

[Cite as *State v. Campbell*, 2015-Ohio-1464.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-140372
	:	TRIAL NO. B-1306397
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
RANDY CAMPBELL,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: April 17, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Melynda J. Machol*,
Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Jon R. Sinclair, for Defendant-Appellant.

Please note: this case has been removed from the accelerated calendar.

DEWINE, Judge.

{¶1} This is an appeal in a criminal case following no-contest pleas. The defendant challenges the trial court's denial of his motion to suppress and the court's acceptance of the pleas. We find no error and affirm the judgment of the trial court.

I. Background

{¶2} Randy Campbell was driving a car that rear-ended another vehicle. Officer Thomas Stanton responded to the scene, and Mr. Campbell was placed in his police cruiser to discuss the accident. Meanwhile, the occupants of the car that had been hit told another officer "that dude from that car over there put a gun on the rail." A gun was found where the people had indicated. At this point, Officer Stanton handcuffed Campbell and read him his *Miranda* rights.

{¶3} Officer Stanton transported Campbell to District Five headquarters. On the way to the headquarters, Officer Stanton noticed Campbell moving around in the back seat of the cruiser. When they arrived at police headquarters, Officer Stanton removed Campbell from the cruiser and saw a crumbled up white substance all over the seat. Mr. Campbell was subsequently charged with possession of cocaine and tampering with evidence. He was not charged with a firearm offense.

{¶4} Mr. Campbell filed a motion to suppress evidence flowing from his arrest. Officer Stanton was the only witness to testify at the hearing. He explained that at the time of the arrest, he believed that Campbell had been the only person in the car. At the station, however, Mr. Campbell told him there had been another person in the car. As a result, Officer Stanton decided not to charge Campbell with a firearm violation. According to Officer Stanton, once he learned about the other person in the car, he "[couldn't] put the gun on [Campbell.]"

{¶5} Following the hearing, the court denied the motion to suppress, concluding that there had been probable cause to arrest Campbell. Mr. Campbell then entered no-contest pleas to possession of cocaine and tampering. He was found guilty and sentenced accordingly.

II. Probable Cause

{¶6} In his first two assignments of error, Mr. Campbell asserts that the trial court erred in its probable-cause determination. He argues that there was no evidence that he had committed a crime at the time of his arrest, and that the witnesses who had identified him as possessing a gun were not reliable.

A. An issue not raised below is waived.

{¶7} Mr. Campbell first contends that he should not have been arrested in the first place because the presence of the gun on the side of the road did not amount to a crime. Mr. Campbell points out that during the suppression hearing the state did not present any evidence he was under any disability that would have made his possession of the gun illegal. *See* R.C. 2923.13. Thus, he contends, he was arrested for possession of a gun, which is not in and of itself a crime. The problem is that he didn't raise this argument below.

{¶8} Crim.R. 47 requires that a motion "state with particularity the grounds upon which it is made[.]" Here, Mr. Campbell filed a general motion seeking to suppress evidence flowing from his arrest. The motion is full of boilerplate language with little connection to the events of the arrest. For example, the motion states "[t]here was no lawful cause to stop the Defendant, detain the Defendant, remove Defendant from the car, search defendant, search vehicle of Defendant." The only factual claim pertinent to Campbell's arrest was that he was handcuffed and placed in a cruiser.

{¶9} At the motion-to-suppress hearing, counsel clarified that the basis of the motion was the trustworthiness of the information provided to the officers. He explained, “I do not think, Your Honor, there is probable cause to arrest someone when the officers are told by—this is [Officer Stanton’s] words, ‘unreliable and not credible people,’ that a gun on a railing belongs to someone who placed it there from my client’s car.” The sole focus of the probable-cause challenge was reflected in the cross-examination of Officer Stanton. Counsel for Campbell questioned Officer Stanton about the reliability of the witnesses and about whether he was certain they meant Campbell had placed the gun on the rail.

{¶10} The purpose of Crim.R. 47’s particularity requirement is to put the prosecuting attorney and the trial court on notice of the basis of the challenge. “The prosecutor must know the grounds of the challenge in order to prepare his case, and the court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the merits.” *Xenia v. Wallace*, 37 Ohio St.3d 216, 218, 524 N.E.2d 889 (1988), citing *State v. Johnson*, 16 Ore.App. 560, 567-570, 519 P.2d 1053 (1974).

{¶11} Here, the assistant prosecuting attorney concentrated her questions on the circumstances that corroborated the statements made by the occupants of the other car. She did not delve into what crime Officer Stanton believed had been committed, because she didn’t know that was an issue. Likewise, the court predicated its decision upon the discovery of the gun and the witnesses’ statements that “the dude in the other car had the gun.” Had Mr. Campbell raised the issue of whether a crime had been committed, the state would have had the opportunity to ask for what offense Officer Stanton had arrested Campbell. And the court would

have been able to determine whether the facts were sufficient to demonstrate probable cause to arrest for that offense.

