

STATE OF OHIO

CUYAHOGA COUNTY

FILED

2011 MAR -8 P 2:52

IN THE COURT OF COMMON PLEAS

CASE NO. CV-543454

STATE OF OHIO

GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

vs

WILLIAM SANDERS

Defendant

**OPINION AND ORDER**

**MICHAEL J. RUSSO, JUDGE:**

This matter comes before the Court on Defendant William Sanders' motion to suppress physical evidence. For the following reasons, Defendant's motion is denied.

An evidentiary hearing was held on February 24, 2011. Officers Donald Kopchak and Paul Benedictus from the Cleveland Police Department testified on behalf of the State; the Defendant did not call any witnesses. The uncontroverted evidence is that these officers were sitting in a parked zone car near the traffic light at E.125<sup>th</sup> and Superior Avenue on October 21, 2010 around 8 p.m. They observed a passenger vehicle driven by Defendant fail to stop for a red light at that intersection. The officers activated the overhead lights of the zone car and stopped Defendant's vehicle at E. 123<sup>rd</sup> and Superior. Kopchak approached the driver's side of the car and Benedictus went to the passenger side of the car. When Kopchak knocked on the window and advised the driver he did not stop for the traffic signal, Defendant rolled down his window two inches and stuck his driver's license through the opening. As this occurred, Benedictus observed a young female in the front passenger seat, who he learned was Defendant's daughter. The officers returned to their zone car and ran



Defendant's Ohio license number through the computer. They determined that there was a possible warrant for Defendant, so the officers returned to Defendant's vehicle. Kopchak and Benedictus intended to place Defendant in the zone car until they could verify the warrant. Defendant exited his vehicle upon request and was seated in the rear of the zone car, but without restraints. Both officers had training and field experience in drug identification and detection, and when Defendant had opened his vehicle door they each noted the odor of unburnt marijuana. While Benedictus was writing Defendant a ticket for a traffic control violation, Defendant became worried about his daughter. Defendant asked the officers to check on her and Kopchak returned to Defendant's vehicle to do so. After shining his flashlight on Defendant's daughter and determining she was safe, Kopchak also shined his flashlight in the back seat area. On the floor, behind the passenger's seat, Kopchak saw a partially-opened plastic container. Inside the container he saw a baggie filled with marijuana; additional loose marijuana was situated below the baggie. Kopchak returned to the zone car and Defendant was then placed under arrest for a state drug law violation. While performing an inventory search of the vehicle prior to towing, the officers also located a scale with suspected marijuana residue in the rear seat area. Due to the new charge and arrest, the officers discontinued their attempt to verify the warrant.

Based upon the foregoing evidence, the Court finds that the officers lawfully stopped Defendant's car for a traffic violation (i.e., running a red light). During the course of the stop, they smelled the odor of unburnt marijuana from outside of Defendant's vehicle. Kopchak thus had a reasonable suspicion that marijuana was located in Defendant's vehicle and he confirmed that suspicion when he looked into the rear area of the vehicle while ascertaining the safety of Defendant's daughter. As the Eighth District Court of Appeals has previously held in *State v.*

*Hopper*, Cuyahoga App. Nos. 91269 and 91327, 2009-Ohio-2711, “Under the plain smell doctrine, the officers had the right to detain the occupants of the vehicle, and then had the right to search the vehicle based upon the reasonable suspicion that criminal activity was taking place. After their suspicions were confirmed, the officers were permitted to arrest the occupants based upon the marijuana found in the car.” See also, *State v. Huffman*, Cuyahoga App. No. 93000, 2010-Ohio-5116 (search of vehicle held valid when police officer makes lawful vehicle stop and smells marijuana from the car floor and sees it there.) In light of the foregoing law and evidence, Defendant’s motion to suppress is not well-taken and the Court holds that the marijuana and the scale were lawfully seized.

IT IS SO ORDERED.

  
MICHAEL J. RUSSO, JUDGE

Date: March 8, 2011

**CERTIFICATE OF SERVICE**

A copy of the foregoing **Opinion and Order** was sent by ordinary U.S. Mail this 8<sup>th</sup> day of March, 2011 to: Stuart H. Lippe, Esq., 526 Superior Avenue, East, Suite #940, Cleveland, Ohio 44114 and Marcus Wainwright, Assistant County Prosecutor, Cuyahoga County Prosecutor’s Office, 1200 Ontario Street, Cleveland, Ohio 44113.

  
MICHAEL J. RUSSO, JUDGE