[Cite as *State v. Fisher*, 2011-Ohio-2488.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 10AP-746
v.	:	(C.P.C. No. 09CR-01-509)
Antwan M. Fisher,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 24, 2011

Ron O'Brien, Prosecuting Attorney, and *Seth Gilbert*, for appellee.

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

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Antwan M. Fisher, appeals from the judgment of the Franklin County Court of Common Pleas convicting him of carrying a concealed weapon and improperly handling a firearm in a motor vehicle. For the following reasons, we affirm that judgment.

{¶2} On January 27, 2009, appellant was indicted on one count of carrying a concealed weapon in violation of R.C. 2923.12 and one count of improperly handling a firearm in a motor vehicle in violation of R.C. 2923.16. On September 16, 2009, appellant

filed motions to suppress the identification of appellant, any statements made by appellant, and any evidence obtained from the search of appellant's vehicle. On July 22, 2010, the trial court held a hearing on the motions, at which the following evidence was adduced.

{¶3} Columbus Police Officer Daniel Yap testified that on December 26, 2008, he and his partner, Officer Robert Reffrit, were patrolling the area of Howard Avenue and Second Street in their police cruiser. At approximately 9:53 p.m., Officer Yap heard "a shot fired" in the area. (Tr. 5.) Via radio dispatch, Officer Yap advised other area police units that a shot had been fired.

{¶4} Officer Christopher Cline testified that he and his partner, Officer Christopher Boyle, responded "immediately" to the area pursuant to the radio dispatch. (Tr. 9.) While traveling westbound on Leonard Avenue, they passed a silver vehicle "traveling at a high rate of speed" in the opposite direction. (Tr. 9.) Officer Cline averred that it was raining at the time. Officer Cline testified that they turned around and pursued the vehicle both for "a speed violation" and "since it was leaving the area at a high rate of speed, it was possible that it could have been involved in a shooting." (Tr. 9.) Officer Cline stated that both he and Officer Boyle were concerned that there could be a gun in the vehicle.

{¶5} According to Officer Cline, the officers had to drive "quite a distance," from the Eaton Grove area of Leonard Avenue to beyond the Fifth Avenue exit on I-670, before catching up to and pulling over the vehicle. (Tr. 10.) Because there were two occupants in the vehicle, Officer Cline approached the driver's side, while Officer Boyle approached the passenger side. According to Officer Cline, appellant "displayed nervous behavior";

that is, he was breathing heavily and had difficulty speaking. (Tr. 12.) Although appellant was cooperative, his nervousness heightened Officer Cline's suspicions that appellant might have been involved in the shooting and that there might be a gun in the vehicle. As a result, Officer Cline had appellant exit the vehicle and walk toward the back of the car. Concerned that appellant might be armed, Officer Cline conducted a pat-down search of appellant.

{¶6} Officer Cline found nothing on appellant's person; however, during the pat-down, Officer Cline asked appellant if there were any weapons in the vehicle, to which appellant responded, "Yes, there's a gun underneath the seat." (Tr. 14.) According to Officer Cline, he asked the question because he was concerned about his and his partner's safety. Officer Cline reported appellant's admission to Officer Boyle, "just so he's aware because there's still another occupant in the car." (Tr. 15.) Upon appellant's admission, Officer Cline handcuffed appellant and placed him in the backseat of the police cruiser.

{¶7} On cross-examination, Officer Cline admitted that the only information provided in the radio dispatch was that a shot had been fired; the dispatch did not include any description of a vehicle or person. He further acknowledged that there were "quite a few houses" and "a lot of people" in the area where the shot was fired and that Leonard Avenue was a "heavily traveled street." (Tr. 16-17.) Officer Cline admitted, after reviewing the arrest report he completed following the incident (Defendant's Exhibit 1), that he cited appellant only for improperly handling a firearm in a motor vehicle; he did not cite appellant for any traffic offenses.

