

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-283
Plaintiff-Appellee,	:	(C.P.C. No. 11CR-2610)
v.	:	
Herschel D. Taylor,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 28, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶ 1} Defendant-appellant, Herschel D. Taylor, appeals from a judgment of the Franklin County Court of Common Pleas finding him guilty, pursuant to a no contest plea, of one count of improperly handling a firearm in a motor vehicle in violation of R.C. 2923.16, a felony of the fourth degree. Defendant assigns a single error:

THE TRIAL COURT ERRONEOUSLY OVERRULED THE DEFENDANT'S MOTION TO SUPPRESS EVIDENCE WHEN THE STATE FAILED TO ESTABLISH THAT A CONSTITUTIONAL BASIS EXISTED TO STOP THE DEFENDANT'S VEHICLE.

Because defendant waived, or forfeited, the arguments he raises on appeal by not first raising them in the trial court, we affirm.

I. Facts and Procedural History

{¶ 2} By indictment filed May 18, 2011, defendant was charged with one count of improperly handling a firearm in a motor vehicle. Defendant responded with a motion to suppress, contending the Gahanna police officers who stopped him lacked a basis to search his vehicle.

{¶ 3} The trial court conducted a hearing on the motion on November 17, 2011 and denied the motion to suppress. Defendant entered a no contest plea to the indicted offense, and the trial court sentenced him accordingly.

II. Assignment of Error - Motion to Suppress

{¶ 4} In his single assignment of error, defendant contends the Gahanna police officers had no valid basis to stop his vehicle, rendering the subsequent search invalid and warranting suppression of the evidence obtained as a result of the search. Plaintiff-appellee, the State of Ohio, responds that defendant waived, or forfeited, the argument by failing to raise it in the trial court in the context of his motion to suppress.

{¶ 5} According to the state's evidence at the hearing on defendant's motion to suppress, Officer Jason Jones was a patrol officer on March 28, 2011 when, at approximately 4:20 p.m., he and another officer, Phil Stacy, were returning to Gahanna from Columbus. They observed "a vehicle that had dark window tint on it" and "initiated a traffic stop with that vehicle." (Tr. 6.) The dispatcher forwarded information indicating defendant, the registered owner of the vehicle, had a revoked carry conceal license.

{¶ 6} As Officer Jones was speaking to defendant, he saw "in the driver's side door handle a really small Baggie and a couple small pieces of what [he] thought to be marijuana." (Tr. 10.) He asked defendant to step out of the vehicle and patted defendant down. While he was doing so, "checking him for weapons, a marijuana cigarette fell out of [defendant's] left pant leg by his left shoe." (Tr. 12.) Defendant was placed in the cruiser, and the passenger was removed from the vehicle. Officer Jones then searched the passenger compartment of the vehicle. He found the glove box locked, opened it with the key from the vehicle, and found in the glove box a Smith & Wesson .40-caliber handgun with two loaded magazines.

{¶ 7} Defendant's testimony differed in some aspects, but he overall testified the officers pulled him over, approached the car and asked if he had any illegal drugs or

items; defendant responded that he did not. Officer Jones told him to step out of the car and searched him, causing "the little marijuana [he] had, it actually fell out of [his] pants." (Tr. 37.) Significantly, defendant stated that the officer, after completing the search, handcuffed defendant and put him in the cruiser.

{¶ 8} Defendant argued, pursuant to *Arizona v. Gant*, 556 U.S. 332 (2009), that once defendant was out of the vehicle and handcuffed, the officers had no reason or basis to search the vehicle. As a result, defendant argued, the gun discovered in the glove box had to be suppressed. The state argued that, if defendant were not under arrest, *Gant* permitted the search; it alternatively argued that even if defendant were under arrest, the search was proper in view of the marijuana found in the car and on defendant's person.

{¶ 9} Finding Officer Jones credible, the court determined that whether or not defendant was formally under arrest, he was secured in the back of the cruiser well away from the firearm locked in the glove box and from access to any other kind of potential weapon, so officer safety did not pertain. The court nonetheless determined "it was reasonable for the officer to conclude that there was a likelihood of discovery of [offense]-related evidence, and that [] under *Gant* does provide a basis to unlock and search the glove box." (Tr. 50.) Determining the officers reasonably could conclude defendant's vehicle "might contain further evidence of a drug offense," the trial court concluded the state presented "the kind of evidentiary concern that justified an unconsented and warrantless search here." (Tr. 51.)

{¶ 10} In contrast to the arguments defendant presented in the trial court, defendant contends on appeal that the officers lacked a basis to stop defendant's vehicle, as the record contains no evidence suggesting the degree of tint on defendant's windows and whether it might violate the relevant statutes or ordinances. Defendant, however, did not raise the issue in his motion to suppress and, in failing to do so, waived, or forfeited, the argument.

{¶ 11} A pre-trial motion, including a motion to suppress under Crim.R. 12(C)(3), must "state with particularity the grounds upon which it is made." Crim.R. 47; *State v. Shindler*, 70 Ohio St.3d 54, 56 (1994). "The prosecutor must know the grounds of the challenge in order to prepare [the] case, and the court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the

merits." *Xenia v. Wallace*, 37 Ohio St.3d 216, 218 (1988). "By requiring the defendant to state with particularity the legal and factual issues to be resolved, the prosecutor and court are placed on notice of those issues to be heard and decided by the court and, by omission, those issues which are otherwise being waived." *Shindler* at 58.

{¶ 12} Although, pursuant to Crim.R. 12(I), defendant's "plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence," defendant did not preserve in his motion to suppress the issue of whether the initial stop was illegal; he argued only that the subsequent search of the vehicle was inappropriate under *Gant*. As a result, his no contest plea does not include the issue neither raised nor preserved in the trial court.

{¶ 13} Accordingly, defendant's single assignment of error is overruled.

III. Disposition

{¶ 14} Having overruled defendant's single assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
