[Cite as *State v. Forkland*, 2011-Ohio-337.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94834

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMARR J. FORKLAND

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-529938

BEFORE: Sweeney, J., Blackmon, P.J., and Gallagher, J.

RELEASED AND JOURNALIZED: January 27, 2011

ATTORNEY FOR APPELLANT

James R. Willis, Esq.
323 W. Lakeside Avenue
420 Lakeside Place
Cleveland, Ohio 44113-1009

ATTORNEYS FOR APPELLEE

William D. Mason, Esq.
Cuyahoga County Prosecutor
By: Matthew E. Meyer, Esq.
Margaret A. Troia, Esq.
Asst. County Prosecutors
1200 Ontario Street
Cleveland, Ohio 44114

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant Jamarr Forkland ("defendant") appeals the court's denial of his motion to suppress evidence and his two year prison sentence. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On October 2, 2009, defendant was arrested for drug trafficking, failure to comply with order or signal of police officer, and possession of criminal tools, following a traffic stop of his vehicle. On October 15, 2009, defendant was charged with drug trafficking in violation of R.C. 2925.03(A)(2) and possessing criminal tools in violation of R.C. 2923.24(A). On March 10, 2010, the court held a hearing on, and subsequently denied, defendant's motion to suppress evidence. Defendant pled no contest to both counts, and the court sentenced

him to one year in prison for each offense, to run consecutively, for an aggregate sentence of two years in prison.

{¶ 3} Defendant appeals and raises five assignments of error for our review. Assignments of error one, three, and four concern the court's denial of defendant's motion to suppress and will be reviewed together.

{¶ 4} "I. The court erred when it denied the motion to suppress."

{¶ 5} "III. Apart from violating Rule 12(F), Ohio Rules of Criminal Procedure, the trial court's rulings (resolving various Fourth Amendment issues) were not expressed on the record 'with unmistakable clarity.' With this being so, it follows the court's denial of the motion to suppress and for the return of illegally seized property was not only erroneous, it also violated due process."

{¶ 6} "IV. Given the fact that there was no legal or constitutional basis to seize the monies taken from the defendant's person and from his vehicle (except for safekeeping), it follows the court erred when it denied the motion for the return of all the monies seized incident to the defendant's arrest."

{¶ 7} "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." *State v. Polk*, Cuyahoga App. No. 84361, 2005-Ohio-774, ¶2.

{¶ 8} 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, 664 N.E.2d 1091. A second exception is that police may seize an incriminating object that was discovered in plain view. See *State v. Halczyszak* (1986), 25 Ohio St.3d 301, 496 N.E.2d 925.

{¶ 9} A search of a person incident to a lawful arrest is another exception that is reasonable under the Fourth Amendment. *Chimel v. California* (1969), 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685. A valid warrantless arrest is based on probable cause — whether "the facts and circumstances within the officer's knowledge were sufficient to cause a prudent person to believe that the individual had committed or was committing an offense." *State v. Johnson*, Cuyahoga App. No. 84282, 2005-Ohio-98, ¶13. Searches incident to arrest are broad in scope and the police may fully search an arrestee's person for weapons and contraband. *State v. Ferman* (1979), 58 Ohio St.2d 216, 389 N.E.2d 843.

{¶ 10} In *Arizona v. Gant* (2009), 129 S.Ct. 1710, 173 L.Ed.2d 485, the United States Supreme Court narrowed the search incident to arrest doctrine as applied to automobiles: a search of an arrestee's recently driven vehicle is proper if the arrestee had access to the car at the time of the search or if the police reasonably believe that the car contains evidence relevant to the offense of arrest. See, also, *State v. Burke*, 188 Ohio App.3d 377, 2010-Ohio-3597, 936

N.E.2d 1019.

{¶ 11} In the instant case, the following testimony was heard concerning defendant's motion to suppress evidence:

{¶ 12} On October 2, 2009, at approximately 10:00 p.m., Cleveland Police Officer Gonzalez was patrolling the East 105th Street and East Blvd. area, which is a high drug activity area. He was stopped at the East 105th and Morison Avenue intersection at a red light, facing south, when he "heard a loud noise, like drag racing" coming from a vehicle that was headed west on Morison at a high speed. Defendant, who was driving the silver Dodge Charger that Officer Gonzalez observed, looked at the police car and recklessly turned north onto 105th Street.

