[Cite as *State v. Latson*, 2010-Ohio-6297.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-1212 (M.C. No. 2009 CRB 2483)
Mark M. Latson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 21, 2010

Richard C. Pfeiffer, Jr., City Attorney, and *Melanie R. Tobias*, for appellee.

R. William Meeks Co., LPA, *R. William Meeks* and *David H. Thomas*, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶1} Defendant-appellant, Mark M. Latson, appeals from a judgment of conviction and sentence entered by the Franklin County Municipal Court. Because the trial court properly denied appellant's motion to suppress, we affirm that judgment.

{¶2} On the evening of January 31, 2009, officers from the Columbus Police Department stopped the driver of a stolen vehicle outside of a motel on the west side of Columbus, Ohio. That stop led to the arrest of a woman inside one of the motel rooms for possession of heroin. According to the woman, the motel room was used for drug sales.

During the arrest, police officers monitored the area around the motel to keep people away.

{¶3} One of those officers, Sergeant Jennifer Knight, observed appellant drive his truck into the motel's parking lot and stop. Because the truck did not move, Sgt. Knight approached the truck and asked appellant if he had a room key. Appellant told her that he did not have a room key but he was there to visit someone. Appellant could not tell her the name of the person he was there to meet. Sgt. Knight asked him what room number he was going to, and he told her a room number in the 400's. However, Sgt. Knight knew that the rooms in the area where appellant had parked were in the 300's. At this point, Sgt. Knight noticed that appellant was stammering and acting nervous.

{¶4} Sgt. Knight also noticed appellant put his right hand under his leg. She repeatedly told him to keep his hands where she could see them, but he continued to reach under his leg. Concerned that appellant may have a gun, Sgt. Knight pulled her weapon and told appellant to place his hands on the steering wheel. Appellant complied. Another officer came to the scene to assist Sgt. Knight. The officers checked appellant's identification and license plate. The officers discovered that appellant's license plate was registered to a different vehicle. Sgt. Knight then walked around to the other side of the truck and saw an empty gun holster on the seat. The officers ordered appellant out of his truck and placed him on the ground. The officers found a handgun inside the truck.

{¶5} Because Sgt. Knight believed that appellant may have come to the motel to purchase drugs, she called a canine unit to the scene to check appellant's truck for drugs. The dog alerted to a container in the truck bed. As a result, the officers searched

appellant's truck. Although they did not find drugs in the container, they did find a small amount of marijuana inside the truck.

{¶6} Appellant was charged with one count of knowingly possessing marijuana in violation of R.C. 2925.11. Appellant entered a not guilty plea to the charge. Subsequently, appellant filed a motion to suppress the marijuana found in his truck. Appellant argued that the marijuana should be suppressed because Sgt. Knight lacked reasonable, articulable suspicion to justify her initial detention of appellant. After a hearing, the trial court disagreed and denied appellant's motion to suppress. In light of that ruling, appellant entered a no contest plea to the charge of possession of marijuana. The trial court sentenced him accordingly.

{¶7} Appellant appeals and assigns the following error:

> THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE, BECAUSE OFFICERS DID NOT HAVE A REASONABLE, ARTICULABLE SUSPICION OR ANY OTHER BASIS UPON WHICH TO DETAIN APPELLANT AND THEREFORE VIOLATED APPELLANT'S RIGHTS AS GUARANTEED BY THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

{¶8} Appellant argues in his sole assignment of error that the trial court erred when it denied his motion to suppress because the officer conducted an investigatory detention without reasonable, articulable suspicion. We disagree.

{¶9} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. Thus, an appellate court's standard of review of a trial court's decision denying the motion to suppress is two-fold. *State v. Reedy,* 10th Dist. No. 05AP-501, 2006-Ohio-1212, ¶5 (citing *State v. Lloyd* (1998), 126 Ohio App.3d 95, 100-01). Because the trial court

assumes the role of fact finder and, accordingly, is in the best position to weigh the credibility of the witnesses, "we must uphold the trial court's findings of fact if they are supported by competent, credible evidence." Id. (citing *State v. Klein* (1991), 73 Ohio App.3d 486, 488); *Burnside*. We then must independently determine, as a matter of law, whether the facts meet the applicable legal standard. Id. (citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707). Appellant does not challenge any of the trial court's factual findings. He contends that the trial court's legal conclusion was wrong. Thus, we must independently determine whether Sgt. Knight had a reasonable articulable, suspicion to detain appellant.

