[Cite as *State v. Jimenez*, 2012-Ohio-3318.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-09-103
	:	O P I N I O N
- vs -		7/23/2012
	:	
ERICK S. JIMENEZ,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 11CR27417

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

William F. Oswall, Jr., 810 Sycamore Street, 6th Floor, Cincinnati, Ohio 45202, for defendant-appellant

HENDRICKSON, J.

{¶ 1} Appellant, Erick S. Jimenez, appeals from his conviction in the Warren County Court of Common Pleas for possession of heroin. For the reasons stated below, we affirm the decision of the trial court.

{¶ 2} On April 27, 2011, Sergeant Shannon Cotton was patrolling the downtown area of Franklin, Ohio. The Franklin Police Department has made this area a targeted patrol

location because of the area's high rate of crime and drug activity. During this patrol, Cotton observed appellant running "very hard" down a sidewalk. Appellant was wearing baggy jeans, a white t-shirt and did not appear to be exercising or running recreationally. Appellant was not being chased by anyone. Cotton immediately recognized appellant as a known drug trafficker in the area because he had been informed by his colleagues that appellant was arrested a couple weeks prior for drug trafficking. Cotton was also recently told by an informant that appellant was a drug trafficker. Cotton was concerned that appellant was engaging in criminal activity and he stopped him on the sidewalk to investigate.

{¶ 3} Once Cotton had stopped appellant on the sidewalk, he patted down the exterior of his clothing to ensure that he was not carrying any weapons. During the pat-down, Cotton stood behind appellant and felt his waistband and front pockets for weapons. Cotton saw that appellant's pants contained a side cargo pocket that was "gaping open." Inside this pocket, there was a fragment of a yellow plastic grocery bag tied into a bundle. The bag appeared to be from the Dollar Store, which was approximately three blocks from their location. The bag was partially transparent and Cotton saw four gel caps inside the bundle. Cotton testified that he immediately believed this bundle and gel caps contained illegal drugs because this is a common way to package heroin and cocaine. Cotton seized the bundle and gel caps and arrested appellant. A subsequent test revealed that the gel caps contained heroin.

{¶ 4} On June 10, 2011, appellant was indicted for one count of possession of heroin. Appellant moved the court to suppress evidence of the heroin, arguing Cotton did not have reasonable suspicion that appellant was engaging in criminal activity to stop him. The trial court denied appellant's motion to suppress. Thereafter, appellant pled no contest to possession of heroin, a fifth-degree felony. Appellant was sentenced to three years of community control, five years of driver license suspension, and 100 hours of community

service.

{¶ 5} Appellant now appeals the trial court's decision, raising a single assignment of error:

{¶ 6} THE TRIAL COURT ERRED WHEN [IT] OVERRULED DEFENDANT-APPELLANT'S MOTION TO SUPPRESS WHICH VIOLATED HIS U.S. AND OHIO CONSTITUTIONAL RIGHTS.

{¶ 7} In appellant's sole assignment of error, he argues that the trial court erred when it overruled his motion to suppress the evidence obtained during his encounter with Cotton. Specifically, he argues that Cotton did not possess reasonable suspicion to detain and pat him down and that the seizure of the drugs located in appellant's pocket were obtained illegally as the drugs were not in plain view.

{¶ 8} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Davenport*, 12th Dist. No. CA2008-01-011, 2009-Ohio-557, ¶ 6; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility. *State v. Eyer*, 12th Dist. No. CA2007-06-071, 2008-Ohio-1193, ¶ 8. In turn, the appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *State v. Lange*, 12th Dist. No. CA2007-09-232, 2008-Ohio-3595, ¶ 4, citing *State v. Bryson*, 142 Ohio App.3d 397, 402 (8th Dist.2001). After accepting the trial court's factual findings as true, the appellate court must then determine, as a matter of law, and without deferring to the trial court's conclusions, whether the trial court applied the appropriate legal standard. *State v. Forbes*, 12th Dist. No. CA2007-01-001, 2007-Ohio-6412, ¶ 29; *State v. Dierkes*, 12th Dist. No. 2008-P-0085, 2009-Ohio-2530, ¶ 17.

