

[Cite as *State v. Mathews*, 2015-Ohio-1047.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 26326
Plaintiff-Appellee	:	
	:	Trial Court Case No. 13-CR-2269
v.	:	
	:	(Criminal Appeal from
JONEL MATHEWS	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 20th day of March, 2015.

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MATHIAS H. HECK, JR., by MELISSA I. REDLIEN, Atty. Reg. No. 0091732, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45402
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FAIN, J.

{¶ 1} Defendant-appellant Jonel Mathews appeals from his conviction and sentence for Having a Weapon While Under a Disability. Mathews contends that the trial

court erred in overruling his motion to suppress evidence obtained as a result of a warrantless search of his residence. We conclude that the warrantless search of Mathews's residence was justified, based on an anonymous tip that was corroborated by persons and evidence on the scene. Therefore, the trial court did not err in overruling the motion to suppress. Accordingly, the judgment of the trial court is Affirmed.

I. The Search

{¶ 2} At about 5:00 p.m. one day in late July 2013, Dayton police officers were dispatched to the area of Kenilworth and Richmond Streets based on an anonymous tip of a possible shooting in the area. Officer Dustin Phillips and his partner, Officer Justin Ellis were the first two officers on the scene. Upon their arrival they saw a small group of people standing near the intersection, all pointing toward the house located at 400 Kenilworth. Shortly thereafter, they were joined by other officers. Officer Phillips observed what appeared to be fresh blood drops on the sidewalk and steps leading to the backyard, so he decided to require all the occupants of the house to exit so he could search the house for a possible gunshot victim. Mathews was the first person to exit the house, and Officer Ellis handcuffed him and had him lie on the ground. Three other occupants exited the house, and Officer Ellis provided *Miranda*¹ warnings to all four persons, while Officer Phillips went into the house. Officer Phillips searched the house for all possible places where a gunshot victim might be located, including closets. When Officer Phillips opened a closet in an upstairs bedroom he saw a gun in plain sight. When returning to the backyard, Mathews admitted ownership of the gun. Mathews was arrested for Having a

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Weapon While Under a Disability, a third degree felony. No evidence of a shooting was found on the premises, no photos or samples of the supposed blood drops were taken at the scene, and no interviews were conducted of the persons who were pointing at the house when the officers arrived.

II. The Course of Proceedings

{¶ 3} Mathews was indicted on one count of Having Weapons While Under a Disability, a felony of the third degree, in violation of R.C. 2923.13(A)(2). In 2007, Mathews had been convicted of Aggravated Robbery. Mathews moved to suppress the evidence and his statements, arguing that the officer did not have probable cause to search his home, without a warrant. Officer Phillips, Officer Ellis and Mathews's mother, Rosalie Mathews, testified at the suppression hearing.

{¶ 4} The trial court overruled the motion to suppress, finding that exigent circumstances justified a warrantless search of Mathews's home, because the officer reasonably believed that a shooting had occurred, and that the shooter or the victim might be inside the house. The court concluded that the officer's reasonable belief was based on the anonymous tip that a shooting had occurred in the area and the officer's observation of blood on the sidewalk leading to the backyard of Mathews's residence. The court further found that the exigent circumstances provided the officer with reasonable grounds to search places in the home where the victim could be located, including the bedroom closets. The court concluded that the officer found the gun in plain sight. The court also found that Mathews was properly Mirandized prior to his voluntary statement that led to his arrest.

{¶ 5} Mathews appeals from the court's denial of his motion to suppress.

III. Officer Phillips Had a Reasonable, Articulable Suspicion Justifying the Search of the Home, Including the Bedroom Closet

{¶ 6} Mathews's sole assignment of error states:

THE TRIAL COURT ERRED WHEN IT RULED THAT THERE WAS PROBABLE CAUSE TO SEARCH THE HOUSE WHERE THE FIREARM OWNED BY DEFENDANT-APPELLANT WAS FOUND.

{¶ 7} Mathews contends that the trial court erred by finding that the anonymous tip was a sufficient basis for the officer to form a reasonable, articulable suspicion that a crime had occurred. Mathews argues that an anonymous tip, in the absence of any other indicia of reliability, does not provide enough information to form the basis of a reasonable, articulable suspicion. The State argues that the anonymous tip was corroborated by Officer Phillips's personal observations.

{¶ 8} In deciding a motion to suppress, "the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996), quoting *State v. Venham*, 96 Ohio App.3d 649, 653, 645 N.E.2d 831 (4th Dist.1994). "The court of appeals must accept the trial court's findings of fact if they are supported by competent, credible evidence in the record." *State v. Isaac*, 2d Dist. Montgomery No. 20662, 2005-Ohio-733, ¶ 8, citing *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994). Accepting those facts as true, the appellate court must then determine as a matter of law, without deference to the trial court's legal conclusion,

whether the applicable legal standard is satisfied. *State v. Dooley*, 2d Dist. Clark No. 2014-CA-3, 2015-Ohio-343, ¶ 12.