{¶10} The Fourth Amendment to the United States Constitution, as well as Section 14, Article I, of the Ohio Constitution, protects individuals from unreasonable searches and seizures. *State v. Kinney*, 83 Ohio St.3d 85, 87, 1998-Ohio-425; *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868; *Katz v. United States* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 511. Even so, " 'not all personal intercourse between policemen and citizens involves "seizures" of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred' " within the meaning of the Fourth Amendment. *State v. Jones*, 10th Dist. No.09AP-1053, 2010-Ohio-2854, ¶11 (quoting *Terry* at fn. 16).

{¶11} Appellant concedes that his initial encounter with Sgt. Knight was consensual in nature. A consensual encounter does not implicate the Fourth Amendment. *State v. Moyer*, 10th Dist. No. 09AP-434, 2009-Ohio-6777, ¶13; *Jones* at ¶14. Appellant contends that the consensual encounter with Sgt. Knight escalated into an unconstitutional investigatory detention when Sgt. Knight raised her gun and ordered

appellant to place his hands on the steering wheel without reasonable, articulable suspicion of criminal activity. We disagree.

{¶12} Even when contact with police begins as a consensual encounter, it can escalate into an investigatory detention, commonly known as a *Terry* stop. *Moyer* at ¶18. A *Terry* stop constitutes a seizure for purposes of the Fourth Amendment. *Jones* at ¶16. Under *Terry*, however, a police officer may constitutionally stop or detain an individual without probable cause when the officer has reasonable suspicion, based on specific, articulable facts, that criminal activity is afoot. *Moyer* at ¶14. Accordingly, "[a]n investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion that 'the person stopped is, or is about to be, engaged in criminal activity.' " *State v. Jordan,* 104 Ohio St.3d 21, 2004-Ohio-6085, ¶35 (quoting *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690, 695). "Reasonable suspicion entails some minimal level of objective justification, 'that is, something more than an inchoate and unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause.' " *Jones* at ¶17 (quoting *State v. Jones* (1990), 70 Ohio App.3d 554, 556-57).

{¶13} The propriety of an investigatory stop must be assessed in light of the totality of the surrounding circumstances. *State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶15 (citing *State v. Bobo* (1988), 37 Ohio St.3d 177, paragraph one of the syllabus). Here, Sgt. Knight explained that she was familiar with the motel where she stopped appellant and that the motel had been the scene of "numerous" drug busts. (Tr. 16-17.) Appellant stammered and acted nervous while talking to Sgt. Knight. Sgt. Knight also thought appellant's answers to her questions regarding his reasons for visiting the

motel were dishonest. Appellant could not identify the person he was supposedly there to visit. Nor was he parked near the room he was supposedly visiting. Most importantly, appellant repeatedly reached his hand under his leg and refused to follow Sgt. Knight's instructions to keep his hands visible. In light of the totality of these circumstances, Sgt. Knight possessed reasonable, articulable suspicion that appellant was or was about to engage in criminal activity. *State v. Atchley*, 10th Dist. No. 07AP-412, 2007-Ohio-7009, ¶13-15 (reasonable suspicion based on location of stop, the scene of prior drug arrests, defendant's nervous behavior, and furtive movements); *Bobo* at 179-80 (reasonable suspicion based on prior drug busts in area and furtive movements).

{¶14} Because Sgt. Knight had reasonable, articulable suspicion to detain appellant, her investigatory detention of appellant was a proper *Terry* stop.[1] Accordingly, the trial court did not err by denying appellant's motion to suppress. Appellant's assignment of error is overruled.

{¶15} Having overruled appellant's assignment of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

FRENCH and DELANEY, JJ., concur.

DELANEY, J., of the Fifth Appellate District, sitting by assignment in the Tenth Appellate District.

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[1] Appellant does not take issue with the steps taken by the police after the investigatory detention, including the search of his truck.