

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

STATE OF OHIO,	:	APPEAL NO. C-150515
	:	TRIAL NO. B-1404497
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
JASON GLENN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Jason Glenn appeals from the judgment of the Hamilton County Court of Common Pleas convicting him, after a jury trial, of trafficking in heroin, in violation of R.C. 2925.03(A)(2).

Veteran Cincinnati Police Officer Jerry Turner stopped Glenn for two traffic violations committed while Glenn operated his brother's Toyota Corolla. After Glenn pulled over, Officer Turner observed him make excessive, furtive movements down to his right, then behind towards the back of the vehicle, and then to the glove box. When Officer Turner approached, Glenn provided his driver's license, but appeared nervous and lied to Officer Turner about where the occupants had been. After running Glenn's information through the police data base, Officer Turner learned that Glenn was on federal parole and had multiple felony convictions. Two additional officers arrived on the scene and Glenn and the other occupants were removed from the Corolla and briefly

questioned, but not placed under arrest or in a police vehicle. Believing that Glenn might have been hiding a weapon in the Corolla, Officer Turner performed a protective search of the area around the driver's seat about ten minutes after the stop. After finding a plastic baggie containing heroin under the driver's seat, Officer Turner arrested Glenn and advised him of his *Miranda* rights. An inventory search of the Corolla revealed a drug scale, a drug press, baggies, and plastic gloves. One of the passengers was also found to have a large amount of heroin. In a recorded statement to the police, Glenn admitted that he had supplied the heroin.

Prior to trial, Glenn unsuccessfully moved to suppress the evidence. At trial, a DVD recording of the stop and arrest captured from Officer Turner's dashboard camera was played for the jury. At a sidebar, defense counsel, who had objected generally before trial to the playing of any portion that referenced Glenn's federal parole status or his prior conviction, complained that he had heard an officer mention that Glenn was on federal parole. But defense counsel admitted that he "d[id]n't think it [wa]s clear," and that he "d[id]n't think [the jury] heard it" or "understood the import" of what the officer had said. The trial court judge and the prosecutor both stated that they had not heard the allegedly redacted inadmissible statements.

Later in the trial, a juror came forward and told the court that she had heard an officer state that someone was on parole, but that she did not know to whom the officer had been referring. Ultimately, the juror indicated that she could put aside what she had heard, and the defense agreed that she could remain on the case. The trial court discreetly questioned the other the jurors about their observations concerning the DVD, ordered any additional necessary redactions, and informed the jury that the copy admitted into evidence would not contain anything inadmissible.

The trial court twice overruled Glenn's motion for a mistrial based on the jury's hearing of the insufficiently redacted DVD, a copy of which was not made a part of our record. Glenn now appeals. In two assignments of errors, Glenn argues that the trial court erred by denying his motion to suppress and motion for a mistrial.

We overrule Glenn's first assignment of error upon our determination, after applying the standard of review set forth in *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8, that the trial court properly denied the motion to suppress. Although Glenn maintains that the protective-weapons search was unlawful, we hold that Officer Turner's warrantless search of the driver's seat area of the Corolla was effected in conformity with the Fourth Amendment. Under the totality of the circumstances, Officer Turner had a reasonable and articulable belief that a weapon was present and that Glenn was dangerous, even though Glenn had been removed from the vehicle, as he would have been able to return to the vehicle. *See State v. Smith*, 1st Dist. Hamilton No. C-110727, 2013-Ohio-2208, ¶ 11-19. Furthermore, the record demonstrates that the search did not occur during an illegally prolonged detention. *See Rodriguez v. United States*, ___ U.S. ___, 135 S.Ct. 1609, 1614-1616, 191 L.Ed.2d 492 (2015).

We overrule the second assignment of error upon our determination that the trial court did not abuse its discretion in refusing to grant a mistrial based on the playing of the insufficiently redacted DVD during the trial. The trial court judge was present when the challenged DVD was played for the jury and was in a much better position to evaluate both the recording's effect on the jury and whether Glenn could receive a fair trial in light of curative actions taken by the court. *See State v. Glover*, 35 Ohio St.3d 18, 19, 517 N.E.2d 900 (1988). And we agree with the state that there was no reasonable possibility that the other-act evidence contributed to Glenn's conviction because of the overwhelming

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evidence establishing his guilt. *See State v. Trimble*, 122 Ohio St.3d 297, 2009-Ohio-2961, 911 N.E.2d 242, ¶ 175.

Therefore, we affirm the trial court's judgment.

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.

HENDON, P.J., CUNNINGHAM and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 4, 2016
per order of the court _____.
Presiding Judge