{¶8} On redirect, Officer Cline testified that although appellant was speeding, he did not cite him for that offense because he had already charged him with the more serious felony offense of improperly handling a firearm in a motor vehicle. He further averred that he did not believe appellant was fleeing from him so he did not charge him with that offense. Officer Cline stated, however, that appellant could have been fleeing from "a different location." (Tr. 20.)

{¶9} Officer Boyle testified that after receiving the radio dispatch about a shot being fired in their patrol area, he and Officer Cline observed a vehicle traveling eastbound on Leonard Avenue "at a high rate of speed." (Tr. 22-23.) According to Officer Boyle, they pursued the vehicle both because it was traveling "[f]ast for the conditions due to the rain conditions and coming from the area that the shots fired were heard from." (Tr. 23.) Officer Boyle averred that appellant's speed and the wet road conditions impeded their ability to catch up to the vehicle; however, they eventually were able to initiate a traffic stop. Upon Officer Cline's report that there was a gun under the driver's seat, Officer Boyle removed the passenger from the vehicle and thereafter searched the vehicle. As a result of the search, Officer Boyle retrieved a loaded handgun from under the driver's seat.

{¶10} On cross-examination, Officer Boyle admitted that he could not recall how heavily it was raining on the night in question; however, he described the roads as "rain-slicked." (Tr. 29.) He opined that appellant was traveling both "too fast for the conditions" and "over the posted speed limit." (Tr. 30.) Officer Boyle admitted that his latter opinion was based upon his "visual observations." (Tr. 30.)

{¶11} At the conclusion of the hearing, the trial court overruled appellant's motion to suppress evidence of the gun obtained from the search of appellant's vehicle.[1] The court first found that the officers "articulated a reason for stopping that vehicle" (the speeding violation), such that the traffic stop was "proper." (Tr. 36.) The trial court next found that appellant's speeding immediately away from the area after shots had been fired, combined with appellant's nervous behavior, justified removing appellant from the vehicle and patting him down. (Tr. 36-37.) While doubting whether these facts individually would amount to reasonable suspicion, the trial court found that together they created a legitimate concern for officer safety. (Tr. 36-37.) Finally, the court found that, given appellant's admission that there was a gun in the vehicle, "the final part of the search became complete and proper." (Tr. 37.)

{¶12} Appellant subsequently pled no contest to the charges in the indictment. On July 20, 2010, the trial court entered a judgment, finding appellant guilty of both charges and imposing a sentence of one year of community control.

{¶13} Appellant filed a timely appeal, advancing a single assignment of error:

> The trial court erroneously overruled appellant's motion to suppress evidence obtained after an unlawful seizure of the defendant.

{¶14} Appellant contends that the stop and search of his vehicle violated his rights under the Fourth Amendment to the United States Constitution. Specifically, appellant contends that the weapon recovered from under the driver's seat of his vehicle must be suppressed because: (1) the officers lacked reasonable suspicion to initiate a traffic stop of his vehicle; (2) the officers lacked reasonable suspicion to perform a pat-down search

[1] Appellant offered no argument pertaining to his motions to suppress his identification or his statements.

of his person; and (3) the search of his vehicle was unlawful because his admission that there was a gun under the driver's seat did not constitute probable cause of criminal activity.

{¶15} "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. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." Id., citing *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Accordingly, an appellate court must defer to the trial court's findings of fact so long as they are supported by competent, credible evidence. *Burnside* at ¶8. However, an appellate court reviews de novo whether the trial court's conclusions of law, based upon those findings of fact, are correct. Id., citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707.

{¶16} Appellant first contends that the state's evidence was not detailed enough to allow the trial court to make its own determination as to whether the officers had reasonable suspicion to initiate the traffic stop. More particularly, appellant argues that the state failed to present specific facts pertaining to the alleged speeding violation which served as the basis for the stop. Appellant maintains that the state presented no evidence regarding the posted speed limit, how fast appellant was traveling, or why appellant's speed was unsafe for the conditions. Appellant contends that the state merely relied upon the conclusions of the officers that appellant was speeding.

