[Cite as *State v. Redding*, 2010-Ohio-4286.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STATE OF OHIO	C.A. No. 10CA0018-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JESUS M. REDDING	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 08-CR-0200

DECISION AND JOURNAL ENTRY

Dated: September 13, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Jesus Redding, appeals from the denial of his motion to suppress in the Medina County Court of Common Pleas. This Court affirms.

I

{¶2} At approximately 8:30 a.m. on May 7, 2008, Medina County Sheriff's Deputy James Cartwright decided to approach the driver of a tractor-trailer parked at the Truck Stops of America in Medina. Deputy Cartwright based his decision on several observations he made, including that the driver of the tractor-trailer twice moved the trailer to different spots in the parking lot while Deputy Cartwright patrolled the area. Deputy Cartwright spoke with the driver, Fabian Casas, shortly thereafter. The conversation ultimately resulted in Casas' arrest, as several officers discovered narcotics inside the trailer. Casas initially indicated that he was travelling alone, but later admitted that he had been travelling with Redding. The officers on scene searched the tractor-trailer and found Redding's suitcase, which contained his wallet,

identification, and personal effects. Casas informed the officers that Redding had left the tractor-trailer and had gone inside the truck stop before Deputy Cartwright first arrived.

{¶3} Later that afternoon, Deputy Dan Kohler walked around the truck stop in plain clothes and found Redding in a television room, sitting in a corner with a baseball cap "covering his face." He was able to identify Redding from a photo identification card that the officers had found in Redding's suitcase. The police arrested Redding and led him out of the truck stop. Redding told Deputy Kohler that "he was with a friend, but his friend left him."

{¶4} On May 14, 2008, a grand jury indicted Redding on one count of possession of marijuana, in violation of R.C. 2925.11(A)(C)(3)(f) and an attendant forfeiture specification. On June 23, 2008, Redding filed a motion to suppress, arguing that officers obtained the evidence against him through an unreasonable search and seizure. The court held a hearing on Redding's motion on August 29, 2008 and later denied the motion. The matter proceeded to a jury trial, and the jury found Redding guilty. The court sentenced Redding and he appealed, but this Court dismissed his appeal due to an invalid post-release control notification. *State v. Redding* (Nov. 18, 2009), 9th Dist. No. 09CA0021-M. Subsequently, the court resentenced Redding and ordered him to serve eight years in prison.

{¶5} Redding now appeals from the court's denial of his motion to suppress and raises one assignment of error for our review.

II

Assignment of Error

"THE TRIAL COURT ERRED TO THE PREJUDICE OF MR. REDDING BY DENYING HIS MOTION TO SUPPRESS EVIDENCE."

{¶6} In his sole assignment of error, Redding argues that the court erred by denying his motion to suppress. He argues that the police lacked reasonable suspicion to seize Casas, and the

court should have suppressed all of the evidence the police obtained as a result of Casas' illegal seizure. Because Redding never demonstrated that the police violated his own Fourth Amendment rights, his argument lacks merit.

{¶7} The Ohio Supreme Court has held that:

> "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. 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. 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." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

Accordingly, this Court reviews the trial court's factual findings for competent, credible evidence and considers the court's legal conclusions de novo. *State v. Conley*, 9th Dist. No. 08CA009454, 2009-Ohio-910, at ¶6, citing *Burnside* at ¶8.

{¶8} The Fourth Amendment to the United States Constitution provides in part that "[t]he right of the people to be secure in their persons *** against unreasonable searches and seizures, shall not be violated[.]" Accord Ohio Const., Art. I, Sec. 14. A defendant who seeks the suppression of evidence on the basis that the police obtained it pursuant to an illegal search and seizure "bears the burden of proving that he had a legitimate expectation of privacy." *State v. Blackert* (July 22, 1992), 9th Dist. No. 15409, at *3. "[S]uppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself[.]" *Alderman v. United States* (1969), 394 U.S. 165, 171-72. "Fourth Amendment rights are personal in nature and may not be vicariously asserted by others." *State v. Dennis* (1997), 79 Ohio St.3d 421, 426. "A person who is aggrieved by an illegal search and seizure

only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas* v. *Illinois* (1978), 439 U.S. 128, 134.

