[Cite as *State v. Cottrell*, 2023-Ohio-2240.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 22CA0048
	:	
JOHN COTTRELL	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 2021CR00199
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	June 29, 2023

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
JENNY WELLS LICKING CO. PROSECUTOR KENNETH W. OSWALT 20 S. Second St., 4th Floor Newark, OH 43055	APRIL F. CAMPBELL 545 Metro Place South, Ste. 100 Dublin, OH 43017

Delaney, J.

{¶1} Appellant John Cottrell appeals from the June 28, 2022 Judgment of Conviction and Sentence of the Licking County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

Overview: appellee's bill of particulars

{¶2} The following evidence is adduced from appellee's bill of particulars filed August 10, 2021.

{¶3} On June 15, 2020, the Pataskala Police Department executed a search warrant at 210 Cedar Street, Lot 31, after information was received and a preliminary investigation showed that drug trafficking was occurring at the address, a house trailer. Upon entering the trailer during execution of the warrant, officers contacted co-defendant Timothy Noble, appellant, another male, a female, and an infant.

{¶4} Officers found multiple weapons and marijuana in plain view throughout the home. In conducting the search, officers also found multiple bags of varying size of marijuana, large amounts of loose currency, a money counting machine, additional firearms, items used to manufacture "dabs" (THC wax), and paraphernalia.

{¶5} In addition to the house, the search warrant also authorized a search of all vehicles at the residence. Officers located three vehicles, including a white Honda Ridgeline registered to appellant. After being Mirandized and interviewed, appellant admitted driving the Ridgeline to the residence. Before the vehicles were searched, a K-9 performed a free-air search of all three vehicles, and alerted on all three vehicles.

{¶6} Upon searching the Ridgeline, officers found 6 boxes containing pre-packaged bags of marijuana. The boxes and bags were submitted to BCI for analysis and found to contain 43,804.5 grams of marijuana, a Schedule I controlled substance which contained THC in an amount greater than three-tenths of a percent of dry weight.

{¶7} A cell phone was collected from appellant's person and subsequently searched pursuant to a search warrant. The contents of the phone showed evidence of drug trafficking. Officers also collected $25 from appellant, purportedly proceeds of drug trafficking.

Indictment, pleas of not guilty, and motion to suppress

{¶8} Appellant was charged by indictment with one count of aggravated trafficking in marijuana pursuant to R.C. 2925.03(A)(2)(C)(3)(g), a felony of the first degree [Count I], and one count of aggravated possession of marijuana pursuant to R.C. 2925.11(A)(C)(3)(g), a felony of the second degree [Count II]. The indictment also contained forfeiture specifications pursuant to R.C. 2981.02(A)(1)(a) and (b), and R.C. 2941.1417(A), for the 2006 white Honda Ridgeline and $25.00 in currency.

{¶9} Appellant entered pleas of not guilty.

{¶10} On September 25, 2021, appellant filed a motion to suppress arguing he was unlawfully detained during execution of the search warrant; the search warrant for his cell phone was not supported by probable cause; the dog sniff of his vehicle was unreliable; the search of the Ridgeline was unlawful; and his statements were obtained unlawfully. Appellee responded with a memorandum in opposition.

{¶11} Appellant's motion to suppress challenged, in part, a search warrant signed by the judge presiding on the case [Branstool]. Therefore, that portion of the suppression

motion was referred and assigned to a different judge [Marcelain]. Each judge presided over a separate suppression hearing.

Suppression hearing of March 23, 2022

{¶12} This hearing addressed suppression issues regarding the search warrant for the residence and the following evidence was adduced.

{¶13} On June 15, 2020, a joint operation between the Licking County Sheriff's Office and the CODE Task Force executed a search warrant at an address on Cedar Street as part of an ongoing narcotics investigation.

Det. Woodyard interviews appellant

{¶14} Detective Woodyard testified he maintained surveillance on the perimeter of the residence as an entry team went in and secured the occupants. Customarily, anyone found in the home is identified and detained until execution of the search warrant is complete. Woodyard said an individual might be released before the conclusion of the warrant only if they were determined to have no role in the underlying investigation.