{¶ 9} The Fourth Amendment to the United States Constitution guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures [.]” 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.” *Minnesota v. Dickerson*, 508 U.S. 366, 372, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), quoting *Thompson v. Louisiana*, 469 U.S. 17, 20, 105 S.Ct. 409, 83 L.Ed.2d 246 (1984). Evidence is inadmissible if it stems from an unconstitutional search or seizure. *State v. Dooley*, 2d Dist. Clark No. 2014-CA-3, 2015-Ohio-343 ¶ 13, citing *Wong Sun v. United States*, 371 U.S. 471, 484–85, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

{¶ 10} A protective sweep is a reasonable exception to the Fourth Amendment's warrant requirement. See *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). A protective sweep, however, is not a full search of the premises. It is only a cursory inspection of those areas where a person who poses a threat of danger to the police may be found. *Id.*, 494 U.S. at 335.

{¶ 11} We have also recognized that exigent circumstances are a well-established exception to the Fourth Amendment's warrant requirement. *State v. Berry*, 167 Ohio App.3d 206, 2006-Ohio-3035, 854 N.E.2d 558, ¶ 12 (2d Dist.). “The exigent or emergency circumstances exception to the warrant requirement applies in a variety of situations, including when entry into a building is necessary to protect or preserve life, to prevent physical harm to persons or property, or to prevent the

concealment or destruction of evidence, or when officers are in ‘hot pursuit’ of a fleeing suspect or someone inside poses a danger to the police officer's safety.” *State v. Goode*, 2d Dist. Montgomery No. 25175, 2013-Ohio-958, ¶ 13, citing *State v. Sharpe*, 174 Ohio App.3d 498, 2008-Ohio-267, 882 N.E.2d 960, ¶ 48 (2d Dist.); *Kentucky v. King*, ___U.S___, 131 S.Ct. 1849, 1856, 179 L.Ed.2d 865 (2011).

{¶ 12} We were presented with a similar issue in *State v. Hunter*, 2d Dist. Montgomery No. 24350, 2011-Ohio-6321, where police officers were dispatched to Hunter’s residence based on an anonymous 9-1-1 call that a person was being held captive at a specific address. The officer’s suspicion of criminal activity was corroborated by the occupants’ failure to cooperate with the officers. We concluded that in order to support a warrantless entry into a residence some, but not much, corroboration is required for an anonymous tip reporting circumstances in which a victim is likely to be in physical peril. *Id.* at ¶ 29.

{¶ 13} In the present case, the anonymous tip that a shooting had occurred in the vicinity of Mathews’s residence was corroborated by persons who pointed out the house to the officers who arrived on the scene, and by the officer’s observation of blood drops on the sidewalk leading to the backyard of Mathews’s residence. Those circumstances supported a reasonable inference that either the occupants of the residence were involved in criminal activity, or that a shooting victim might be in the residence. Therefore, the circumstances provided sufficient corroboration of the information received from the anonymous caller that someone in the vicinity had just fired a weapon and a victim at the Mathews’s residence might need assistance. That would lead a prudent police officer to reasonably believe that a person was in imminent danger of

physical harm, an exigent circumstance justifying a warrantless search of the residence.

{¶ 14} In *Hunter*, we also addressed the plain-view doctrine and its relationship to the extent of the search allowed for the safety of the officers and the safety of the possible victim. We recognized that “[t]he search conducted in this case is known as a ‘protective sweep,’ defined by the United States Supreme Court as ‘a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers and others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.’ ” *Hunter, supra* at ¶ 33, quoting *Maryland v. Buie*, 494 U.S. 325, 327, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). If contraband is found from this cursory visual inspection, the plain view doctrine would allow the officer to seize it, without a warrant. However, in *Hunter*, we questioned whether the officer’s actions in looking and finding weapons between the mattress and the box springs were reasonable under the circumstances, and remanded the case for further fact finding on this issue. In the present case, the court found that the gun was found in an area where victims could be located, the bedroom closet. When the closet was opened, the gun was visible in plain sight. We agree that under circumstances where an officer is searching for a shooting victim who could need immediate help, a protective sweep can reasonably include a bedroom closet, where the victim might be located.

{¶ 15} We conclude that the trial court did not err in finding that exigent circumstances and corroborating evidence provided the officer with sufficient justification for a warrantless search, and that the firearm was found in plain sight, in an area where the officer had a reasonable basis to search. Accordingly, the sole assignment of error is overruled.

IV. Conclusion

{¶ 16} Mathews's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN and HALL, JJ., concur.

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