

[Cite as *State v. Grundy*, 2009-Ohio-4950.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO

:

Plaintiff-Appellee

:  
C.A. CASE NO. 2008  
CA 62

v.

: T.C. NO. 2008  
CR 0001

MARTIN D. GRUNDY

:

(Criminal appeal from  
Common Pleas Court)

Defendant-Appellant

:

:

.....

**OPINION**

Rendered on the 18<sup>th</sup> day of September, 2009.

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STEPHANIE R. HAYDEN, Atty. Reg. No. 0082881, Assistant Prosecutor, 61 Greene Street, Xenia, Ohio 45385

Attorney for Plaintiff-Appellee

SHA D. HINDS-GLICK, Atty. Reg. No. 0080822, 7501 Paragon Road, Dayton, Ohio 45459

Attorney for Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Martin D. Grundy appeals his conviction and sentence

for one count of possession of cocaine, in violation of R.C. § 2925.11(A), a felony of the fifth degree. Grundy filed a timely notice of appeal with this Court on August 19, 2008.

## I

{¶ 2} The incident which forms the basis of this appeal occurred on the night of April 23, 2007, when Sergeant Steve Lane of the Xenia Police Department received a dispatch regarding an anonymous tip that two black males, one of whom was named “Martin,” were traveling in a newer model gold colored vehicle to 270 Mount Vernon Drive in order to sell drugs to a female present at that location. Sgt. Lane traveled to that location in his police cruiser.

{¶ 3} Once there, Sgt. Lane observed a gold colored vehicle being driven by one black male. Sgt. Lane pulled in behind the vehicle and followed it for short distance, but did not activate his cruiser’s lights or otherwise direct the operator to pull over. Rather, the driver of the gold vehicle, later identified as Martin Grundy, pulled over of his own accord, and Sgt. Lane pulled in behind him.

{¶ 4} Without any directive from Sgt. Lane, Grundy exited his vehicle and walked over to the sidewalk adjacent to where he was parked. At this point, Sgt. Lane recognized the driver from a previous encounter as Martin Grundy. Sgt. Lane then exited his cruiser in order to make contact with him. Sgt. Lane stated that he knew that Grundy’s license had been suspended only a week prior, however, he did not check with dispatch in order to determine if the suspension was still in effect, nor did he ask Grundy for any identification before initiating contact with him that evening.

{¶ 5} Sgt. Lane testified that Grundy appeared nervous. Grundy later testified at the suppression hearing that he was aware that his license was still under suspension, but he

did not want to alert Sgt. Lane to that fact. Sgt. Lane also testified that Grundy provided him with conflicting stories regarding where he was traveling. During the conversation, Grundy reached into one of his pockets. Fearing for his safety, Sgt. Lane attempted to conduct a pat-down of Grundy. As Sgt. Lane was doing so, Grundy began struggling. Sgt. Lane brandished his taser in an effort to make Grundy stop struggling. Grundy momentarily stopped struggling, and Sgt. Lane started to holster his taser. Grundy then broke free from Sgt. Lane and began running. Sgt. Lane ultimately tasered Grundy twice before he was apprehended and handcuffed.

{¶ 6} Upon being subdued, Grundy informed Sgt. Lane that there was a baggie of marijuana in his pocket. Sgt. Lane testified that he did not find any marijuana on Grundy. Grundy then claimed the marijuana must be in his vehicle, and the record discloses that Sgt. Lane, in fact, recovered a bag of marijuana from the vehicle after a K-9 unit alerted to it. Sgt. Lane also found a large amount of cash in Grundy's pocket. Grundy was placed under arrest and transported to the station. While the money was being counted at the police station, several crumbs of crack cocaine fell out from between the folded bills. Grundy was subsequently charged with possession of cocaine and possession of criminal tools.

{¶ 7} On January 4, 2008, Grundy was indicted for one count of possession of cocaine, in violation of R.C. § 2925.11(A), one count of possession of criminal tools, in violation of R.C. § 2923.24(A), and a forfeiture specification seeking the forfeiture of money seized from Grundy at the time of his arrest. At his arraignment on April 11, 2008, Grundy plead not guilty to both counts in the indictment.

{¶ 8} Grundy filed a motion to suppress on April 28, 2008. On May 29, 2008, the trial court held a hearing regarding Grundy's motion to suppress. In a judgment entry filed

on June 2, 2008, the trial court overruled Grundy's motion, and the case proceeded to jury trial on August 6, 2008. Grundy was found guilty of possession of cocaine, while the charge of possession of criminal tools and the forfeiture specification were dismissed by the State. The trial court subsequently sentenced Grundy to twelve months imprisonment.

{¶ 9} It is from this judgment that Grundy now appeals.

## II

{¶ 10} Grundy's sole assignment of error is as follows:

{¶ 11} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS, THEREBY VIOLATING APPELLANT'S RIGHT TO BE SECURE FROM UNREASONABLE SEARCH AND SEIZURE UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 OF THE OHIO CONSTITUTION."

{¶ 12} In his sole assignment, Grundy contends that the trial court erred when it overruled his motion to suppress because Sgt. Lane did not have a reasonable, articulable suspicion that Grundy was involved in criminal activity before ordering him to submit to a pat-down. Grundy argues that the search was a violation of his constitutional rights, and that the evidence obtained against him as a result of the illegal search should have been suppressed by the trial court.

{¶ 13} A review of the denial of a motion to suppress involves mixed questions of law and fact. *State v. Burnside* (2003), 100 Ohio St. 3d 152, 154, 797 N.E.2d 71, 2003-Ohio-5372. When reviewing a ruling on a motion to suppress, deference is given to the trial court's findings of fact so long as they are supported by competent, credible evidence. *Id.* With respect to the trial court's conclusions of law, however, our standard of review is de

novo, and we must decide whether the facts satisfy the applicable legal standard. *Id.*

{¶ 14} We note that the record supports the trial court's finding that the initial encounter between Sgt. Lane and Grundy was consensual in nature. A consensual encounter can be an instance in which the Fourth Amendment protections are not implicated. *State v. Taylor* (1995), 106 Ohio App.3d 741, 747-748. Encounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free to choose not to answer and walk away. *Hardin*, Montgomery App. No. 20305, at ¶ 14; *United States v. Mendenhall* (1980), 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497. "The Fourth Amendment guarantees are not implicated in such an encounter unless the police officer has by either physical force or show of authority restrained the person's liberty so that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter." *Taylor*, 106 Ohio App.3d at 747-748 citing *Mendenhall*, 446 U.S. at 554. "Even when police officers have no basis for suspecting a particular individual of any criminal activity, they may ask questions and even request to search that person's property, so long as the requests are not perceived as coercive." *State v. Hill* (Nov. 7, 1997), Hamilton App. No. C-960963, citing *Florida v. Bostick* (1991), 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389.

{¶ 15} In the instant case, Sgt. Lane was responding to an anonymous tip that two black males, one of whom was named "Martin," were traveling in a newer model gold colored vehicle to 270 Mount Vernon Drive in order to sell drugs to a female. After arriving at that location, Sgt. Lane observed a black male driving a

gold colored vehicle away from the immediate vicinity of the address provided by the tipster. Sgt. Lane did not activate his lights or order the driver of the vehicle to pull over. Sgt. Lane merely followed the suspect vehicle for a short time before the operator pulled over on his own accord. Sgt. Lane waited until the driver exited his vehicle before he initiated contact. Sgt. Lane recognized the driver as Martin Grundy from a prior contact with him. At that point, Sgt. Lane got out of his cruiser and began a conversation with Grundy in order to discern his reason for being in the area. There is nothing in the record to indicate there was a show of authority in such a way that a reasonable person would have felt he or she could not decline the officer's request and walk away. Sgt. Lane never brandished his weapon, nor did he otherwise threaten Grundy. Simply put, there is no evidence in the record to suggest that the initial encounter between Sgt. Lane and Grundy was anything less than consensual.

{¶ 16} Finally, we must analyze the events leading up to Sgt. Lane's decision to search Grundy. For an anonymous tip to provide the suspicion required to perform a pat down search, the information obtained must be independently corroborated by the police officer to demonstrate that the defendant was engaged in criminal activity. *State v. Works*, Montgomery App. No. 19557, 2003-Ohio-4720, at \_19, citing *Alabama v. White* (1990), 496 U.S. 325, 110 S.Ct. 2412. There is independent corroboration of a gold colored vehicle leaving the immediate vicinity of an address where a drug transaction was to occur, and the operator was an individual named "Martin."

{¶ 17} Noting that the initial encounter between Sgt. Lane and Grundy was

entirely consensual, we find Grundy did appear nervous during the brief detention and provided Sgt. Lane with conflicting information regarding his purpose for being in the area. In a *Terry* stop, a consensual encounter becomes a seizure when, in view of all the circumstances surrounding the incident, by means of physical threat or show of authority a reasonable person would believe he was not free to leave. *State v. Taylor* (1995), 106 Ohio App.3d 741, 748, 667 N.E.2d 60, 65, citing *U.S. v. Mendenhall* (1980), 446 U.S. 544, 553, 100 S.Ct. 1870, 1877.

{¶ 18} After a thorough review of the record, we agree with the trial court that Grundy's act of reaching into his pocket, along with all of the attendant circumstances, was sufficient to provide Sgt. Lane with a reasonable, articulable suspicion to conduct a *Terry* pat-down search of Grundy. The anonymous tip had been corroborated to the extent Sgt. Lane recognized Grundy as an individual named "Martin," and he was operating a gold vehicle leaving from the immediate vicinity of the address where the drug transaction was alleged to occur. Moreover, Sgt. Lane's knowledge that Grundy was under suspension just a week earlier would justify a brief detention in order to determine if Grundy was properly licensed. Grundy's nervous demeanor as well as the act of reaching into his pocket during the consensual encounter led Sgt. Lane to fear for his safety, believing that Grundy may have been armed. Thus, Sgt. Lane possessed a reasonable, articulable suspicion necessary to perform a protective pat-down of Grundy, and the trial court did not err in overruling Grundy's motion to suppress. Grundy's flight and resistance to Sgt. Lane, that is, Grundy's own conduct, led to a further search of his person and his vehicle. The record establishes that, in fact, Grundy was unlicensed, and thus, he

was subject to arrest. We note that Sgt. Lane performed a cobalt reagent field test on a powdery substance found in the vehicle after a K-9 unit alerted to marijuana in the car. The test returned a positive result for cocaine, which, in turn, formed an additional basis for Grundy's arrest as an unlicensed driver.

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

III

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

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Stephanie R. Hayden  
Sha D. Hinds-Glick  
Hon. J. Timothy Campbell