[Cite as *State v. Hodge*, 2012-Ohio-4306.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-1099
v.	:	(C.P.C. No. 10CR-09-5749)
Stephen J. Hodge,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 20, 2012

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Dustin M. Blake, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Stephen J. Hodge ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his motion to suppress. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} Appellant was indicted on one count of carrying a concealed weapon and one count of improperly handling a firearm in a motor vehicle after police found a gun and ammunition in his car during a traffic stop. Appellant filed a motion to suppress that evidence, on grounds that it was obtained during an unconstitutional stop and search, and the trial court held a hearing on the motion. Columbus Police Officer

Kimberly Hollander testified as follows at the hearing. On August 28, 2010, Hollander heard shots being fired outside of a bar. She drove to the bar and talked to a woman who said that the shooter was a black man wearing hair braids and a T-shirt with writing. The woman also said that the shooter fled from the area. Hollander dispatched the description of the shooter to other police officers.

{¶ 3} Next, Columbus Police Officer Barry Kirby testified as follows. Kirby heard Hollander's dispatch that a shooting occurred at a bar, but he did not recall hearing a description of the shooter. He drove toward the bar and saw a Pontiac Grand Prix fleeing the area. The car went over a sidewalk and nearly struck Kirby's cruiser. The driver was a black man wearing a T-shirt. Kirby believed that the driver may have been the shooter, and he called on other officers to stop the car.

{¶ 4} Columbus Police Officer Justin Jones stopped the car described in Kirby's dispatch, and he testified as follows. Jones executed the stop near the bar where the shooting occurred, and he approached the car with his gun drawn. The driver matched Hollander's description of the shooter, and Jones identified appellant as the driver. He ordered appellant to exit the car, and he patted down appellant's outer clothing to search for weapons. He found nothing during that search, however. Jones also told appellant that he was being detained, and, in fact, Jones did everything with appellant that he would ordinarily do when he arrests someone. In particular, he handcuffed appellant and placed him in a patrol wagon. In the meantime, other police officers searched appellant's car and found a gun unlawfully concealed under one of the seats. The police also found ammunition in the car.

{¶ 5} The trial court concluded that it was constitutional for the police to stop appellant and search his car. Accordingly, the court denied appellant's motion to suppress. Appellant pleaded no contest to carrying a concealed weapon and improperly handling a firearm in a motor vehicle. The court merged the offenses for purposes of sentencing, and it sentenced appellant to community control.

II. ASSIGNMENT OF ERROR

{¶ 6} Appellant filed a timely notice of appeal and now assigns the following as error:

> THE TRIAL COURT ERRONEOUSLY OVERRULED APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED AFTER AN UNLAWFUL SEARCH AND SEIZURE.

III. DISCUSSION

{¶ 7} In his single assignment of error, appellant argues that the trial court erred by denying his motion to suppress. We disagree.

{¶ 8} When presented with a motion to suppress, the trial court assumes the role of the trier of fact. *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Therefore, the trial court is in the best position to resolve questions of fact and evaluate witness credibility. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. On review, we must accept the trial court's factual findings if they are supported by competent, credible evidence. *State v. Stokes*, 10th Dist. No. 07AP-960, 2008-Ohio-5222, ¶ 7. Accepting those facts as true, we must then independently determine, as a matter of law and without deference to the trial court's conclusion, whether the facts meet the applicable legal standard. *State v. Coger*, 10th Dist. No. 10AP-320, 2011-Ohio-54, ¶ 10. With this standard in mind, we consider the trial court's decision to deny appellant's motion.

{¶ 9} The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures, and a trial court is required to suppress evidence obtained during an unconstitutional search and seizure. *State v. Carrocce*, 10th Dist. No. 06AP-101, 2006-Ohio-6376, ¶ 27. Appellant first argues that it was unconstitutional for Jones to conduct a pat-down search. But appellant waived that issue on appeal because he did not raise it in his motion to suppress. *See State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶ 19-20 (10th Dist.). In any event, appellant cannot establish that the search resulted in prejudice to him because no evidence was obtained from it.

{¶ 10} Appellant additionally argues that the trial court was required to suppress the gun and ammunition he had in his car because the police found them during an unconstitutional search and seizure. As an initial matter, the traffic stop that Jones executed constitutes a seizure under the Fourth Amendment. *See State v. McCandlish*, 10th Dist. No. 11AP-913, 2012-Ohio-3765, ¶ 7. A traffic stop is constitutional if an officer

has a reasonable suspicion that the motorist committed a crime. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, ¶ 7. Reasonable suspicion exists when "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Appellant does not dispute that the shooting in front of the bar was unlawful, but he contends that there was no basis for Jones to stop him on suspicion that he was the shooter.