{¶9} The Ohio Supreme Court has recognized that passengers in a vehicle may challenge the validity of a traffic stop. *State v. Carter* (1994), 69 Ohio St.3d 57. In doing so, however, the Court reasoned that "[b]oth passengers and the driver [of a vehicle] have standing regarding the legality of a stopping *because when the vehicle is stopped, they are equally seized, and their freedom of movement is equally affected*." (Emphasis added.) Id. at 63. As such, the Court merely recognized that a person's status as a passenger does not erase his or her right to be free from an unlawful seizure. Id. The question of whether a person may challenge the search of a vehicle in which they have placed an item of property is a distinct inquiry. See *State v. Earley* (June 28, 2000), 9th Dist. No. 99CA0059, at *3-4. See, also, *Brendlin v. California* (2007), 551 U.S. 249, 253, citing *Rakas v. Illinois* (1978), 439 U.S. 128 (drawing a distinction between a passenger who challenges the constitutionality of a traffic stop on the basis that he was unlawfully seized and one who does so on the basis that the vehicle at issue was unlawfully searched). In short, if a person seeks to suppress evidence taken from a vehicle he must demonstrate either that: (1) the police subjected him to an illegal seizure when he was a passenger in the vehicle; or (2) he possessed a legitimate expectation of privacy in the vehicle searched or the item seized. See *Brendlin*, 551 U.S. at 256-58; *State v. White*, 9th Dist. No. 23522, 2008-Ohio-657, at ¶28.

{¶10} Redding does not claim that he had any ownership or possessory interests in the tractor-trailer at issue or in the contraband that the police seized. Redding's argument is that the trial court should have suppressed the narcotics the police discovered in the tractor-trailer

because the police "conducted a warrantless seizure of Mr. Casas." In other words, Redding seeks the suppression of evidence on the basis that a third party's rights were violated. The Fourth Amendment does not extend so far. *State v. McDaniels* (April 14, 1982), 9th Dist. Nos. 10436 & 10453, at *2. Accord *Dennis*, 79 Ohio St.3d at 426.

{¶11} The record reflects that Redding was not in the tractor-trailer when Deputy Cartwright approached it. He left the tractor-trailer at some undetermined point prior to Deputy Cartwright's approach and never returned. Deputy Kohler only found Redding several hours later because he was still sitting inside the truck stop. This scenario hardly comports with the Supreme Court's rationale that passengers have standing "because when the vehicle is stopped, they are equally seized, and their freedom of movement is equally affected." *Carter*, 69 Ohio St.3d at 63. In any event, Redding never addressed the issue of whether the court should have afforded him a passenger status despite his prior departure from the tractor-trailer because he never challenged his own seizure. He took issue with the evidence police obtained as a result of Casas' seizure. As previously noted, however, "[a] person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Rakas*, 439 U.S. at 134. Because Redding focused his argument on Casas' rights, he never satisfied his "burden of proving that he had a legitimate expectation of privacy." *Blackert*, at *3. See, also, *Alderman*, 394 U.S. at 171-72.

{¶12} The trial court overruled Redding's motion on the merits, concluding that no Fourth Amendment violations occurred. Although the trial court denied Redding's motion on the merits, "an appellate court shall affirm a trial court's judgment that is legally correct on other grounds[.]" *State v. Scott*, 9th Dist. No. 08CA009446, 2009-Ohio-672, at ¶16, quoting *State v.*

Danko, 9th Dist. No. 07CA0070-M, 2008-Ohio-2903, at ¶40. Because Redding failed to prove that he had any legitimate expectation of privacy under the Fourth Amendment, the trial court correctly denied his motion. Redding's assignment of error is overruled.

III

{¶13} Redding's assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

HECTOR G. MARTINEZ, JR., Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL A. HOPKINS, Assistant Prosecuting Attorney, for Appellee.