{¶17} "The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Section 14, Article I of the Ohio Constitution, protects '[t]he right of the people to be secure in their persons, houses,

papers, and effects, against unreasonable searches and seizures.' " *State v. Ford,* 10th Dist. No. 07AP-803, 2008-Ohio-4373, ¶19. "Searches and seizures conducted without a warrant are per se unreasonable unless they come within one of the ' "few specifically established and well delineated exceptions." ' " Id., quoting *Minnesota v. Dickerson* (1993), 508 U.S. 366, 372, 113 S.Ct. 2130, 2135, quoting *Thompson v. Louisiana* (1984), 469 U.S. 17, 20, 105 S.Ct. 409, 410. Those seeking exemption from the warrant requirement bear the burden of establishing the applicability of one of the recognized exceptions. *State v. Lowry* (June 17, 1997), 4th Dist. No. 96CA2259, citing *United States v. Jeffers* (1951), 342 U.S. 48, 51, 72 S.Ct. 93, 96. The burden of proof on this issue is that of a "preponderance of the evidence." *State v. Simon* (1997), 119 Ohio App.3d 484, 487, citing *State v. Baker* (1993), 87 Ohio App.3d 186, 192.

{¶18} An investigative stop by a police officer is one of the common exceptions to the Fourth Amendment warrant requirement. *Terry v. Ohio* (1968), 392 U.S. 1, 20-22, 88 S.Ct. 1868, 1879. To justify a brief investigative stop or detention of an individual pursuant to *Terry,* a police officer must be able to cite specific and articulable facts which, taken together with rational inferences derived from those facts, give rise to a reasonable suspicion that the individual is engaged or about to be engaged in criminal activity. *State v. Williams* (1990), 51 Ohio St.3d 58, 60-61. " 'Reasonable suspicion' has been described as 'requiring more than an inchoate suspicion or a "hunch," but less than the heightened level of certainty required for probable cause.' " *State v. Parrish,* 10th Dist. No. 01AP-832, 2002-Ohio-3275, quoting *State v. Seals* (Dec. 30, 1999), 11th Dist. No. 98-L-206, citing *State v. Sheperd* (1997), 122 Ohio App.3d 358, 364. "The propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding

circumstances." *State v. Freeman* (1980), 64 Ohio St.2d 291, at paragraph one of the syllabus. "[T]he circumstances surrounding the stop must 'be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.' " *State v. Bobo* (1988), 37 Ohio St.3d 177, 179, quoting *United States v. Hall* (C.A.D.C. 1975), 525 F.2d 857, 859.

{¶19} "The United States Supreme Court has stated that a traffic stop is constitutionally valid if an officer has a reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime." *State v. Mays*, 119 Ohio St.3d 406, 408, 2008-Ohio-4539, citing *Delaware v. Prouse* (1979), 440 U.S. 648, 663, 99 S.Ct. 1391, 1401. "[I]f an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the surrounding circumstances, then the stop is constitutionally valid." *Mays* at 408. "Reasonable suspicion exists in traffic stops where a police officer has observed a traffic violation." *State v. Garnett,* 10th Dist. No. 09AP-1149, 2010-Ohio-5865, ¶15, citing *Columbus v. Dials*, 10th Dist. No. 04AP-1099, 2005-Ohio-6305, ¶21. "[T]raffic stops based on observation by a police officer of a traffic violation are constitutionally permissible." *Garnett* at ¶15, citing *Dayton v. Erickson,* 76 Ohio St.3d 3, 11-12, 1996-Ohio-431.

{¶20} There is no dispute that speeding is a traffic violation. Speeding includes traveling "at a speed greater * * * than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions." R.C. 4511.21(A); Columbus City Code 2133.03(A). In addition, traveling at a speed exceeding

the posted speed limit is "prima facie unlawful." R.C. 4511.21(C); Columbus City Code 2133.03(C).