{¶ 11} Jones stopped appellant in response to Kirby's dispatch. Accordingly, we determine whether Kirby had a reasonable suspicion that appellant was the shooter. *See Maumee v. Weisner*, 87 Ohio St.3d 295, 298 (1999). Reasonable suspicion that an individual was involved in a shooting exists when he is seen in the area where the incident recently occurred, and he is fleeing. *State v. Fisher*, 10th Dist. No. 10AP-746, 2011-Ohio-2488, ¶ 37. Here, Kirby saw appellant in the area where the shooting had just happened, and appellant was fleeing. Consequently, pursuant to *Fisher*, Kirby had a reasonable suspicion that appellant was the shooter, and Jones was authorized to stop appellant based on Kirby's dispatch.

{¶ 12} Next, appellant argues that it was unconstitutional for the police to search his car without a warrant. A warrantless search is unconstitutional under the Fourth Amendment unless an exception applies. *State v. Jones*, 188 Ohio App.3d 628, 2010-Ohio-2854, ¶ 11 (10th Dist.). Under one exception, the police may conduct a warrantless search of a car if the occupant is under arrest and if "it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009). To determine whether that exception applies to the search of appellant's car, we must first decide whether appellant was under arrest at the time and, if so, whether the arrest was valid. *See Coger* at ¶ 12.

{¶ 13} An arrest occurs when (1) there is an intent to arrest, (2) under real or pretended authority, (3) accompanied by an actual or constructive detention, and (4) the person who was apprehended understands that he is under arrest. *State v. Darrah*, 64 Ohio St.2d 22, 26 (1980). Both parties contend that appellant was under arrest when the police searched his car, and we agree. Jones had his gun drawn when he approached appellant, and he handcuffed appellant and placed him in a patrol wagon

while his car was being searched. In addition, Jones told appellant that he was not free to leave, and Jones admitted at trial that he did everything with appellant that he would ordinarily do when he arrests someone.

{¶ 14} Nevertheless, appellant contends that Jones lacked a basis to arrest him. An arrest must be based on probable cause that a crime occurred. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). " 'Probable cause exists if the facts and circumstances known to the officer warrant a prudent [person] in believing that [an] offense has been committed.' " *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, ¶ 73, quoting *Henry v. United States*, 361 U.S. 98, 102 (1959). " 'Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.' " *Id.*, quoting *Adams v. Williams*, 407 U.S. 143, 149 (1972). The standard for probable cause requires only a showing that a probability of criminal activity exists, not a prima facie showing of criminal activity. *State v. George*, 45 Ohio St.3d 325, 329 (1989). Jones arrested appellant based on his own observations during the traffic stop, as well as the dispatches from Kirby and Hollander. Consequently, we consider whether that information, combined, established probable cause for the arrest. *See Coger* at ¶ 17.

{¶ 15} Hollander dispatched an informant's description of the shooter. Jones was permitted to depend on the informant's tip if it was reliable. *See Maumee* at 299. " 'Information from an ordinary citizen who has personally observed what appears to be criminal conduct carries with it indicia of reliability.' " *Bordelon v. Franklin Twp.*, 10th Dist. No. 01AP-256 (Dec. 13, 2001), quoting *State v. Loop*, 4th Dist. No. 93CA2153 (Mar. 14, 1994). Under *Bordelon*, the informant who spoke with Hollander is reliable because she saw the shooting. Also establishing the informant's reliability is that she spoke with the police in person. *See State v. Jordan*, 10th Dist. No. 00AP-1443 (Nov. 29, 2001). Because the informant provided a reliable tip, Jones was permitted to depend on it. Jones discovered during the traffic stop that appellant matched the informant's description of the shooter, and, beforehand, he obtained information from Kirby that implicated appellant in the shooting. Accordingly, Jones had probable cause to believe that appellant was the shooter given his own observations during the traffic

stop and the dispatches from Hollander and Kirby. Consequently, Jones was authorized to arrest appellant.

{¶ 16} Lastly, we conclude, pursuant to *Gant*, that the police were entitled to conduct a warrantless search of appellant's car incident to his arrest. In particular, there was reason for the police to believe that appellant's car contained evidence of the shooting because he was stopped near the area where the shooting had just occurred.

{¶ 17} For all these reasons, we hold that the police procured a gun and ammunition from appellant's car during a constitutional stop and search. Therefore, the trial court did not err by denying appellant's motion to suppress, and we overrule appellant's single assignment of error.

IV. CONCLUSION

{¶ 18} Having overruled appellant's single assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN, P.J., and SADLER, J., concur.