[Cite as *State v. Brooks*, 2012-Ohio-646.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2011-A-0032**
- vs -	:	
LEANNE BROOKS,	:	
Defendant-Appellee.	:	

Criminal Appeal from the Ashtabula County Court of Common Pleas, Case No. 2010 CR 427.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor, and *Shelley M. Pratt*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047-1092 (For Plaintiff-Appellant).

Dean F. Topalof, Ashtabula County Public Defender, Inc., 4817 State Road, Suite 202, Ashtabula, OH 44004 (For Defendant-Appellee).

THOMAS R. WRIGHT, J.

{¶1} This is an accelerated-calendar appeal, from a final judgment of the Ashtabula County Court of Common Pleas. Appellant, the state of Ohio, brought this appeal pursuant to Crim.R. 12(K), seeking reversal of the trial court's determination to suppress certain evidence obtained during a traffic stop involving appellee, Leanne Brooks. As the primary basis for the appeal, the state submits that the seizure of the disputed evidence was not illegal because the police officer was acting within the scope

of the authorized search.

{¶2} The traffic stop at issue occurred at approximately 4:00 a.m. on November 3, 2010. Appellee was driving her boyfriend's pickup truck on Main Avenue in the city of Ashtabula, Ohio. Appellee had just left her job at a local newspaper, and was providing a "ride" for a female co-worker.

{¶3} As appellee's vehicle went through the downtown area, it was observed by a city patrolman who was also driving his marked police cruiser on Main Avenue. Upon pointing his "radar" equipment at appellee's vehicle, the patrolman determined that she was travelling at 38 m.p.h. in a 25 m.p.h. speed zone. As a result, he initiated the traffic stop by pulling the pickup truck over.

{¶4} After speaking to appellee for the first time, the patrolman ran a computer check on her name. This process revealed that she did not have a valid license to drive a motor vehicle in Ohio. Consequently, the patrolman proceeded to issue her two traffic citations.

{¶5} As part of the computer check, the patrolman noted that an arrest warrant for appellee had been issued by the state of California. Despite the fact that he did not have the authority to enforce the warrant, the patrolman decided that he would not allow appellee to simply "walk off" at the conclusion of the stop. Thus, when he approached the truck for a second time, he asked appellee if she would consent to a search of the vehicle. After appellee answered in the affirmative, the patrolman instructed her and the passenger to exit the vehicle.

{¶6} In complying with the patrolman's instruction, appellee left her black purse on the seat inside the truck cab. As part of his ensuing search of the cab, the patrolman

opened the black purse and found a small green "coin" purse inside. Upon opening the green purse, he found a white powdery substance that initially appeared to be cocaine. When the patrolman then asked appellee if the black purse belonged to her, she again responded in the affirmative. Accordingly, the patrolman placed her under arrest.

{¶7} Ultimately, it was determined that the white powder in the green purse was methamphetamine, a Schedule II controlled substance. Based upon this, appellee was indicted on one count of aggravated possession of drugs, a fifth-degree felony pursuant to R.C. 2925.11(A).

{¶8} After engaging in preliminary discovery, appellee moved the trial court to suppress the evidence that had been seized during the patrolman's search of the truck cab. As the general grounds for the motion, appellee maintained that the patrolman did not have a reasonable suspicion to expand the scope of the traffic stop. Once the state had been afforded an opportunity to respond, the trial court held an abbreviated evidentiary hearing on the motion. During that proceeding, the patrolman testified on behalf of the state, and appellee testified on her own behalf.

{¶9} In its written judgment entry granting the motion to suppress, the trial court found that, although appellee had consented to the search of the truck cab's interior, a reasonable person would not have believed that the scope of that consent included her black purse. In support of this point, the trial court concluded that a person in appellee's position would have a reasonable expectation of privacy in relation to a purse or wallet. In addition, the trial court found that, when the patrolman asked appellee to allow him to conduct the search, there had been no facts before him which would have warranted a reasonable suspicion that evidence of criminal activity would be located in the cab.

{¶10} Upon deciding that the criminal prosecution could not go forward in light of the trial court's ruling, the state followed the procedure under Crim.R. 12(K) for bringing this appeal. It has now asserted the following assignment of error for consideration:

{¶11} "The trial court erred in granting appellee's motion to suppress."