{¶12} Because Mr. Campbell did not raise the issue about the gun as a basis for his motion to suppress, he has waived the issue for purposes of this appeal. *Xenia* at 218. The first assignment of error is overruled.

B. Probable cause based on the totality of the circumstances

{¶13} We turn now to the issue that Campbell has preserved for appeal. He argues that, because the occupants of the car that he hit were known to be unreliable, Officer Stanton's information was not reasonably trustworthy.

{¶14} Probable cause exists when at the moment of the arrest "the facts and circumstances within [the police officer's] knowledge and of which [he] had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the defendant] had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). "[Informants' tips] can establish probable cause, depending on the totality of the circumstances." *State v. McCorvey*, 11th Dist. Ashtabula No. 2010-A-0038, 2011-Ohio-3627, ¶ 23. But Officer Stanton agreed that, based on his past dealings with the people in the first car, these informants were unreliable and not credible. This unreliability must be factored into the weighing of the totality of the circumstances. Like a tip from an anonymous informant who is "comparatively unreliable," the tip "will generally require independent police corroboration." *Maumee v. Wiesner*, 87 Ohio St.3d 295, 300, 720 N.E.2d 750 (1999), citing *Alabama v. White*, 496 U.S. 325, 329, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

{¶15} In this case, the statement that "that dude from that car over there put a gun on the rail" was corroborated by the discovery of a gun on the rail where indicated and by the fact that, to the best of the officer's knowledge at the time of arrest, Campbell

was the only “dude” who had been in the car. We conclude that the trial court’s finding that Officer Stanton had probable cause to arrest Campbell was supported by competent, credible evidence. *See State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. The second assignment of error is overruled.

III. The no-contest plea precludes review of the tampering conviction

{¶16} In his final assignment of error, Mr. Campbell asserts that the court erred when it accepted his no-contest plea to tampering. He protests that there was no evidence that he was currently under investigation for a cocaine offense at the time he allegedly tampered with the drug. The basis of Campbell’s argument is the Ohio Supreme Court’s decision in *State v. Straley*, 139 Ohio St.3d 339, 2014-Ohio-2139, 11 N.E.3d 1175. In that case, the court held that a tampering conviction “requires proof that the defendant intended to impair the value or availability of evidence that related to an existing or likely official investigation or proceeding.” *Id.* at syllabus. Mr. Campbell maintains that when he was being transported to District Five, the only investigation involved a firearm violation. His attempt to hide the cocaine did not impair any evidence that related to that investigation.

{¶17} The problem for Campbell is that while his analysis of what constitutes tampering may be sound, it does not dispose of this assignment of error because he entered a no-contest plea. When a defendant pleads no contest, he admits to “the truth of the facts alleged in the indictment[.]” Crim.R. 11(B)(2). “[W]here the indictment * * * contains sufficient allegations to state a felony offense and the defendant pleads no contest, the court must find the defendant guilty.” *State v. Bird*, 81 Ohio St.3d 582, 584, 692 N.E.2d 1013 (1998). The indictment for Campbell’s tampering charge provided he, “knowing that an official proceeding or investigation was in progress or was about to be or likely to be instituted, altered,

destroyed, concealed, or removed a certain record, document or thing, to wit: COCAINE with purpose to impair its value or availability as evidence in such proceeding or investigation.” The allegations sufficiently stated the tampering offense.

{¶18} An exception to the rule stated in *Bird* exists where “the prosecutor presents a statement of facts and those facts positively contradict the felony charged in the indictment by negating an element essential to the commission of the offense alleged[.]” *State v. Cooper*, 168 Ohio App.3d 378, 2006-Ohio-4004, 860 N.E.2d 135, ¶ 6 (2d Dist.). In such a case, “the court may not make a finding of guilt on the basis of the charges alleged in the indictment. *Id.* See *State v. Cohen*, 60 Ohio App.2d 182, 396 N.E.2d 235 (1st Dist.1978). But Mr. Campbell did not provide a transcript of the plea hearing, so we are unable to review the statement of facts presented by the state. Based on the record that is before us, we conclude the trial court did not err when it found Campbell guilty of tampering with the evidence. The third assignment of error is overruled.

{¶19} We therefore affirm the judgment of the trial court.

Judgment affirmed.

CUNNINGHAM, P.J., and HILDEBRANDT, J., concur.

LEE H. HILDEBRANDT, JR., retired, from the First Appellate District, sitting by assignment.

Please note:

The court has recorded its own entry on the date of the release of this opinion.