{¶ 9} The Fourth Amendment to the United States Constitution and Section 14,

Article 1 of the Ohio Constitution protect individuals from unreasonable searches and seizures. Although Ohio citizens are afforded protection by both the U.S. Constitution and the Ohio Constitution, the Ohio Supreme Court has largely interpreted the protections afforded by Section 14, Article 1 of the Ohio Constitution as "coextensive with those provided by the United States Constitution." *State v. Robinette,* 80 Ohio St.3d 234, 238 (1997). Thus, we will analyze appellant's Ohio Constitutional rights under the U.S. Constitution's Fourth Amendment jurisprudence. If an individual's right against unreasonable searches and seizures is violated, the evidence obtained as a result of the violation is subject to exclusion. *United States v. Leon*, 468 U.S. 897, 906, 104 S.Ct. 3405 (1984). While the Fourth Amendment does not contain an express mandate that evidence seized as a result of an illegal search be suppressed, suppression is inherent in the amendment's language. *Id.*, citing *United States v. Calandra*, 414 U.S. 338, 348, 94 S.Ct. 613 (1974). "The [exclusionary] rule thus operates as 'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.'" *Id.*, quoting *Calandra* at 348.

{¶ 10} In general, in order for a police officer to search a person, the officer must possess a warrant. *Arnold v. Cleveland*, 67 Ohio St.3d 35, 45 (1993). However, there are a number of specifically established exceptions to this general rule. A police officer may briefly stop and detain an individual without an arrest warrant or probable cause for an arrest in order to investigate the officer's reasonable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868 (1968). In doing so, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Andrews*, 57 Ohio St.3d 86, 87 (1991), citing *Terry* at 21-22.

{¶ 11} The Ohio Supreme Court has recognized that "the reputation of an area for

criminal activity is an articulable fact upon which a police officer may legitimately rely in determining whether an investigative stop is warranted." *State v. Freeman*, 64 Ohio St.2d 291, 295 (1980). *See also State v. Popp*, 12th Dist. No. CA2010-05-128, 2011-Ohio-791, ¶ 15. We have also found a *Terry* stop was warranted where a defendant was a known drug dealer, the police officer was experienced in drug activity, and the defendant was engaged in suspicious behavior. *State v. Young*, 12th Dist. No. CA2011-06-066, 2012-Ohio-3131, ¶ 27-30; *State v. Potter*, 12th Dist. No. CA2006-07-166, 2007-Ohio-4216, ¶ 15.

{¶ 12} "The propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." *Freeman* at paragraph one of the syllabus. The circumstances surrounding the stop must "be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training." *State v. Bobo*, 37 Ohio St.3d 177, 179 (1988), quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C.Cir.1976).

{¶ 13} We find that based on the totality of the circumstances, Cotton had reasonable suspicion to conduct an investigatory stop of appellant. The evidence presented at the suppression hearing established that appellant was running "very hard" down a sidewalk, wearing baggy jeans and a white t-shirt, and did not appear to be exercising or running recreationally. Moreover, the area in Franklin in which appellant was detained is a high crime area that is known for drug activity. Cotton is an experienced police officer and has received specialized drug training. Further, Cotton was informed by his colleagues and an informant that appellant was involved in drug trafficking. Cotton testified that as he approached appellant in his vehicle, he was able to view his face and he immediately recognized appellant as a known drug trafficker. In light of these circumstances, we find that Cotton possessed reasonable suspicion of criminal activity to detain appellant.

{¶ 14} We next turn to whether Cotton's pat-down of appellant was proper. "Once a

lawful stop has been made, the police may conduct a limited protective search for concealed weapons if the officers reasonably believe that the suspect may be armed or a danger to the officers or to others." *State v. Rodriguez*, 12th Dist. No. CA2009-09-024, 2010-Ohio-1944, ¶ 28, quoting *State v. Lawson*, 180 Ohio App.3d 516, 2009-Ohio-62, ¶ 21 (2nd Dist.). "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." *State v. Evans*, 67 Ohio St.3d 405, 422, 1993-Ohio-186, citing *Terry*, 392 U.S. at 24. To justify a pat-down, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry* at 27. "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id. See also State v. Smith*, 56 Ohio St.2d 405, 407 (1978). In determining whether a police officer reasonably believed the suspect was armed sufficient to justify a pat-down, we look to the totality of the circumstances. *Evans* at 408.

{¶ 15} Additionally, it is well-recognized that the need for a protective pat-down becomes more urgent where drugs are involved. The Ohio Supreme Court has stated that "the right to [pat-down] is virtually automatic when individuals are suspected of committing a crime, like drug trafficking, for which they are likely to be armed." *Evans* at 413. Further, "[r]ecognizing the prevalence of weapons in places where illegal drugs are sold and used * * * an officer's fear of violence when investigating drug activity is a legitimate concern that will justify a pat-down search for weapons." *State v. Oatis*, 12th Dist. No. CA2005-03-074, 2005-Ohio-6038, ¶ 23, citing *State v. Taylor*, 82 Ohio App.3d 434 (2nd Dist.1992).

{¶ 16} We find that based on the totality of the circumstances, Cotton articulated a reasonable basis to believe that appellant may be armed and dangerous. The area in Franklin in which Cotton stopped appellant was known for its high rate of crime and

specifically its high rate of drug crimes. Cotton testified that based on his knowledge and experience as an officer, it is not uncommon for suspects to carry weapons and that in particular, he has observed many suspects carrying weapons in this area. Moreover, Cotton immediately recognized appellant as a known drug dealer based on the information he received from his colleagues and from an informant. Further, he testified that he was concerned that appellant might be carrying a weapon. These factors, taken together and viewed objectively through the eyes of the officer on the scene, warrant a reasonable belief that appellant could be armed. Thus, the totality of the circumstances supports the trial court's finding that Cotton's pat-down of appellant was proper.

{¶ 17} Finally, we address whether Cotton properly seized the drugs in appellant's pocket. The plain view doctrine allows a police officer, under particular circumstances, to seize contraband even if the officer does not have a search warrant for that item. *State v. Cobb*, 12th Dist. No. CA2007-06-153, 2008-Ohio-5210, ¶ 30, citing *State v. Halczyszak*, 25 Ohio St.3d 301, 303 (1986). "The doctrine 'is grounded on the proposition that once police are lawfully in a position to observe an item first-hand, its owners' privacy interest in that item is lost.'" *Halczyszak* at 303, quoting *Illinois v. Andreas*, 463 U.S. 765, 771, 103 S.Ct. 3319 (1983). The Ohio Supreme Court set out a three-part test in order to determine if an object is in plain view. *Halczyszak* at 303. In order to seize an item in plain view, (1) the police must be in a lawful position to view the item, (2) the object's discovery must be inadvertent, and (3) the object's incriminating nature must be immediately apparent. *Id.* An object's incriminating nature is immediately apparent when a police officer has probable cause to believe the item is associated with criminal activity. *Id.* at 304, citing *Texas v. Brown*, 460 U.S. 730, 741-742, 103 S.Ct. 1535 (1983).

{¶ 18} Upon a thorough review of the record, we find that Cotton properly seized the plastic bundle as it was in plain view. As discussed above, Cotton was in a position to view

the drugs lawfully as he had reasonable suspicion to stop and pat-down appellant. Moreover, the discovery of the drugs was inadvertent as Cotton was conducting the pat-down to look for weapons. Lastly, the incriminating nature of the plastic bundle and the gel caps were immediately apparent. At the suppression hearing, Cotton explained that during the pat-down, he observed a piece of a plastic bag tied in a bundle in appellant's cargo pocket. He testified that he did not manipulate the pocket in any way to view the bundle. Based on Cotton's knowledge and experience as a police officer, he immediately recognized the bundle as a common way to package illegal drugs. After Cotton removed the bundle from appellant's pocket, he could see four gel caps in the bundle as the bag was partially transparent. He testified that he believed the gel caps were illegal drugs because heroin and cocaine are frequently packaged in gel caps. Accordingly, we find that the contraband was properly seized as the plastic bundle and gel caps were in plain view.

{¶ 19} Appellant's sole assignment of error is overruled.

{¶ 20} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.