{¶ 13} Officer Gonzalez turned on the overhead lights and siren, made a u-turn, and followed defendant to pull the vehicle over. Officer Gonzalez saw defendant continue to speed, then turn right onto Amor without using a turn signal. Defendant turned his vehicle into a driveway on Amor, and Officer Gonzalez pulled in behind defendant. Defendant tried to get out of his car, but Officer Gonzalez told defendant to stay in his vehicle. Officer Gonzalez approached the vehicle and asked for defendant's driver's license, which defendant gave to the officer. As Officer Gonzalez walked back to his police car, he saw a bottle of liquor on the back seat and two bags of what he suspected was marijuana on the rear floor of defendant's car.

{¶ 14} Defendant was ordered out of the car and patted down for weapons.

Officer Gonzalez felt a lump in each of defendant's front pants pockets and recovered drugs and money. Officer Gonzalez arrested defendant for reckless driving, possession of marijuana, and open container and put defendant in the back seat of the police car. Officer Gonzalez's partner conducted a search of defendant's vehicle and, according to the police report, found three more bags of marijuana under the driver's seat, more money in the driver's door well, a scale in the center console, and plastic sandwich bags in the trunk. This property was seized, including seven bags of marijuana totaling 166.49 grams, two cellular phones, $3,243.19 in cash, a scale, and baggies.

{¶ 15} Defendant testified on his own behalf that he lives on Amor in Cleveland, at the same address where he was arrested on October 2, 2009. He was driving about 25 to 30 miles per hour on Morison, when he slowed down to make a right turn on East 105th Street. He remembers slowing down because there was a police car at that intersection that he would have hit had he not slowed his vehicle to make the turn. He drove the speed limit up 105th and onto Amor, where he turned into his driveway, which is about nine houses down. He got out of the car, took a few steps, and saw police officers with their guns out. The officers took defendant to the police car, then searched defendant's car. According to defendant, he handed the officers his driver's license before he was put in the police car.

{¶ 16} Defendant testified that he paid $175 to someone "from off the streets" for the marijuana found in his car. Defendant testified that he had

$3,200 in cash with him at the time of his arrest, because he gambles a lot. Defendant stated that the marijuana and scale were for personal use, and he was unaware of the sandwich bags found in his trunk.

{¶ 17} In denying defendant's motion to suppress, the court stated that Officer Gonzalez's testimony was credible, clear, and concise, and consistent with the referenced police reports. Crim.R. 12(F) states that "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record." However, the failure to do so will not prejudice a defendant "where the record provides an appellate court with a sufficient basis to review a defendant's assignments of error." *State v. Harris*, Cuyahoga App. No. 85270, 2005-Ohio-2192, ¶18.

{¶ 18} Defendant argues that Officer Gonzalez's testimony was not credible or believable because if defendant was speeding from Morison to his house, his car would have been out of the officer's sight when he made the turn onto Amor, considering that the officer had to make a u-turn to pursue defendant. Defendant also argues extensively about how fast a car would have to be going to make the right turn from Morison to 105th without crossing the center yellow line and how long it would take a car traveling at certain speeds to cover certain distances, attempting to show that Officer Gonzalez's testimony "defies the laws of nature."

{¶ 19} These arguments, however, are pure speculation. No reliable evidence was presented at the hearing that reconstructed the events other than a

Mapquest.com image of the streets in the area. Officer Gonzalez testified that defendant was speeding and made a turn driving recklessly, which is evidence of probable cause to make a traffic stop. The police report of the incident is consistent with the testimony: "We viewed a silver Dodge Charger coming westbound at a high rate of speed. The driver of this vehicle looked in the zone car's direction and tried to slow down. The vehicle turned a corner in a reckless manner, and then continued eastbound down Amor Avenue."

{¶ 20} Furthermore, there was evidence that, after making the lawful traffic stop of defendant's car, Officer Gonzalez viewed two bags of marijuana in plain view on the rear floor of the car. Defendant argues that he was out of the car when the officer approached him to get his identification; therefore, there was no reason for the officer to look in his car. However, Officer Gonzalez testified that defendant tried to get out of his car, but was told to stay in the car for safety reasons. Officer Gonzalez approached the vehicle, got defendant's identification, and saw the drugs in defendant's car as he was walking back to his police vehicle. Officer Gonzales testified that, based on his nine years experience making drug related arrests, it was likely that defendant, who was being arrested for drug possession, had additional drugs or possibly weapons in his car. Compare with *Gant*, 129 S.Ct. at 1719 (holding that the search of Gant's vehicle violated his Fourth Amendment rights because "Gant was arrested for driving with a suspended license — an offense for which police could not expect to find evidence in the passenger compartment of Gant's car").

