The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 9, 2024

[Cite as *05/09/2024 Case Announcements #2,* 2024-Ohio-1767.]

APPEALS NOT ACCEPTED FOR REVIEW

2024-0411. State v. Etherson-Tabb.
Scioto App. No. 22CA4009, 2024-Ohio-550.
Donnelly, J., dissents, with an opinion joined by Brunner, J.

DONNELLY, J., dissenting.

{¶ 1} In his memorandum in support of jurisdiction, appellant, Ryan C. Etherson-Tabb, asks this court to address whether law enforcement violated the Fourth Amendment to the United States Constitution in stopping and searching his vehicle. I have concerns about the justification for and the duration of that stop, and I think that constitutional questions concerning those matters merit this court's review. On that basis, I voted to accept jurisdiction over Etherson-Tabb's appeal. And because this court does not, I dissent. But I feel compelled to express my concerns about another aspect of Etherson-Tabb's trial.

{¶ 2} This case's background is simple enough. According to the Fourth District Court of Appeals' decision, during a traffic stop, law enforcement discovered Etherson-Tabb to be in possession of oxymorphone and oxycodone pills. 2024-Ohio-550, ¶ 3-5, 10. Etherson-Tabb was charged with one count each of aggravated trafficking in drugs, aggravated possession of drugs, and possessing criminal tools. *Id.* at ¶ 2. Before trial, Etherson-Tabbb filed a motion to suppress the evidence discovered during the traffic stop. *Id.* But here is where it gets weird.

{¶ 3} According to the procedural history provided in the court of appeals' decision, the trial court held a hearing on Etherson-Tabb's motion to suppress "simultaneously" with part of the bench trial to adjudicate Etherson-Tabb's guilt. *Id.* The court of appeals seems to imply that

the trial court considered the evidence that the state presented during the suppression hearing *as the evidence necessary* for the state to meet its burden of proof to convict Etherson-Tabb. Then, after presenting the evidence at the suppression hearing, the state rested its case-in-chief and the trial court denied the motion to suppress. *Id.* at ¶ 11. It then fell to Etherson-Tabb to present his defense to the charges. *See id.* If the sequence of the suppression hearing and the trial laid out in the court of appeals' decision is accurate, I have serious concerns.[1]

{¶ 4} The question whether a defendant committed the crime with which he is charged is not even implicated, let alone resolved, in a suppression hearing. A suppression hearing addresses a limited issue—the admissibility of evidence that a defendant alleges was obtained in violation of his constitutional rights. *State v. Kinn*, 2d Dist. Montgomery No. 28336, 2020-Ohio-512, ¶ 24, citing *State v. Abraham*, 5th Dist. Richland No. CA-1812, 1979 WL 209663, *1 (Dec. 28, 1979); *see also United States v. Merritt*, 695 F.2d 1263, 1269 (10th Cir.1982). By contrast, the purpose of a criminal trial is to determine whether a defendant has violated a criminal statute. *See Delaware v. Van Arsdall*, 475 U.S. 673, 681, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) ("the central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence"), citing *United States v. Nobles*, 422 U.S. 225, 230, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975). Because of the limited scope of its inquiry and the limited liberty interests at stake, a suppression hearing requires less elaborate due-process protections than those required in a criminal trial. *United States v. Raddatz*, 447 U.S. 667, 679, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980). For example, in a suppression hearing, a trial court can rely on hearsay or other forms of evidence that are not admissible in a criminal trial. *Maumee v. Weisner*, 87 Ohio St.3d 295, 298, 720 N.E.2d 507 (1999), citing *Raddatz* at 679. While a suppression hearing might be a precursor to—or a separate proceeding within—a criminal trial, its purpose and scope are fundamentally distinct from those of a criminal trial. And because of those distinctions, the protections afforded a defendant in each proceeding are different.

{¶ 5} What appears to have happened in this case would collapse those distinctions and, potentially, undermine the due-process protections Etherson-Tabb is entitled to receive. The trial

1. As with any request for this court to accept jurisdiction over an appeal, we do not have the full record of the lower courts' proceedings and are limited to the factual and procedural background provided in the court of appeals' decision and the parties' assertions in their pleadings. So the exact sequence and nature of the events in the trial court are not fully fleshed out. That said, the court of appeals noted that the trial court held the suppression hearing simultaneously with part of the bench trial and that the motion to suppress was denied only *after* the state rested its case-in-chief. 2024-Ohio-550 at ¶ 2, 11. Both of those assertions lead me to have concerns regarding what may have happened in the trial court.

court did not simply hold a suppression hearing, deny Etherson-Tabb's motion to suppress, and then proceed to trial. If it had, I would have no concerns. Instead, it appears that the trial court replaced at least part of the state's case-in-chief with the suppression hearing. *See* 2024-Ohio-550 at ¶ 11. And while there is no allegation that the trial court did not provide the due-process protections to which Etherson-Tabb was entitled at trial when it considered the evidence adduced during the suppression hearing, I worry that a combined suppression hearing and bench trial could be subject to abuse under some circumstances. My concern is heightened given that there appears to be no statute or rule that permits such combined proceedings or governs their peculiar needs.

{¶ 6} Admittedly, this appeal does not squarely present a question concerning the propriety of the trial court's decision to combine the suppression hearing and part of the bench trial. But as the state's highest court, tasked with providing guidance to bench, bar, and citizens alike, I believe we should address problematic practices when we encounter them. I look forward to a case that gives this court the chance to better consider whether and how combined proceedings like the suppression hearing and the bench trial in this case comport with the constitutional protections afforded defendants. And again, I believe that the Fourth Amendment concerns Etherson-Tabb raises in this appeal warrant this court's review. Because this court has voted not to accept this appeal, I respectfully dissent.

BRUNNER, J., concurs in the foregoing opinion.