

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070843
Plaintiff-Appellee,	:	TRIAL NO. B-0705817
vs.	:	<i>JUDGMENT ENTRY.</i>
WAYMAN HAMILTON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Wayman Hamilton entered a no-contest plea to one charge of possession of crack cocaine in violation of R.C. 2925.11(A). The trial court found him guilty and imposed a two-year prison term. Hamilton now appeals, asserting in two assignments of error that the trial court erred in overruling his motion to suppress the cocaine found in his front, right pants pocket after a police officer had searched Hamilton's person a second time during a traffic stop. For the following reasons, we affirm the trial court's judgment.

At the suppression hearing, Cincinnati Police Officer Mark Bode testified to the following. Bode stated that on July 12, 2007, he was riding as the passenger in a marked police car with Specialist John Bolte, when they observed the automobile

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

OHIO FIRST DISTRICT COURT OF APPEALS

that Hamilton was driving go left of the center line. After checking Hamilton's license plates on their computer system, the officers learned that Hamilton had "more than one" weapons charge on his record. The officers then stopped Hamilton. Officer Bode approached Hamilton's car on the passenger side, while Officer Bolte approached the driver side and initiated contact with Hamilton, who was very agitated. Officer Bolte asked Hamilton to get out of the car and to keep his hands where the officers could see them. Hamilton was uncooperative, so Officer Bode pointed his taser at Hamilton, which subdued him. Officer Bolte searched Hamilton's person for weapons, handcuffed him, and placed him in the back of the police cruiser.

With the consent of Hamilton, Officer Bode searched Hamilton's car, found no contraband, and returned to the police cruiser to issue Hamilton a citation for driving left of center. While working on the citation, Bode observed Hamilton moving around in the back seat "a lot." Bode testified that this made him uncomfortable because, as an eight-year veteran of the police department who had spent the last six years focusing on narcotics and weapons-related offenses, he was aware of instances in the past where a police officer had searched a person, and placed him in handcuffs, and the person still had a weapon and had shot the officer. Office Bode decided to remove Hamilton from the car to conduct another weapons search. He testified that after he had decided to remove him from the car to conduct the weapons search, Officer Bolte mentioned that he had felt something in Hamilton's right pocket. Bode testified that he did not ask Bolte any questions about what he had felt.

Bode testified that he performed a full pat-down, starting at the waistband. Bode stated, “[A]nd when I rubbed my hand over his right pocket of his pants I felt what, through my training and experience, and all the narcotics investigations I’ve done, I felt crack cocaine.” The cocaine was then removed from Hamilton’s pocket, and he was arrested.

The trial court found that both pat-downs were proper and that Officer Bode had immediately recognized, based on his experience and training, that the object in Hamilton’s pocket was crack cocaine.

At a suppression hearing, the credibility of the witnesses is an issue for the trial court.² On review, an appellate court engages in a two-step inquiry. First, the trial court’s findings of fact are given deference and reviewed only for clear error.³ Then, we engage in a de novo review to determine whether the trial court erred in applying the substantive law to the facts of the case.⁴

In his first assignment of error, Hamilton argues that both frisks of his person for weapons were improper. We disagree.

Under *Terry v. Ohio*,⁵ a police officer may frisk a detainee’s outer clothing for concealed weapons when the officer has a reasonable suspicion that the detainee is armed and dangerous.⁶ An officer need not be certain a detainee is armed, but the officer’s suspicions about the presence of a weapon must be reasonably aroused to conduct a protective search.⁷ In determining whether a police officer had a

² *State v. Warren* (1998), 129 Ohio App.3d 598, 601, 718 N.E.2d 936, citing *State v. Mills* (1992), 62 Ohio St.3d 357, 582 N.E.2d 972.

³ *State v. Evans* (2001), 144 Ohio App.3d 539, 549, 760 N.E.2d 909, citing *Ornelas v. United States* (1996), 517 U.S. 690, 116 S.Ct. 1657.

⁴ *Id.*

⁵ (1968), 392 U.S. 1, 88 S.Ct. 1868.

⁶ *Id.*; see also *State v. Bobo* (1988), 87 Ohio St.3d 177, 524 N.E.2d 489, paragraph two of the syllabus.

⁷ *Warren*, *supra*, citing *State v. Smith* (1978), 56 Ohio St.2d 405, 407, 384 N.E.2d 280.

reasonable suspicion, we look at the totality of the circumstances.⁸ In reviewing the circumstances, we give due weight to the police officer's training and experience and view the evidence as it would be understood by those in law enforcement.⁹

With respect to the first protective search or frisk in this case, we hold that it was proper. The police officers had a reasonable, articulable suspicion to stop Hamilton after he had driven left of center. And given Hamilton's agitated state when he was stopped—the police used the threat of a Taser to subdue him—combined with the officers' knowledge that Hamilton had at least two weapons-related charges on his record, it was reasonable to conduct a protective search of Hamilton.

We also hold that the second protective search was proper under the totality of the circumstances. Officer Bode testified that he had observed Hamilton moving around “a lot” in the back of the police cruiser, and although Hamilton was handcuffed, Officer Bode stated that this made him uncomfortable given his awareness of instances where a previously searched suspect still had a weapon and used it. Given these factors, as well as the ones mentioned in regard to the first protective search, we conclude that Officer Bode had a reasonable suspicion that Hamilton may have been armed.

Hamilton argues that the second protective search was merely a pretext to search for contraband, other than a weapon. But the record does not support this assertion. Although it appears that Officer Bode knew that Officer Bolte had felt “something” in Hamilton's pants pocket during the first search, Bode did not learn

⁸ *Bobo*, *surpa*.

⁹ *State v. Andrews*, 57 Ohio St.3d 86, 88, 565 N.E.2d 1271.

this information until after he had made the decision to perform a second protective search and had removed Hamilton from the police cruiser.

Under his second assignment of error, Hamilton argues that the “plain feel” exception to the warrant requirement did not apply in this case. We disagree.

The trial court found that Officer Bode had immediately recognized the object in Hamilton’s pocket as crack cocaine. Given that Officer Bode testified that he had been investigating narcotics-related offenses for the past six years, knew what crack cocaine felt like, and had immediately recognized the object in Hamilton’s pocket as crack cocaine, we hold that the trial court’s finding was supported by competent, credible evidence. Giving deference to that finding, we hold that the plain-feel exception was applicable here.¹⁰

Because both protective searches were proper, and because the plain-feel doctrine applied in this case, the trial court did not err in overruling Hamilton’s motion to suppress. The two assignments of error are overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 24, 2008
per order of the Court _____
Presiding Judge

¹⁰ See *Dickerson v. Minnesota* (1993), 508 U.S. 366, 113 S.Ct. 2180 (if, during a lawful protective search, a police officer feels an object whose contour or mass makes its incriminating character as contraband immediately apparent, the officer is entitled to seize the object).