{¶ 21} This is sufficient to cause Officer Gonzalez to believe that defendant was committing drug related offenses, thus justifying the arrest, subsequent search, and seizure of property. After review, we find competent, credible evidence in the record to support the traffic stop, arrest, and search incident to arrest, all of which are valid warrantless searches. Although the court's findings under Crim.R. 12(F) are not particularly detailed, we conclude that the testimony presented at the hearing provided a sufficient basis to deny defendant's motion to suppress. Defendants first, third, and fourth assignments of error are overruled.

{¶ 22} Defendant's second assignment of error states the following:

{¶ 23} "II. The court erred when without setting forth any findings it artificially concluded there was a nexus between monies seized from the appellant and the offenses of conviction, and when it, without a factual basis, ordered these monies forfeited to the state."

{¶ 24} In *State v. Gales*, Cuyahoga App. No. 80449, 2002-Ohio-4420, ¶20 (internal citations omitted), this court held the following: "The mere possession of cash is not unlawful. Therefore, in order to prove that the money is contraband, the State must have demonstrated that it is more probable than not, from all the circumstances, that the defendant used the money in the commission of a criminal offense." Additionally, pursuant to R.C. 2981.02(A), "[p]roceeds derived from" or an "instrumentality * * * used in * * * the commission of" an offense is subject to forfeiture by the State.

{¶ 25} In the instant case, the police found packaged marijuana, a scale,

sandwich baggies, two cellular phones, and over $3,000 cash on defendant's person and in his car when he was arrested for drug trafficking and possession of criminal tools. From this evidence, it is reasonable to conclude that the money was used in committing the drug related offenses. See *State v. Moore*, Cuyahoga App. No. 92829, 2010-Ohio-3305. Accordingly, defendant's second assignment of error is without merit.

{¶ 26} In defendant's fifth assignment of error, he argues as follows:

{¶ 27} "V. The court erred when it determined the defendant's conviction was the worst form of the charged offenses and sentenced him to maximum consecutive terms."

{¶ 28} The Ohio Supreme Court set forth the standard for reviewing felony sentencing in *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, 896 N.E.2d 124[1]. See, also, *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470. *Kalish*, in a plurality decision, holds that appellate courts must apply a two-step approach when analyzing alleged error in a trial court's sentencing. "First, they must examine the sentencing court's compliance with all applicable rules and statutes in imposing the sentence to determine whether the sentence is clearly and convincingly contrary to law. If this first prong is satisfied, the trial court's decision shall be reviewed under an abuse-of-discretion standard." Id. at

[1] We note the Ohio Supreme Court's recent decision in *State v. Hodge*, Slip Opinion No. 2010-Ohio-6320, which holds that Ohio's post-*Foster* treatment of consecutive sentences remains intact in light of *Oregon v. Ice* (2009), 555 U.S. 160, 129 S.Ct. 711, 172 L.Ed.2d 517.

¶4.

{¶ 29} Defendant was convicted of two fifth degree felonies, each of which carries a six to 12 month prison sentence. R.C. 2929.14(A)(5). Therefore, defendant's two year prison sentence is within the statutory range and not contrary to law.

{¶ 30} We now analyze the details of the court's findings and review the decision for an abuse of discretion under the second prong of *Kalish*. The court found that defendant, who was 26 years old at the time, had six prior drug related convictions, and had served two prison sentences for drug related offenses. The court found that defendant "just [kept] doing the same thing," and he had a large amount of cash in his possession, which indicated that he sold marijuana prior to being arrested. The court sentenced defendant to the maximum term of 12 months in prison for each count, to run consecutively.

{¶ 31} We find that the court acted within its discretion when it sentenced defendant to maximum prison terms to run consecutively, and defendant's fifth assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from 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.

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

JAMES J. SWEENEY, JUDGE

PATRICIA ANN BLACKMON, P.J., and
SEAN C. GALLAGHER, J., CONCUR