

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

STATE OF OHIO :
Plaintiff : **CASE NO. 2012 CR 00630**
vs. : **Judge McBride**
BARBARA ETTA MURPHY : **DECISION/ENTRY**
Defendant :

Scott C. O'Reilly, assistant prosecuting attorney for the state of Ohio, 123 North Third Street, Batavia, Ohio 45103.

D. Vincent Faris, assistant public defender for the defendant Barbara Etta Murphy, 10 S. Third Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to suppress filed by the defendant Barbara Etta Murphy.

This court scheduled and held a hearing on the motion to suppress on October 3, 2012. At the conclusion of that hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

On May 3, 2012, Agents Dwayne Crouch and Richard Depuccio of the Clermont County Narcotics Unit were investigating Eddie Davis for suspicion of selling large quantities of crack cocaine. Both Agents Crouch and Depuccio have several years of experience in the narcotics unit investigating drug activity.

Agents Crouch and Depuccio were working with a known confidential informant from whom they received reliable information in the past. The confidential informant was in contact with Davis and arranged to purchase crack cocaine from Davis that afternoon.

Agent Crouch placed a wire on the confidential informant and, at approximately 1:30 p.m., Agent Depuccio drove the informant to the Motel 6 located on State Route 125 in Clermont County, Ohio. This particular location is known for a high incidence of drug activity and complaints of drug activity. The confidential informant went into Davis' hotel room, remained in the room for three to five minutes, and returned to Depuccio's vehicle with crack cocaine he had purchased from Davis.

Agents Crouch and Depuccio and the confidential informant then traveled to the parking lot of the Kroger at Cherry Grove shopping plaza where the informant told them

that Davis was in the hotel room with one or two females, one weapon, and more drugs. After the short debriefing, Agent Crouch drove back to the Motel 6.

After returning to the Motel Six and parking along S.R. 125 in an area where he could observe the premises through a fence line, and within three to five minutes after parking his vehicle, Agent Crouch observed a dark maroon Ford Taurus enter the parking lot at approximately 2:00 p.m. Donald Beebe exited the driver's side of the vehicle, jogged to Davis's hotel room, was in the room for 1-2 minutes, exited the hotel room, jogged back to the vehicle, and exited the parking lot.

Previously, Agents Crouch and Depuccio had been informed by the same confidential informant who made the drug buy on this date that Donald Beebe was a drug runner for Eddie Davis. Agents Crouch and Depuccio had observed Davis and Beebe together during their past surveillance of Davis. Agent Crouch saw a passerby have a conversation with someone in the passenger seat of the vehicle but he could not clearly see the individual in the passenger seat.

Believing that Beebe had just purchased or received drugs from Davis in the hotel room based on the short length of time Beebe was in the room and the information obtained from the confidential informant that Beebe ran drugs for Davis, Agent Crouch radioed the information to Agent Depuccio, who was driving back to the Motel 6 at that time. Agent Crouch watched as the vehicle drove onto the State Route 125 ramp, and Agent Depuccio was following the vehicle by that time. They decided to stop the vehicle and Agent Depuccio called the Union Township Police Department and informed Officer Jeremy Grooms that they had probable cause to stop the vehicle and requested that he effectuate the stop. Officer Grooms did so, and Agent Depuccio pulled behind the

officer's vehicle once the stop was made. From the time Beebe's vehicle pulled into the Motel 6 parking lot until the stop was completed, the vehicle was never out of sight of law enforcement.

Officer Grooms approached the driver's side of the vehicle while Agent Depuccio approached the passenger side of the vehicle where Agent Depuccio observed the defendant Barbara Murphy sitting with a gray grocery bag hanging out of her bra, the same type of bag in which the confidential informant's drugs were located after he made the drug buy from Davis. The bag was later found to contain crack cocaine.

The defendant now seeks to suppress the evidence obtained from her person on the date in question, arguing that there was no reasonable articulable suspicion of criminal activity to permit the traffic stop of Beebe's vehicle.

LEGAL ANALYSIS

Both the Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution protect individuals from unreasonable searches and seizures.¹ "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."²

" * * * [A]n officer is permitted to 'stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause.' "³ "Likewise, a

¹ *State v. Jimenez* (July 23, 2012), 12th Dist. No. CA2011-09-103, 2012-Ohio-3318, ¶ 9.

² *Id.*, quoting *United States v. Leon* (1984), 468 U.S. 897, 906, 104 S.Ct. 3405.

³ *State v. Young* (July 9, 2012), 12th Dist. No. CA2011-06-066, 2012-Ohio-3131, ¶ 28, quoting *United States v. Sokolow* (1989), 490 U.S. 1, 7, 109 S.Ct. 1581, quoting *Terry v. Ohio* (1968), 392 U.S. 1, 30, 88 S.Ct. 1868.

moving vehicle may be stopped to investigate an officer's reasonable and articulable suspicion that its occupants had engaged, were engaging, or were about to engage in criminal activity.”⁴ “Before initiating such a stop, a ‘police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.’ ”⁵ “ ‘Courts must determine from the totality of the circumstances whether law enforcement had an objective and particularized basis for suspecting criminal wrongdoing.’ ”⁶ An officer’s reliance on a “mere hunch” is not sufficient to justify a stop.⁷

In *State v. Jimenez* (July 23, 2012), 12th Dist. No. CA2011-09-103, 2012-Ohio-3318, an officer observed the defendant running quickly down a sidewalk in an area known for its high rate of crime and drug activity.⁸ The defendant did not appear to be running recreationally and he was not being chased by anyone.⁹ The officer, who was experienced in investigating drug activity, recognized the individual as a known drug trafficker and stopped the defendant on the sidewalk to investigate.¹⁰ Based on these facts, the appellate court found that the officer had a reasonable suspicion of criminal activity sufficient to briefly detain the defendant.¹¹ In so finding, the court noted that “[t]he Ohio Supreme Court has recognized that ‘the reputation of an area for criminal

⁴ *Id.*, citing *United States v. Hensley* (1985), 469 U.S. 221, 226-227, 105 S.Ct. 675.

⁵ *State v. Floyd* (March 12, 2012), 9th Dist. No. 11CA10033, 2012-Ohio-990, ¶ 3, quoting *Terry* at 21.

⁶ *Young* at ¶ 28, quoting *United States v. Perez*, 440 F.3d 363, 371 (6th Cir.2006), citing *United States v. Arvizu* (2002), 534 U.S. 266, 272-277, 122 S.Ct. 744.

⁷ *State v. Gaston* (Jan. 28, 2010), 8th Dist. No. 92838, 2010-Ohio-248, ¶ 12, citing *Terry* at 27.

⁸ *Jimenez* at ¶ 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at ¶ 13.

activity is an articulable fact upon which a police officer may legitimately rely in determining whether an investigative stop is warranted.’¹²

In *State v. Popp* (Feb. 22, 2011), 12th Dist. No. CA2010-05-128, 2011-Ohio-791, the defendant’s vehicle was driven into a bar parking lot which was under police surveillance for a high incidence of drug activity.¹³ A detective observed an individual enter the defendant’s truck and exit twenty seconds later.¹⁴ The detective testified that this behavior was indicative of a drug transaction and particularly consistent with the manner in which drug transactions were often conducted in this particular parking lot.¹⁵ The truck then exited the parking lot and the truck was ultimately stopped by a marked cruiser at the direction of the detective based on the suspicion of a drug transaction.¹⁶ Based on the totality of the circumstances, the court found that the detective had a reasonable and articulable suspicion to effectuate a *Terry* stop of the vehicle in order to investigate possible criminal activity.¹⁷

In *State v. Keller* (Oct. 28, 2011), 2nd Dist. No. 24485, 2011-Ohio-5546, an officer observed the operator of a GMC Envoy in which the defendant was located enter into a residential neighborhood known for drug activity, pull the vehicle to the curb, and shut off its lights.¹⁸ No one exited the vehicle to enter a residence in the area.¹⁹ Several minutes later, another car arrived, an occupant of the Envoy went over to that vehicle, exited that vehicle approximately one minute later, and returned to the Envoy, and both

¹² Id. at ¶ 11, quoting *State v. Freeman* (1980), 64 Ohio St.2d 291, 295, 414 N.E.2d 1044; and citing *State v. Popp* (Feb. 22, 2011), 12th Dist. No. CA2010-05-128, 2011-Ohio-791, ¶ 15.

¹³ *Popp* at ¶¶ 14-15.

¹⁴ Id. at ¶ 15.

¹⁵ Id. at ¶¶ 14-15.

¹⁶ Id. at ¶ 4.

¹⁷ Id.

¹⁸ *Keller* at ¶¶ 18-19.

¹⁹ Id. at ¶ 18.

cars were then driven away from the scene.²⁰ Although the detective did not observe what occurred in the vehicle, the court found that the detective, who had significant experience with drug investigations, had a reasonable and articulable basis to believe that he had witnessed a vehicle-to-vehicle drug transaction and, based on the totality of the circumstances, the stop of the vehicle was valid.²¹

A reasonable articulable suspicion of criminal activity sufficient to justify the stop of a vehicle has also been found when a known confidential informant made a controlled drug buy from an individual, that same informant told the officers that a large shipment of marijuana was going to be delivered to that individual's warehouse two days later, and, when a tractor-trailer was stopped at the warehouse at the time of the suspected arrival of the shipment of drugs, the defendant, who had arrived at the warehouse shortly after the tractor-trailer, sped around the building and attempted to leave despite being flagged down by police officers.²²

In the case at bar, Agent Depuccio drove a known confidential informant to the Motel 6, where that informant purchased crack cocaine from Eddie Davis. This Motel 6 is a location known for a high incidence of drug activity. During the debriefing immediately after the buy, the informant told Agents Crouch and Depuccio that Eddie Davis had more drugs in that hotel room. Shortly thereafter, Agent Crouch saw Donald Beebe's vehicle pull into the Motel 6 parking lot and saw Beebe go into that same hotel room, remain for several minutes, then return to his vehicle, and drive away. While it is true that Agents Crouch and Depuccio left the Motel 6 parking lot for a short period of time while they were debriefing the confidential informant at the Kroger's, they still had a

²⁰ Id.

²¹ Id. at ¶¶18-21.

²² *State v. Higuera* (Sept. 2, 2010), 8th Dist. No. 93633, 2010-Ohio-4113, ¶ 15.

reasonable suspicion that Eddie Davis and the drugs in his possession were still in that hotel room a short time later when Beebe arrived.

Additionally, the same known confidential informant who made the drug buy from Davis had previously informed Agents Crouch and Depuccio that Donald Beebe was running drugs for Davis. Agents Crouch and Depuccio testified that they had received reliable information from this confidential informant in the past. In this regard, “[t]he testimony of an officer that he has received reliable information from the confidential informant in the past may be sufficient to establish that new information provided by the informant is credible.”²³ Additionally, just that day, the information provided by the informant that a drug buy was set up with Davis came to fruition and that informant did, in fact, purchase crack cocaine from Davis at the Motel 6. The fact that the agents had information from a known reliable informant about Donald Beebe running drugs for Eddie Davis in conjunction with a drug buy that occurred in that same hotel room only a half an hour earlier with Davis, information that there were more drugs remaining in the hotel room, and Crouch’s observations of Beebe going into the hotel room and exiting a short time later provided a sufficient basis to justify the stop of Beebe’s vehicle. Agent Crouch, a member of the Clermont County Narcotics Unit for approximately two and a half years, believed that Donald Beebe bought crack cocaine from Davis in the hotel room based on all of the facts related in the case, and the court finds that the agents were able to point to specific and articulable facts which reasonably warranted the stop.

²³ *State v. Dennis* (Oct. 22, 2012), 12th Dist. No. CA2012-01-004, 2012-Ohio-4877, ¶ 15, citing, *State v. Koueviakoe* (Feb. 24, 2005) 4th Dist. No. 04CA11, 2005-Ohio-852, ¶ 20.

Based on the totality of the circumstances, the court finds that there was a reasonable and articulable suspicion that Donald Beebe obtained drugs from Eddie Davis at the Motel 6. As such, the investigatory stop of Beebe's vehicle was valid.

CONCLUSION

Based on the above analysis, the defendant's motion to suppress is not-well taken and is hereby denied.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 29th day of October 2012 to all counsel of record and unrepresented parties.

Administrative Assistant to Judge McBride