[Cite as *State v. Pickett*, 2009-Ohio-5748.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 23351

vs. : T.C. CASE NO. 08CR2479

JASON PICKETT :

Defendant-Appellant :

. . . .

O P I N I O N

Rendered on the 30th day of October, 2009.

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GRADY, J.:

{¶ 1} Defendant, Jason Pickett, appeals from his conviction for possession of crack cocaine, R.C. 2925.11(A), and the mandatory one year prison term imposed for that offense pursuant to law.

{¶ 2} Defendant's conviction was entered on his plea of no contest to a charged violation of R.C. 2925.11(A), after the court had denied Defendant's Crim.R. 12(E)(3) motion to suppress evidence. On appeal, Defendant argues that the trial court erred when it denied his motion to suppress on the basis of an incorrect finding of fact.

{¶ 3} In reviewing a trial court's decision on a motion to suppress, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence in the record. Accepting those facts as true, the court of appeals then independently determines, as a matter of law and without deference to the trial court's conclusions, whether those facts satisfy the applicable legal standard. *State v. Satterwhite* (1997), 123 Ohio App.3d 322.

{¶ 4} The court held an evidentiary hearing on Defendant's motion on September 28, 2008. Dayton Police Officer Daniel A. Reynolds testified for the State, and was the only person who testified.

{¶ 5} Officer Reynolds testified that on June 18, 2008, at around 10:30 p.m., he and Dayton Police Officer Michael Fuller were dispatched on a complaint of drug use and trafficking at 3622 Stanford Place in Dayton. That location is in a high crime area where Officer Reynolds has made hundreds of arrests.

{¶ 6} When they arrived, the officers saw a car parked at the curb in front of the location across the street at 3261 Stanford Place. Officer Reynolds has made arrests for guns and drugs there. Five or six persons were standing at a distance of about fifteen feet from the car. A man was seated in the car's driver's seat.

{¶ 7} The officers pulled their cruiser to a stop behind the car. The cruiser's windows were open. Officer Reynolds testified: "When we stop (sic) our cruiser behind it, you could immediately smell the odor of marijuana." (T. 10). Officer Reynolds also stated that he had smelled marijuana "thousands" of times before. (Id.)

{¶ 8} When the officers' cruiser came to a stop behind the car, the driver, Defendant Pickett, got out of the car and began to walk away, leaving the engine running. The officers ordered Defendant to stop, and he did.

{¶ 9} Officer Reynolds testified that he ordered Defendant to stop because he smelled the odor of marijuana, and the odor of marijuana he smelled was both "around the car" and "around [Defendant's] person, too." (T. 21).

{¶ 10} Officer Reynolds decided to perform a patdown of Defendant's person "because of the violence in the neighborhood and gun arrests that we have made there before, pat him down

down to make sure he doesn't have any weapons." (T. 11). When he reached the area of Defendant's pants pocket, Officer Reynolds felt an object inside that he immediately recognized as a rock of crack cocaine. He seized the cocaine and arrested Defendant. A bag of marijuana was found in Defendant's car.

{¶ 11} Defendant does not challenge the patdown or the seizures of drugs that led to his arrest. Rather, he challenges the trial court's finding that because Officer Reynolds "smelled marijuana . . . emanating from the vehicle" from which Defendant had emerged (T. 27), the officer therefore acted on a reasonable and articulable suspicion of criminal activity required by the Fourth Amendment in order to perform the stop of Defendant the officers made. *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889.

{¶ 12} Defendant argues that the trial court's finding of fact is not supported by the record because Officer Reynolds did not testify whether he first smelled the odor of marijuana before or after he exited his cruiser and that the smell came from inside Defendant's car. We do not agree.

{¶ 13} With reference to Defendant's car and his own conduct, Officer Reynolds stated that "[w]hen we stop our cruiser behind it, you could immediately smell the odor of marijuana." He later testified that the odor came from "around the car." The

order of that testimony is unimportant, as it refers to the same sequence of events that led officers to stop Defendant. The testimony is competent, credible evidence that supports the finding of fact the court made connecting Defendant to the criminal activity the officers reasonably suspected from the odor of marijuana Officer Reynolds said he recognized and that came from Defendant's car, permitting the stop of Defendant the officers performed.

{¶ 14} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FROELICH, J. And WOLFF, J. concur.

(Hon. William H. Wolff, Jr., retired from the Second District, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

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