{¶21} Assuming arguendo that the testimony of Officers Cline and Boyle lacked the requisite detail establishing that appellant was driving at a speed exceeding the posted speed limit, their testimony that appellant was traveling at a speed greater than was reasonable for the conditions provided the trial court with sufficient detail to conclude that appellant committed a traffic violation, thereby justifying the traffic stop. Officer Cline testified that appellant was "traveling at a high rate of speed" and it was raining at the time. (Tr. 9.) Officer Boyle testified that appellant was driving "fast for the conditions due to the rain conditions." (Tr. 22.) Officer Boyle characterized the road conditions as "rain-slicked." (Tr. 29.) Officer Boyle further testified that speed and the wet road conditions hampered their ability to catch up to appellant's vehicle. Indeed, Officer Boyle testified that due to the weather conditions, Officer Cline "had to be careful" in pursuing appellant. (Tr. 23.)

{¶22} The portion of both R.C. 4511.21(A) and Columbus City Code 2133.03(A) that proscribes traveling at a speed greater than is reasonable for the road conditions does not require that the vehicle travel at any particular speed or that the speed of the vehicle exceed any particular limit, so it is irrelevant that the officers did not testify as to how many miles per hour appellant was driving or what the posted speed limit was. Pertinent here is the officers' conclusion that appellant was driving too fast for the wet road conditions. Such conclusion is a simple judgment call based upon the officers' personal observation of appellant's speed and the rain's effect on vehicular traffic. Officers Cline and Boyle, both experienced patrol officers at the time of this incident, were

certainly capable of determining whether appellant's speed was unreasonable given the existing weather and road conditions.

{¶23} Appellant contends the trial court could not rely upon the "bare bones conclusions" of the officers that appellant was speeding. In support of this proposition, appellant relies on *State v. Hollis* (1994), 98 Ohio App.3d 549, and *Lee Art Theatre, Inc. v. Virginia* (1968), 392 U.S. 636, 88 S.Ct. 2103. In *Hollis,* the court held that a police officer's affidavit stating only that the defendant sold "obscene" material, without describing the content of that material, did not contain sufficient facts to support a finding of probable cause for the issuance of a search warrant. The court stated at 555:

> Conclusory, "bare bones" statements made by the affiant in a search warrant request concerning the nature of the contraband are by themselves insufficient to justify issuance of a search warrant. [*Illinois v.*] *Gates* [(1983)], 462 U.S. [213] at 239, 103 S.Ct. [2317] at 2332-2333, 76 L.Ed.2d [527] at 548-549. Specifically, "[s]ufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." Id.
>
> Concordantly, in the case where there is an allegation of pandering of obscene materials, there must be a preliminary judicial determination that the materials to be seized were obscene. *State v. Loshin* (1986), 34 Ohio App.3d 62, 65, 517 N.E.2d 229, 232-233.

{¶24} Similarly, in *Lee Art Theatre, Inc.,* a justice of the peace issued a search warrant for allegedly obscene material based upon an affidavit of a police officer which stated only the titles of the material and that the officer had determined from personal observation of the material that it was obscene. The United States Supreme Court held that the subsequent seizure of the materials was unconstitutional, explaining:

> The procedure under which the warrant issued solely upon the conclusory assertions of the police officer without any inquiry by the justice of the peace into the factual basis for the officer's conclusions was not a procedure "designed to focus searchingly on the question of obscenity," [*Marcus v. Search Warrants of Property at 104 East Tenth St.*, 367 U.S. 717] at 732, 81 S.Ct. [1708] at 1716, and therefore fell short of constitutional requirements demanding necessary sensitivity to freedom of expression.

Id., 392 U.S. at 637, 88 S.Ct. at 2104.

{¶25} We decline appellant's invitation to extend the holdings in *Hollis* and *Lee Art Theatre, Inc.* to the instant case. We note initially that the instant case involves a traffic stop where the police officers needed only to articulate a reasonable suspicion of criminal activity. Both *Hollis* and *Lee Art Theatre, Inc.* concerned whether a search warrant was based upon probable cause, which requires a heightened level of certainty. Further, as the state points out, "the seizure of films or books on the basis of their content implicates First Amendment concerns not raised by other kinds of seizures." *New York v. P.J. Video, Inc.* (1986), 475 U.S. 868, 875, 106 S.Ct. 1610, 1614.

{¶26} Appellant's reliance on *State v. Fuller* (Aug. 30, 1990), 2d Dist. No. 2651, is likewise misplaced. In that case, the police officer arrested the defendant for operating a motor vehicle under the influence of alcohol. The defendant filed a motion to suppress, alleging that the stop of his vehicle was illegal and that the evidence obtained from that stop should be suppressed.

{¶27} The police officer testified at the suppression hearing that he stopped appellant after observing him drive four to five blocks through a residential area well within the posted speed limits. The officer averred that the defendant "would slow down for a stop sign but wouldn't really stop. He just kind of rolled through." Id. He also

testified that the defendant was "riding the yellow line, occasionally-not blatantly, but * * * enough that it was noticeable." Id. On cross-examination, the officer admitted that he did not charge the defendant with a stop sign violation and that the defendant never crossed over the yellow line. Upon this evidence, the trial court overruled the defendant's motion to suppress. The court subsequently convicted the defendant upon his no-contest plea.

{¶28} On appeal, the court reversed the trial court's judgment, finding that it had improperly denied the motion to suppress. The court explained:

> In the case before us Officer Hopper stated no reason in the form of direct testimony explaining why he stopped the vehicle. He was only able to say that the vehicle rolled through a stop sign, but admitted that he did not stop the vehicle for that reason. He also stated that he saw the vehicle "riding the yellow line," but added that it was occasional and not blatant and that the vehicle did not cross over the yellow line. Such testimony does not describe "erratic driving." During all this time the vehicle stayed well with the speed limit and the streets were vacant of other traffic.
>
> None of the officer's testimony, in its specific terms or in the surrounding circumstances, constitutes evidence of specific acts which taken together with rational inferences therefrom reasonably warranted the stop.

{¶29} In this case, the officers adequately explained their reasons for stopping appellant. Both Officers Cline and Boyle testified that they observed appellant traveling at a high rate of speed. Both testified that it was raining. Officer Boyle described the roads as "rain-slicked" and averred that appellant was traveling too fast for the rainy road conditions. Officer Boyle further averred that appellant's speed and the wet road conditions hindered their pursuit of appellant. Both testified that they stopped appellant for speeding. Further, unlike the officer in *Fuller,* Officer Cline explained his reasons for failing to cite appellant with a traffic offense.

{¶30} At the hearing on the motion to suppress, Officers Cline and Boyle cited specific and articulable facts which, taken together with rational inferences derived from those facts, gave rise to a reasonable suspicion that appellant committed a traffic offense; i.e, he violated either R.C. 4511.21(A) or Columbus City Code 2133.03(A), or both, by driving at a speed that was unreasonable for the existing road conditions. Based upon the totality of circumstances in the instant case, the officers lawfully initiated the traffic stop of appellant's vehicle.

{¶31} Having concluded that the investigative stop of appellant was lawful, we now consider appellant's second contention; i.e., whether Officer Cline lacked reasonable suspicion to perform a pat-down search of appellant's person.

{¶32} Initially, we note that appellant apparently acknowledges that Officer Cline was permitted to order him to exit the vehicle after initiating the traffic stop. In *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 98 S.Ct. 330, the United States Supreme Court held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." Id., 434 U.S. at 111, 98 S.Ct. at 333, fn.6.

{¶33} Under *Terry,* a police officer may conduct a limited protective search of the detainee's person for concealed weapons where the officer has reasonably concluded that "the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others." Id., 392 U.S. at 24, 88 S.Ct. at 1881. To justify a pat-down search "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts,

reasonably warrant that intrusion." Id., 392 U.S. at 21, 88 S.Ct. at 1880. However, "[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." Id., 392 U.S. at 27, 88 S.Ct. at 1883.

{¶34} The United States Supreme Court's holding in *Terry* has been expanded to include automobile stops. *State v. Henderson* (Nov. 7, 1997), 2d Dist. No. 16016. Accordingly, for his or her own safety, a police officer may pat-down the occupants of a vehicle for weapons if there is a reasonable belief that the occupants may be armed. Id.