{¶15} In the instant case, four adults and one infant were inside the Cedar Street residence. Two adult males, one of whom is appellant, were the focus of the investigation, although appellant was not the target of the search warrant. Appellant walked out of the residence and Woodyard asked to interview him. Appellant was already cuffed and not free to leave. Appellant told Woodyard he drove to the residence in the white pickup truck parked directly in front of the residence. Later a large amount of marijuana was found inside the white pickup truck.

{¶16} Investigators were interested in the white pickup truck because the investigation suggested a white pickup truck was involved in drug trafficking at the Cedar

Street trailer. T. 26. Woodyard acknowledged there was nothing in the search warrant specifically about a white pickup truck, but the search warrant was the culmination of a lengthy investigation of tips, surveillance, and watching for a white truck.

{¶17} The residence is a house trailer with no distinct driveway, although Woodyard testified that between the trailer and the asphalt of the street, there was a "pull-off area" where people would park to enter the residence. T. 20. The passenger-side tires of appellant's truck were parked on the property.

{¶18} Appellee's Exhibit D, a recording of Woodyard's interview with appellant, was introduced. Appellant acknowledged he was inside the residence and Woodyard immediately Mirandized him. Woodyard asked for permission to search appellant's truck and appellant said he wanted to speak to an attorney. Woodyard asked if he had a phone and appellant indicated his back pocket; because he was cuffed, Woodyard took the phone out of appellant's pocket and assisted him in making two phone calls in Woodyard's presence.

{¶19} Woodyard then seized appellant's cell phone as evidence and turned the phone over to the lead detective.

{¶20} Woodyard testified that the house trailer was small and didn't take long to search; he noted it took longer to search appellant's truck.

Thomas authors search warrant and examines cell phone

{¶21} Alan Thomas is a retired supervisor of the CODE Task Force who was involved in the investigation on June 15, 2020. Thomas testified the Pataskala Police Department reached out to CODE for assistance with a narcotics-trafficking investigation. In this case, Thomas authored the search warrant which was signed by Judge Marcelain

of the Licking County Court of Common Pleas. The search warrant, which Thomas described as “cookie-cutter,” authorized police to search the property at the Cedar Street address including the trailer, vehicles, detached buildings, and garbage cans. The subjects of the search warrant were Timothy Noble and Sara Doty.

{¶22} Thomas testified it is typical for such a warrant to include the curtilage of the residence including outbuildings, detached garages, and vehicles. Typically occupants are detained during execution of the warrant so they may be identified, patted down, and interviewed. There is no time limit on the execution of a search warrant, but execution of this search warrant took about 2 hours from start to finish.

{¶23} Thomas also testified the white pickup truck was parked directly in front of the residence, within the trailer’s lot. Thomas walked through the residence but did not interview appellant.

{¶24} Thomas was involved in the search of appellant’s cell phone. Woodyard had a search warrant for all cell phones seized. Thomas took possession of appellant’s phone and performed a forensic download of its contents. The download was transferred to a thumb drive and given to a different investigator to review the contents.

Pataskala police are tipped off to white truck and drug trafficking at trailer

{¶25} James Wiles is a detective with the Pataskala Police Department. He testified that in late May 2020, investigators received anonymous tips regarding potential drug activity at the address on Cedar Street and a specific lot number. Police started surveillance of the residence and gathered information for a search warrant. Wiles was present when the warrant was executed and found appellant in the kitchen of the trailer.

{¶26} Wiles testified a large amount of marijuana was found in the white pickup truck registered to appellant, parked on the street in front of the residence. The tips stated a white truck would arrive at the trailer; boxes would be taken out of the truck into the trailer; then individuals would come out wearing backpacks.

{¶27} Appellant's truck was searched pursuant to the search warrant for the Cedar Street address.

{¶28} A separate search warrant was obtained for appellant's cell phone, authorizing extraction of data. Appellant's phone had a unique MEID identification number. Police did not have to open the phone to find the MEID because it was on a sticker on the back of the phone.

{¶29} Sgt. Detective Gary Smith of the Pataskala Police Department was also present for execution of the warrant. He observed a K-9 sniff of the exterior of appellant's white pickup truck and assisted in the search of the vehicle, which yielded 100 pounds of marijuana. Smith tried to talk to appellant at one point but appellant requested a lawyer and conversation ceased.

Suppression hearing of April 4, 2022

{¶30} On April 4, 2022, the parties appeared very briefly before Judge Marcelain for a motion to suppress arising from the search warrant for appellant's cell phone. Judge Marcelain indicated he would review the four corners of the warrant and issue a written judgment entry.

Motions to suppress overruled and pleas of no contest

{¶31} On April 13, 2022, the trial court [Judge Marcelain] filed a Judgment Entry overruling appellant's motion to suppress the search of the cell phones.

{¶32} On June 9, 2022, the trial court [Judge Branstool] filed a decision and order overruling the remaining arguments in appellant's motion to suppress.

{¶33} On June 28, 2022, appellant appeared before the trial court and changed his previously-entered pleas of not guilty to ones of no contest to Counts I and II and the forfeiture specifications. The trial court found the counts merged for purposes of sentencing and appellee elected to sentence upon Count I. The trial court thereupon imposed an indefinite prison term of 4 to 6 years.

{¶34} Appellant now appeals from the trial court's June 28, 2022 Judgment of Conviction and Sentence.

{¶35} Appellant raises three assignments of error:

ASSIGNMENTS OF ERROR

{¶36} "I. THE EVIDENCE AGAINST COTTRELL SHOULD HAVE BEEN SUPPRESSED BECAUSE THE WARRANT TO SEARCH THE HOME DID NOT PROVIDE PROBABLE CAUSE TO SEARCH AN UNRELATED PERSON'S VEHICLE ON SITTING ON A PUBLIC ROAD, SIMPLY BECAUSE IT HAPPENED TO BE SOMEWHERE NEAR ONE OF THE SEVERAL TRAILERS ON THE LOT[.]"

{¶37} "II. THE TRIAL COURT SHOULD HAVE SUPPRESSED THE EVIDENCE AGAINST COTTRELL BECAUSE HIS DETAINMENT AND THE SEIZURE OF HIS PHONE WAS UNLAWFUL[.]"

{¶38} "III. THE TRIAL COURT'S DECISION SHOULD BE REVERSED BECAUSE COTTRELL'S DETAINMENT WAS UNREASONABLY PROLONGED."

ANALYSIS

I., II., III.

{¶39} Appellant's three assignments of error are related and will be addressed together. He argues the trial court should have granted the motion to suppress because the search of his truck was not authorized by the search warrant; the seizure of his cell phone was unlawful; and his detainment at the scene was unlawfully prolonged. We disagree.

{¶40} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶41} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See, *State v.*

Fanning, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See*, Williams*, supra. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

Search of the white pickup truck

{¶42} In his first assignment of error, appellant argues the search warrant for the Cedar Street address did not provide probable cause to search his white pickup truck because it was parked on the public road, there was no nexus between the residence and the truck, the warrant was overbroad, the truck was not "at the above-listed address for the property specified," and officers did not execute the search in a reasonable manner.

{¶43} A search warrant and its supporting affidavits enjoy a presumption of validity. *McDaniel*, supra, at ¶ 27, citing *Franks v. Delaware,* 438 U.S. 154, 171, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). When a motion to suppress attacks the validity of a search conducted pursuant to a warrant, the burden of proof is on the defendant to establish that evidence obtained pursuant to the warrant should be suppressed. *Id.,* citing *State v. Dennis,* 79 Ohio St.3d 421, 426, 683 N.E.2d 1096 (1997).

{¶44} When challenging the sufficiency of an affidavit on the basis of lack of probable cause to support the issuance of the warrant, it is the duty of a reviewing court to simply ensure that the magistrate had a substantial basis for concluding that probable cause existed. *Illinois v. Gates,* 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). A judge may issue a search warrant only upon a finding that "probable cause for the search exists." Crim.R. 41(C). When reviewing the sufficiency of probable cause in an affidavit submitted in support of a search warrant, an appellate court should accord great deference to the magistrate's judgment. *State v. McDaniel*, 5th Dist. Richland No. 14CA47, 2015-Ohio-1007, ¶ 26, citing *State v. Mills,* 62 Ohio St.3d 357, 367, 582 N.E.2d 972 (1992).

{¶45} Appellant argues the search warrant did not extend to his truck because it did not include the curtilage of the residence. The premises search warrant here authorizes a search for illegal drugs and other items in the residence located at 210 Cedar Street lot 31, Pataskala, Oh, and any "detached structures, **vehicles**, or garbage cans located at the above-listed address for the property specified * * *." (Emphasis added). Therefore, rather than include vehicles in the catchall term "curtilage," this search warrant specifies vehicles at the residence are authorized to be searched. Appellant's premise that the absence of the term "curtilage" invalidates the search is not well-taken.

{¶46} Appellant argues his pickup truck was not "at" the residence for purposes of the warrant because it was parked in the public roadway, a claim that is not supported by the record. Several officers testified that the vehicle was parked along the driveway to the trailer park and that it was obvious that the white pickup truck was associated with the residence located at 210 Cedar Street, Lot 31. The tires of the truck were partially on

the lot. The trial court found, and we agree, that investigators could reasonably connect appellant, his truck, and their purpose in searching the residence. A white pickup truck was part of the investigation; appellant was found inside the residence and admitted he drove the white pickup truck there.

{¶47} We find the search of the truck was authorized by the search warrant. Given where the vehicle was found, we agree that it was on the property to be searched, and law enforcement's intelligence regarding activity at the residence gave them reason to believe that appellant's vehicle was associated with not only the premises but also with the targets of the search. See, *State v. Nelms*, 2nd Dist. No. 27167, 2017-Ohio-1466, 81 N.E.3d 508, ¶ 13.

{¶48} Appellant next summarily argues the search warrant is overbroad in its reference to "vehicles." The Fourth Amendment requires a search warrant to particularly describe " 'the place to be searched' and 'the persons or things to be seized.' " *United States v. Grubbs*, 547 U.S. 90, 97, 126 S.Ct. 1494, 164 L.Ed.2d 195 (2006). The purpose of requiring search warrants to "particularly describe the place to be searched and the persons or things to be seized" is to prevent "wide-ranging exploratory searches." *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987). Courts have identified two primary considerations when evaluating whether a search warrant particularly describes the place to be searched and the person or items to be seized. "The first issue is whether the warrant provides sufficient information to 'guide and control' the judgment of the executing officer in what to seize." *State v. Castagnola,* 145 Ohio St.3d 1, 2015-Ohio-1565, 46 N.E.3d 638, ¶ 79, quoting *United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999).

{¶49} "The second issue is whether the category as specified is too broad in that it includes items that should not be seized." *Id.* at ¶ 79, citing *United States v. Kow*, 58 F.3d 423, 427 (9th Cir. 1995).

{¶50} A search warrant that includes broad categories of items to be seized may nevertheless be valid when the description is "as specific as the circumstances and the nature of the activity under investigation permit." *Guest v. Leis*, 255 F.3d 325, 336 (6th Cir. 2001), quoting *United States v. Henson*, 848 F.2d 1374, 1383 (6th Cir. 1988), quoting *United States v. Blum*, 753 F.2d 999, 1001 (11th Cir. 1985). In the instant case, we find the description of " * * * vehicles * * *at * * * the property specified" is as specific as the nature of the alleged drug trafficking allows. The description limits officers' discretion to vehicles on the property and allows for the possibility described by the tipster that different vehicles will be at the residence related to drug trafficking.

{¶51} Finally, appellant argues law enforcement did not execute the warrant in a reasonable manner. In making this determination, a reviewing court must consider whether the police confined the scope of their search to the command contained in the valid warrant. *State v. Webb*, 12th Dist. Butler No. CA92-12-242, 1993 WL 265488, *2, appeal not allowed, 67 Ohio St.3d 1513, 622 N.E.2d 660, citing *Maryland v. Garrison*, 480 U.S. 90, 88, 107 S.Ct. 1013 (1987). Appellant points to no evidence police exceeded the scope of the warrant. Having already found the truck was "at" the property and was reasonably included in the scope of the search warrant, we find law enforcement did not exceed the scope of the search warrant's command. See *Webb,* supra [warrant authorized search of any vehicles on property, vehicles found directly across from residence in only parking place near residence were reasonably included in search].

