer Jones further testified that the police approached this group of four males because they were on abandoned property in a high drug area, and those two things made them suspicious of criminal trespassing and drug activity.

{¶ 15} The trial court in the instant case stated the following when denying defendant's motion to suppress:

{¶ 16} "Here, the police had a reasonable suspicion that criminal activity was occurring. The purpose of a *Terry* stop here was to investigate four young males in a high-drug area in an abandoned, boarded-up house facing potential criminal trespassing charges. The investigation did not occur until one of the males was observed by the officers and moved away and tossed something to conceal.

{¶ 17} "Trained law enforcement officers understand this is consistent with drug activity and/or can pose a risk to their safety. Officers went to the location, observed six individually-wrapped pieces of crack cocaine. The defendant was not searched until the police observed drugs by his side, and he admitted to more drugs in his pocket. Therefore, the motion to suppress is denied."

{¶ 18} We find that the court's factual findings are supported by the police officers' testimony. Additionally, we find that under *Terry* and *Bobo*, attempting to hide something from the police in a high drug activity area is suspicious enough to investigate further and search for weapons. See *State v. Williams* (Sept. 2, 1993), Cuyahoga App. No. 63502 (holding that a search was warranted when "the officers observed three men standing huddled together in the driveway of a known drug house. One of the men was holding a plastic bag of the kind commonly used to contain narcotics. All of the men were examining the contents of the bag"); *State v. Hall* (Mar. 24, 1994), Cuyahoga App. No. 64887

(holding that a search was legal when an experienced police officer patrolling a known drug area "came upon an illegally parked truck with people inside the truck and one person outside the truck on the passenger side, which behavior represented for the officers behavior consistent with drug trafficking").

{¶ 19} Defendant's 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

ANN DYKE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR