

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO)	CASE NO. CR 15 594175
)	
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
DONALD L. WIXSON)	<u>JOURNAL ENTRY DENYING</u>
)	<u>THE DEFENDANT'S MOTION</u>
)	<u>TO SUPPRESS EVIDENCE</u>
Defendant.)	

John P. O'Donnell, J.:

Donald L. Wixson is charged with drug trafficking, drug possession and possessing criminal tools. He was indicted on April 7, 2015, and filed a motion to suppress evidence on May 19. The plaintiff opposed the motion on June 8 and an evidentiary hearing was held on June 9. This entry follows.

Jeffrey Yasenchack is the only witness who testified at the suppression hearing. He is a detective in the vice unit of the Cleveland police department's fifth district. He has been a Cleveland police officer for 17 years, the last three in the vice unit. He testified that he has significant experience in investigating drug crimes and has made "thousands" of arrests.

On March 13, 2015, he was working in an undercover police car in the fifth district, on Cleveland's northeast side. Yasenchack was near the intersection of East 156 Street and Lakeshore Boulevard. He described the neighborhood as having "a lot of" gang activity, drug dealing and shootings. He testified that he has personally made drug arrests at that corner about 50 to 100 times. On March 13 he was with a 19-year-old female informant trying to make underage liquor purchases at a corner convenience store.

He saw a silver Chrysler pull into the store's parking lot. Its driver, Wixson, got out and went into the store "very briefly" and left without buying anything. Wixson returned to his car and drove southbound on East 156.

Yasenchack followed Wixson and asked his partner to investigate the Chrysler's license plate number. The license plate check showed that the Chrysler was owned by a Willoughby resident. That fact raised Yasenchack's suspicions because he knows that many people from the eastern suburbs come into the fifth district to buy drugs. Meanwhile, Yasenchack saw Wixson turn right and go west on Lucknow Avenue. Yasenchack testified that Lucknow is a "horrible street" where the police are called at least ten times a week for drug complaints and shootings. Wixson drove a couple of blocks west and parked on East 148 or 149 near Lucknow. Yasenchack stopped at the corner and watched Wixson through binoculars.

Wixson remained parked there for about five or ten minutes, after which he moved his car up about two parking spots. Ten or fifteen minutes later a white sport utility vehicle came onto the street and pulled into a driveway near where Wixson was parked. Wixson immediately got out of his car and entered the white SUV's passenger side front seat.

Yasenchack continued to watch Wixson through binoculars as he sat in the SUV for no more than thirty seconds. It appeared to Yasenchack that the SUV's driver was counting money but he admits he could not tell exactly what was occurring inside the SUV. However, as Wixson got out, it was apparent that he was holding something underneath his jacket. Wixson got back into the Chrysler and drove away.

As Wixson turned south on East 152, toward Interstate 90, Yasenchack, believing a drug deal had just happened, called for his partner in a different car to pull over Wixson for an investigatory stop. Once the Chrysler was stopped and Wixson's identity ascertained the police

learned that he was driving with a suspended license. He was therefore arrested on that charge and a tow truck was called to impound the car. During the inventory search of the car incident to the tow a bag with many individually wrapped parcels of marijuana was discovered.

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures. A search without a warrant is per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1961). But an exception to the warrant requirement exists for brief investigatory stops where a police officer reasonably suspects that the person stopped is or has been involved in criminal activity. *State v. Scalmato*, 8th Dist. No. 82576, 2003-Ohio-6617, ¶5. Reasonable suspicion exists where there is an objective and particularized suspicion that criminal activity is afoot and is based on the totality of the surrounding circumstances. *State v. Andrews*, 57 Ohio St. 3d 86, 87 (1991). These circumstances are to be viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold. *State v. Carter*, 69 Ohio St. 3d 57, 65 (1994).

A court reviewing the officer's actions must give due weight to his training and view the evidence as it would be understood by those in law enforcement. *Id.* However, the mere fact that an investigative stop takes place in a high crime area is not, by itself, sufficient to justify the stop. *Brown v. Texas*, 443 U.S. 47, 52 (1979).

Taken in isolation, each of Yasenchack's observations of Wixson are innocuous and do not amount to a reasonable suspicion that criminal activity is afoot. Every day and in every neighborhood people make short stops at convenience stores. Every day and in every neighborhood there are surely cars around that are owned by people who live in a different county. Streets in bad neighborhoods are often traveled by non-residents who have no criminal

intent. And although it is somewhat less ordinary, surely people conduct legitimate business or personal transactions from their cars.

But Yasenchack was not viewing these facts in isolation and neither can I. To paraphrase the United States Supreme Court, it would be poor police work indeed for an officer of Yasenchack's experience in the detection of drug dealing in this same neighborhood to have failed to investigate this behavior further. See *Terry v. Ohio*, 392 U.S. 1, 23 (1968). Taken together, all of these circumstances gave rise to a reasonable suspicion that criminal activity was afoot sufficient to justify the brief detention of Wixson and the Chrysler while the police asked questions of Wixson. One of the first questions asked was whether he had a license and his answer in the negative revealed that Wixson was driving under suspension, an offense for which he could be arrested. He was arrested and the resulting lawful inventory search of the Chrysler revealed the drugs the state seeks to introduce into evidence.

The police had reasonable suspicion to make the investigatory stop and then, upon learning Wixson could not legally drive, had probable cause to arrest him and tow the vehicle. The search of the vehicle in connection with its towing was thus reasonable under the Fourth Amendment and the defendant's motion to suppress is denied.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date

SERVICE

A copy of this journal entry was sent by email on June 26, 2015, to the following:

Mollie A. Murphy, Esq.
mmurphy@prosecutor.cuyahogacounty.us
Attorney for plaintiff The State of Ohio

Christopher G. Thomarios, Esq.
cthomarios@gmail.com
Attorney for defendant Donald L. Wixson

Judge John P. O'Donnell