

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 82
v.	:	T.C. NO. 09CR383
	:	09CR507
JASON TUCKER	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 20th day of August, 2010.

AMY M. SMITH, Atty. Reg. No. 0081712, Assistant Prosecuting Attorney, 50 E. Columbia Street, 4th Floor, P. O. Box 1608, Springfield, Ohio 45501
Attorney for Plaintiff-Appellee

STEPHEN E. SCHUTTE, Atty. Reg. No. 0027162, 31 E. High Street #325, P. O. Box 2382, Springfield, Ohio 45501
Attorney for Defendant-Appellant

DONOVAN, P.J.

{¶ 1} Defendant-appellant Jason Tucker appeals a decision of the Clark County Court of Common Pleas which denied his motion to suppress filed on June 23, 2009. A hearing was held on July 2, 2009, and on July 7, 2009, the court issued a written decision overruling Tucker’s motion to suppress. Tucker filed a timely notice of appeal on

September 4, 2009.

I

{¶ 2} On April 24, 2009, at approximately 1:30 a.m., two members of the Clark County Sheriff's Department, Sergeant Brad Barnhart and Deputy Jon Snyder, responded separately to a call regarding an armed burglary in progress at a trailer park located at 3314 East National Road just outside of Springfield, Ohio. The dispatch reported that the burglary was taking place at Trailer 22. As Deputy Snyder and Sgt. Barnhart approached Trailer 22 after arriving at the trailer park, they noticed that both of Trailer 21's rear doors, the screen door as well as the interior door, were standing open. Deputy Snyder testified that all of the trailers in the park were located side by side and stood approximately twenty to thirty feet from one another.

{¶ 3} Upon observing the open doors, Deputy Snyder and Sgt. Barnhart decided to investigate in order to determine whether a robbery was in progress in Trailer 21. Deputy Snyder announced himself three or four times as he entered the rear door of the trailer. Receiving no response, Deputy Snyder proceeded to conduct a protective sweep of the interior of Trailer 21. This was done without a warrant.

{¶ 4} As Deputy Snyder proceeded through the interior of the trailer, a male juvenile emerged from the living room at the far end of the trailer. Deputy Snyder immediately initiated a conversation with the juvenile who stated that he was fourteen years old. The juvenile informed Deputy Snyder that he was alone in the trailer with his mother,

whom he believed was also present. The juvenile's mother, however, was not present in the trailer.

{¶ 5} While Deputy Snyder spoke with the juvenile, an adult male, later identified as Tucker, walked out of the second bedroom in the trailer. Tucker began a conversation with Sgt. Barnhart, stating that he was a convicted felon. Sgt. Barnhart testified that Tucker also stated that he was babysitting the juvenile. Sgt. Barnhart further testified that he noticed that Tucker appeared nervous and his pants pockets were bulging. As Sgt. Barnhart approached Tucker, he observed body armor laying in plain view on the floor inside the bedroom from which Tucker had just emerged,.

{¶ 6} After Tucker provided identification to the officers, Sgt. Barnhart relayed the information through their dispatch and he was advised that Tucker "was a career criminal through the city of Springfield for carrying a concealed weapon." Sgt. Barnhart asked Tucker if he could pat him down for weapons, and Tucker consented. Upon searching Tucker, Sgt. Barnhart discovered three bags of marijuana, a set of scales with residue on it, a handkerchief, and a pair of clear plastic gloves. At this point, the officers had probable cause to arrest Tucker.

{¶ 7} Sgt. Barnhart then asked Tucker for permission to search the trailer. Tucker stated that the trailer was not his, and he was not able to consent to a search. Sgt. Barnhart conducted a protective sweep of the bedroom from which Tucker had exited in order to confirm that there were no other suspects or weapons present in the trailer. During the protective sweep, Sgt. Barnhart discovered a .45 caliber Ruger semiautomatic pistol under a pillow on the bed and a blue jacket

containing several additional bags of marijuana.

{¶ 8} After Sgt. Barnhart cleared the bedroom, Tracy Stewart, the homeowner, arrived at the trailer. Stewart asserted that Tucker was babysitting her son, the juvenile present in the trailer. Additionally, Stewart provided written consent to a full search of the trailer. Upon searching the bedroom, the deputies found a mirror coated with a white residue and marijuana stems. Tucker was subsequently arrested and taken into custody.

{¶ 9} Tucker was charged in two Clark County Common Pleas cases, Case No. 09-CR-0383 and Case No. 09-CR-0507. In Case No. 09-CR-0383, Tucker was charged with one count of aggravated robbery, two counts of robbery, two counts of having weapons under disability, and one count of possession of criminal tools. The aggravated robbery and robbery charges carried firearm and body armor specifications. In Case No. 09-CR-0507, Tucker was charged with one count of possession of cocaine. The trial court consolidated the cases on July 7, 2009.

{¶ 10} As previously noted, Tucker filed a motion to suppress the evidence discovered during the search of Trailer 21. After a hearing on Tucker's motion, the trial court rendered a decision on July 7, 2009, denying the motion to suppress. The court held that Tucker lacked standing to challenge the constitutionality of a search. In the alternative, the court held that the search performed by Deputy Snyder and Sgt. Barnhart was lawful according to the exigent circumstances exception to the warrant requirement.

{¶ 11} Ultimately, Tucker pled no contest to one count of possession of

cocaine and one count of having a weapon while under disability. The trial court found Tucker guilty and sentenced him to eighteen months for possession of cocaine and five years for having a weapon while under disability in exchange for dismissal of the remaining counts. The court ordered the sentences to run consecutively for an aggregate prison term of six years and six months.

{¶ 12} It is from this judgment that Tucker now appeals.

II

{¶ 13} Tucker's sole assignment of error is as follows:

{¶ 14} "THE COURT ERRED IN DETERMINING THAT THE DEFENDANT LACKED STANDING TO DENY CONSENT FOR THE WARRANTLESS SEARCH OF A TRAILER WHILE SERVING AS A BABYSITTER THEREIN."

{¶ 15} In his sole assignment, Tucker contends that the trial court erred when it denied his motion to suppress the evidence seized during the warrantless search of the trailer. Specifically, Tucker argues that the court erred when it determined that he lacked standing as a babysitter to deny consent to search the trailer. Tucker also asserts that since there was no criminal activity noted at Trailer 21 upon the arrival of Sgt. Barnhart and Deputy Snyder, exigent circumstances did not exist in order to justify the subsequent search of the trailer.

{¶ 16} In regards to a motion to suppress, "the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Hopfer* (1996), 112 Ohio App.3d 521, 548, quoting *State v. Venham* (1994), 96 Ohio App.3d 649, 653. The court of appeals must

accept the trial court's findings of fact if they are supported by competent, credible evidence in the record. *State v. Isaac* (July 15, 2005), Montgomery App. No. 20662, 2005-Ohio-3733, citing *State v. Retherford* (1994), 93 Ohio App.3d 586. Accepting those facts as true, the appellate court must then determine, as a matter of law and without deference to the trial court's legal conclusion, whether the applicable legal standard is satisfied. *Id.*

{¶ 17} The State argues that the trial court correctly found that as a babysitter, Tucker did not have standing to deny consent to the officers to search the trailer. Conversely, Tucker argues that as a babysitter employed by the owner of the trailer, he had a reasonable expectation of privacy under the Fourth Amendment such that he could refuse to give consent to the officers to search the trailer. However, we need not address this point of law since the trial court correctly held that exigent circumstances justified the warrantless entry into the trailer, and facts discovered thereafter permitted a further search for officer safety based upon the discovery of body armor. Additionally, a lawful basis existed to arrest Tucker for possession of illegal drugs and paraphernalia prior to searching the adjacent bedroom, which led to the discovery of the handgun.

{¶ 18} As we recently stated in *State v. Keith*, 178 Ohio App.3d 46, 2008-Ohio-4326:

{¶ 19} "The Fourth Amendment protects individuals from an unreasonable search in their homes. See *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576; *State v. White* (2008), 175 Ohio App.3d 302, 2008-Ohio-657. The sanctity of the home extends to any area where one has a legitimate and

reasonable expectation of privacy, including a motel room. *State v. Norris* (Nov. 5, 1999), Montgomery App. No. 17689, 1999 WL 1000034 at * 2-3. Police may not enter one's home to perform a search or to seize without a warrant, absent consent or exigent circumstances. *Payton v. New York* (1980), 445 U.S. 573, 100 S.Ct. 1371. The United States Supreme Court has held that an exigent circumstance is (1) an emergency situation which arises when a person in the home is in need of 'immediate aid' or there is a life-threatening situation, or (2) a 'hot pursuit.' *Mincey v. Arizona* (1978), 437 U.S. 385, 392-393, 98 S.Ct. 2408, 57 L.Ed.2d 290; *State v. Bowe* (1988), 52 Ohio App.3d 112, 113. 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal.' *Id.* at 392. An important factor in determining whether exigent circumstances exists is the gravity of the underlying offense. *Welsh v. Wisconsin* (1984), 466 U.S. 740, 753, 104 S.Ct. 2091, 80 L.Ed.2d 732."

{¶ 20} In the instant case, Deputy Snyder and Sgt. Barnhart were dispatched to a trailer park to investigate a report of an armed robbery/home invasion in progress. When they arrived at the trailer park at approximately 1:30 a.m., they immediately observed a trailer with its doors wide open next door to the trailer that was reported as having been the location of the armed robbery. After Deputy Snyder announced his presence at least three times into the open trailer and failed to received a response, he testified that he thought he needed to investigate the trailer in order to determine whether an armed robbery was in progress therein. Upon entering the trailer, the officers came into contact with a fourteen year old male juvenile who stated that he was home alone with his mother. The officers

also came into contact with Tucker who stated that he had been hired by the owner of the trailer to babysit the juvenile male.

{¶ 21} Sgt. Barnhart testified that he observed illegal body armor in plain view on the floor of the bedroom that Tucker had just exited. Sgt. Barnhart further testified that Tucker appeared nervous and that his pants pockets were bulging. After identifying Tucker as a felon who had been convicted of having weapons while under disability, Sgt. Barnhart asked Tucker if he would consent to a pat down. Tucker consented, and a search of his person produced three bags of marijuana and other drug paraphernalia. Thus, Tucker was subject to arrest at that juncture. Accordingly, incident thereto the police were justified in searching the immediate area for weapons. "Police officers can use their own judgment when they have facts that lead them to believe a suspect might be dangerous and perform a search based on this evidence. *** This is particularly true during an *in-home encounter*, which is inherently more dangerous than one that occurs in a public place." *Ohio v. Blackwell*, 159 Ohio App.3d 790, 793, 2005-Ohio-922.

{¶ 22} Given the facts adduced at the suppression hearing, the initial entry into Trailer 21 and the subsequent search of the trailer were justified. Exigent circumstances existed which permitted the initial actions taken by Deputy Snyder and Sgt. Barnhart. Their subsequent actions were lawful in light of their observations within the trailer, the discovery of contraband on Tucker's person, and the discovery of body armor in plain view. Tucker's sole assignment of error is overruled.

III

{¶ 23} Tucker's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

.....

GRADY, J. and FROELICH, J., concur.

Copies mailed to:

Amy M. Smith
Stephen E. Schutte
Hon. Douglas M. Rastatter