{¶52} Appellant's first assignment of error is overruled.

Seizure of appellant and his cell phone

{¶53} In his second assignment of error, appellant argues the seizure and resulting search of his cell phone are unlawful because his detainment as an occupant of the premises was unlawful. The search warrant contains the following relevant description of property and persons to be searched and seized: " * * * cell phones, and the records contained therein or generated thereby, indicating trafficking in or possession of drugs * * *; and this warrant shall include the search of all subjects located at the above stated premises at the beginning and during the execution of the warrant."

{¶54} Appellant was immediately found in the kitchen at the beginning of the execution of the warrant. He argues, though, that he was not an "occupant" of the premises such that he could be detained while the warrant was executed.

{¶55} In *Michigan v. Summers*, 452 U.S. 692, 705, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981), the United States Supreme Court authorized law enforcement to detain occupants of a premise subject to a valid search warrant while the search was underway. Detaining such individuals serves three important objectives: (1) prevents flight, (2) minimizes the risk of harm to officers and others, and (3) facilitates the orderly completion of the search. *Id.* at 702–03. *Summers* detention does not require a finding of probable cause so long as police have an articulable basis for suspecting criminal activity. *Id.* at 698–99. "The connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant." *Id.* at 703–04. In *Bailey v. United States*, 568 U.S. 186, 133 S.Ct. 1031, 185 L.Ed.2d 19 (2013), the Supreme Court narrowed the scope of *Summers*

to "the immediate vicinity of the premises to be searched * * *." *Id.* at 1042. In the instant case, appellant was found in the kitchen and based upon the investigation, law enforcement could reasonably connect him to the purpose of the search warrant, especially when he admitted ownership of the white pickup truck.

{¶56} We find no constitutional violation with respect to appellant's detention pursuant to *Summers* or *Bailey*, supra. Where a search warrant lists the address of the premises in question and includes the right to search all subjects (persons) located at the stated premises at the beginning and during the execution of the warrant, "[c]learly appellant was within the purview of the language of the search warrant." *State v. Giblin*, 5th Dist. Licking No. 00CA00033, 2000 WL 1801860, *2. The resulting seizure and search of appellant's cell phone was lawful.

{¶57} Appellant's second assignment of error is overruled.

Detention not unreasonably prolonged

{¶58} In his third assignment of error, appellant argues his detention during execution of the search warrant was unreasonably prolonged.

{¶59} "A search warrant carries with it the limited authority to detain occupants of the premises while a proper search is executed, establishing probable cause to arrest." *State v. Bobo*, 65 Ohio App.3d 685, 689 (1989), citing *Michigan v. Summers*, supra, 452 U.S. 692 (1981). "The term 'occupant' refers not only to the owner of the premises, but may also include other individuals who may be deemed to have such a relationship to the premises to be searched that police may make a reasonable connection between the person and his property within the residence." *State v. Hawkins*, 5th Dist. Richland No.

95 CA 55, unreported (July 22, 1996) citing *State v. Schultz*, 23 Ohio App.3d 130, 133 (1985).

{¶60} In the instant case, appellant was found inside the residence upon entry of law enforcement; was briefly Mirandized and questioned; admitted ownership of the white pickup truck; and made two phone calls before his cell phone was seized. It is not evident from the record whether appellant remained on the scene while his truck was searched and 100 pounds of marijuana discovered. Woodyard testified the recovery and seizure of the marijuana took longer than execution of the search warrant. T. 23. Thomas testified the whole process took two hours from the start of the execution of the search warrant until everyone was cleared from the scene. T. 31-32. We do not discern, and appellant does not reveal, exactly how long he was detained, or in what way his detainment was unnecessarily prolonged.

{¶61} Appellant's third assignment of error is overruled.

{¶62} The trial court's findings of fact are supported by competent, credible evidence and the trial court did not err in overruling appellant's motion to suppress.

CONCLUSION

{¶63} Appellant's three assignments of error are overruled and the judgment of the Licking County Court of Common Pleas is affirmed.

By: Delaney, J.,

Gwin, P.J. and

Wise, J., concur.