{¶12} As its primary argument under this sole assignment, the state submits that the motion to suppress should have been overruled because the patrolman was acting within the scope of appellee's consent when he searched her black purse. According to the state, a reasonable person would have concluded that, by consenting to a search of the truck cab, she was also allowing the officer to open any container in the cab, such as her purse. The state emphasizes that appellee's consent did not place any limit on the extent of the search.

{¶13} Under the Fourth Amendment of the United States Constitution, a search of an individual's home, vehicle, or person is considered per se unreasonable when it is not pursuant to a valid warrant. *State v. Taylor*, 12th Dist. No. CA2001-02-003, 2001 Ohio App. LEXIS 4935, *14 (Nov. 4, 2001), citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). However, certain exceptions to the foregoing basic rule have been expressly recognized. *Id.* "Once the defendant demonstrates that the state conducted a warrantless search or seizure, the burden shifts to the state to prove that its actions were constitutionally permissible." *State v. Stepp*, 4th Dist. No. 09CA3328, 2010-Ohio-3540, ¶21.

{¶14} One of the recognized exceptions to the "warrant" requirement is a search which is conducted pursuant to a party's voluntary consent. *Bainbridge v. Kaseda*, 11th Dist. No. 2007-G-2797, 2008-Ohio-2136, ¶28. In relation to the scope or extent of a

suspect's consent to search, this court has indicated that the standard for making such a determination "is that of objective reasonableness - - what would the typical reasonable person have understood by the exchange between the officer and the suspect? *Florida v. Jimeno* (1991), 500 U.S. 248, 251, ***." *Id*. In other words, the "'scope of a search is generally defined by its expressed object.'" *Stepp*, 2010-Ohio-3540, at ¶29, quoting *Jimeno*, 500 U.S. at 251.

{¶15} In light of the emphasis upon the nature of the conversation between the officer and the suspect, it has been held that a voluntary consent to search the interior of a vehicle can include closed containers when the officer asserts that he intends to look for items which could be inside such containers. For example, in *Stepp*, the officer did not ask for consent to search the vehicle until after the suspect had told the officer about her prior arrest for possession of "pills" and the officer had made a reference to the possibility that "something" illegal could be in the vehicle. In upholding the validity of the subsequent search, the Fourth Appellate District concluded:

{¶16} "So like the defendant in *Jimeno*, Stepp knew what law enforcement wanted to look for before she gave her general consent to search the vehicle, i.e. illegal drugs in the form of pills. And because Stepp placed no explicit limitation on the search, a reasonable person would have understood her general consent to search the vehicle to include consent to search containers within the vehicle that might contain drugs. Because a pill bottle, a small change purse or makeup case, and a suitcase might contain pills, [the officer] did not exceed the scope of Stepp's consent by looking in these items." *Id.* ¶31.

{¶17} In the instant case, although the patrolman did learn during the course of

the traffic stop that there was a foreign warrant for appellee's arrest, the record does not indicate that he was aware of the grounds for the warrant. Thus, the patrolman had no reason to believe that there would be illegal drugs inside the pickup truck. Furthermore, the record demonstrates that, in requesting appellee's consent, the patrolman did not make any statements indicating a suspicion that the vehicle might contain illegal drugs or any other type of small items. Instead, the patrolman's own testimony could only be interpreted to show that he only asked to conduct a general search of the truck cab.

{¶18} Given the lack of any "expressed object" for the search, it logically follows the patrolman did not have any justifiable reason for looking into appellee's black purse. Under such circumstances, the fact that appellee did not place any limits on the search is inconsequential, since a reasonable person could only conclude that, in light of the abbreviated conversation between herself and the patrolman, she had only consented to a basic search of the cab itself. Hence, because the patrolman exceeded the scope of appellee's consent by looking into the black purse, the discovery of the substance in the small green "coin" purse was unconstitutional.

{¶19} As a separate argument under its sole assignment, the state contends that appellee lacked proper standing to contest the search of the small green purse because she expressly denied ownership of that specific purse. As to this point, this court would again note that the patrolman found the green purse inside the black purse. Given its location, the trial court could have implicitly found that appellee's testimony was false, and that the green purse actually did belong to her. In turn, this would mean that she would have standing to contest the search of the small green purse.

{¶20} As the trial court did not err in granting appellee's motion to suppress the

evidence obtained during the search of both purses, the state's sole assignment does not have merit. It is the order and judgment of this court that the judgment of the trial court is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.