{¶35} Appellant contends that the trial court erred in finding that Officer Cline was justified in patting him down. According to appellant, no evidence establishes how much time elapsed between the shot being fired and when the officers first observed appellant's vehicle. Appellant contends this lack of temporal proximity militates against a finding of reasonable suspicion that appellant was involved in the shooting and had a gun in his vehicle. We disagree.

{¶36} Officer Yap testified that he reported the gunshot at 9:53 p.m. Officer Cline testified that he and Officer Boyle responded "immediately" after hearing the radio dispatch. The arrest report states that the officers pursued appellant's vehicle for "several minutes" before finally pulling it over, and that appellant was ultimately arrested at 10:00 p.m. (Defendant's Exhibit 1.) The evidence thus establishes that only seven minutes elapsed between the time the radio dispatch was aired and the time appellant was arrested and that "several minutes" of that seven-minute time period was devoted to pursuing appellant's vehicle. In addition, we can reasonably infer that the mechanics of the traffic stop itself, including any discussion between Officer Cline and appellant,

appellant's exit from the vehicle, and Officer Cline's pat-down search of appellant, consumed some of the remaining time. Given the evidence adduced at the suppression hearing, and the reasonable inferences drawn therefrom, the trial court could reasonably conclude that the officers first observed appellant's vehicle very shortly after hearing the radio dispatch reporting the shooting.

{¶37} Moreover, beyond appellant's temporal proximity to the gunshot, the fact that the vehicle was speeding away from the area provided the officers reason to believe that the vehicle's occupants were involved in the shooting and that there was a gun in the vehicle. The trial court also found significant appellant's nervous behavior during the traffic stop. "Although some degree of nervousness during interactions with police officers is not uncommon * * * nervousness can be a factor to weigh in determining reasonable suspicion." *State v. Atchley,* 10th Dist. No. 07AP-412, 2007-Ohio-7009, ¶14.

{¶38} Appellant's reliance on *State v. Parrish,* 10th Dist. No. 01AP-832, 2002-Ohio-3275, is misplaced. In that case, this court found that the police officer lacked reasonable suspicion that the defendant was involved in a recent shooting. Although the defendant was present in the general vicinity of the shooting, he did not violate any traffic or other laws. Nonetheless, the officer ordered him out of his vehicle and patted him down. No weapons were found as a result of the pat-down; however, during a subsequent search of the vehicle, a handgun was discovered. We held that the totality of the circumstances, including the defendant's mere presence in the general vicinity where the shots allegedly had been fired, did not provide a reasonable, articulable suspicion that the defendant had engaged in criminal activity justifying an investigative stop. Id. at ¶22. In the instant case, not only was appellant present in the general vicinity of the recent

shooting, the officers observed him speeding away from the area where the shot had been fired, and appellant exhibited nervous behavior during the traffic stop. Thus, unlike in *Parrish,* the officers independently observed circumstances reasonably indicating criminal behavior at the scene of the detention.

{¶39} Finally, appellant contends that the trial court's finding that the pat-down search was justified based upon the report of a shot being fired was "internally inconsistent" with its finding that the report of a shot being fired did not justify the initial stop of the vehicle. (Appellant's brief at 16.) Appellant maintains that "[i]f there were insufficient reasons to stop the vehicle based upon the report of a shot fired, there were also insufficient reasons to conduct a frisk-search of the defendant. If the defendant was being unlawfully searched when he provided the information about the gun, then the information must be suppressed since it was obtained after the unlawful seizure and search of the defendant's person." (Brief at 16.) Appellant's argument is without merit.

{¶40} Contrary to appellant's contention, the trial court did not find that the mere report of a shot being fired justified the pat-down. Rather, the court found that appellant's speeding immediately away from the area where the shot had allegedly been fired, coupled with the nervous behavior appellant exhibited during the traffic stop, justified the officer's decision to remove appellant from the vehicle and pat him down for weapons. Although the trial court expressed doubt as to whether these facts individually amounted to reasonable suspicion, the court concluded that they collectively created a legitimate concern for officer safety.

{¶41} Thus, the totality of the circumstances in the instant case provided the officers with reasonable suspicion that appellant may have been armed. Accordingly, the

trial court properly found that these circumstances created a legitimate concern for officer safety justifying the pat-down.

{¶42} Finally, appellant contends that the search of his vehicle was unlawful because appellant's admission that there was a gun under the driver's seat did not constitute probable cause of criminal activity. Appellant contends that his admission did not provide the officers with probable cause to search the vehicle because no facts established that appellant was unlawfully transporting the gun. Appellant maintains that the officers were required to make this determination before searching the vehicle.

{¶43} Initially, we note that the officers would have been justified in searching appellant's vehicle even without appellant's admission that there was a gun under the driver's seat. Law enforcement officers may search without a warrant "the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden * * * if the police officer possesses a reasonable belief * * * that the suspect is dangerous and the suspect may gain immediate control of weapons." *Michigan v. Long* (1983), 463 U.S. 1032, 1048-49, 103 S.Ct. 3469, 3472. Such searches are justified due to the officers' particularly vulnerable position existing because a full custodial arrest has not been effected and the individual may be permitted to reenter the vehicle and gain access to all weapons contained therein before the investigation is over. Id., 463 U.S. at 1049-53, 103 S.Ct. at 3481-83.

{¶44} The same reasons that justified the pat-down of appellant justify the search of appellant's vehicle. Appellant sped away from an area where a gunshot had been fired, and he exhibited nervous behavior during the ensuing traffic stop. As noted above, these facts provided the officers with reason to believe that appellant was armed. In

addition, the passenger remained in the vehicle after appellant had exited. The passenger's presence in the vehicle provided him with immediate access to any weapons in the vehicle and thus posed a threat to both officers. Appellant also posed a potential threat to the officers. Appellant could have escaped Officer Cline's control and retrieved the gun from the vehicle; or, if Officer Cline had permitted him to reenter the vehicle after the traffic stop, he would have had access to the gun at that point. Id., 463 U.S. at 1051-52, 103 S.Ct. at 3481-82.

{¶45} Moreover, we agree with the state that, whether the gun was possessed illegally is immaterial under *Long.* "[W]e have expressly rejected the view that the validity of a *Terry* search depends on whether the weapon is possessed in accordance with state law." Id., 463 U.S. at 1052, 103 S.Ct. at 3482, fn. 16, citing *Adams v. Williams* (1972), 407 U.S. 143, 146, 92 S.Ct. 1921, 1923.

{¶46} In addition, appellant's admission that there was a gun under the driver's seat provided the officers with probable cause to believe that the vehicle contained a loaded firearm that was unlawfully "accessible to the operator or any passenger without leaving the vehicle" in violation of R.C. 2923.16(B). *State v. Nelson,* 2d Dist. No. 22718, 2009-Ohio-2546, ¶46. Although appellant did not admit that the gun was loaded, the report of recent gunfire in the area, combined with the evidence that appellant was speeding away from the gunfire and displayed nervous behavior during the traffic stop, provided the officers probable cause to believe that the gun was loaded.

{¶47} Appellant's admission also provided the officers probable cause to believe that he was carrying a concealed weapon in violation of R.C. 2923.12(A)(2). Pursuant to R.C. 2923.12(B)(1), appellant was required to inform the officers at the time he was

stopped that he had been issued a license to carry a concealed handgun if he had been issued such a license. Appellant's failure to do so provided the officers with probable cause to believe he was carrying a concealed weapon in violation of R.C. 2923.12(A). *Nelson* at ¶46; *State v. White*, 8th Dist. No. 92229, 2009-Ohio-5557, ¶14.

{¶48} Under the totality of the circumstances, including appellant's admission that there was a gun under the seat and the other evidence available to the officers at the time, the officers were justified in searching appellant's vehicle and retrieving the gun. Accordingly, the trial court properly concluded that the search of the vehicle was "complete and proper." (Tr. 37.)

{¶49} For the foregoing reasons, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

BRYANT, P.J., and SADLER, J., concur.

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