[Cite as *State v. Laney*, 2015-Ohio-852.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- JOSHUA LANEY Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P.J. Hon. John W. Wise, J. Hon. Patricia A. Delaney, J. Case No. 2014CA00127 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Canton Municipal Court, Stark County, Case No. 2014CRB1828
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	March 9, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOSEPH MARTUCCIO Canton Law Director TYRONE D. HAURITZ Canton City Prosecutor TASHA FORCHIONE Assistant City Prosecutor 218 Cleveland Ave SW P.O. Box 24218 Canton, Ohio 44701-4218	FREDRICK M. PITINII Chase Bank Building 101 Central Plaza South, Suite 1000 Canton, Ohio 44702

Hoffman, P.J.

{¶1} Defendant-appellant Joshua Laney appeals the June 17, 2014 Judgment Entry entered by the Canton Municipal Court denying his motion to suppress evidence. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 13, 2014, Mark Jackson, a Fire Investigator for the Canton Fire Department, observed Appellant at a four-way stop near Dueber School in Canton, Ohio. Jackson was in the midst of investigating a fire in the area, when he observed children exiting the school, and a large plume of black smoke in the vicinity. Jackson then witnessed Appellant in a pickup truck "burning out" his tires and fish tailing. Appellant then left at a high rate of speed.

{¶3} Jackson testified he followed the vehicle, noting the license plate, and phoning into dispatch the vehicle's license plate number to report the reckless operation.

{¶4} Jackson then observed Appellant conduct a U-turn and proceed to burn his tires, coming at him, head on. Jackson veered off to the right side of the road to avoid contact with Appellant, circled back, and called dispatch back to advise Appellant's direction of travel.

{¶5} The vehicle eventually came to a stop in front of a residence on Dueber Avenue in Canton, Ohio. Jackson got out of his vehicle, and confronted Appellant. Jackson identified himself as a Fire Investigation Officer, and inquired if Appellant was alright. Jackson observed Appellant appeared angry, and he thought Appellant might have been impaired due to a medical condition. Appellant yelled expletives, threatened

and spit at Jackson. Jackson followed Appellant to the base of the steps leading to the residence, along the sidewalk.

{¶6} Another resident then came out of the apartment and confronted Jackson. Jackson testified the resident did not "make a lot of sense," but kept saying "don't make him mad." Appellant then threatened to get a gun, and threatened to shoot Jackson.

{¶7} As Jackson was backing away from the residence, Appellant appeared on the steps of the residence, holding a handgun in his right hand, pointing the gun at Jackson. Appellant continued to yell and scream expletives.

{¶8} Jackson again contacted dispatch to report Appellant had a gun and was using expletives, threatening to shoot.

{¶9} Appellant was standing on the porch of the residence when officers responded to the call. Upon seeing the police officers, Appellant retreated into the residence. The officers ordered Appellant to stop, but he retreated into the residence. The officers forced entry into Appellant's home, placing him in handcuffs. A handgun was found on the floor near Appellant's person.

{¶10} On May 14, 2014, Appellant was charged with one count of aggravated menacing, one count of resisting arrest, one count of obstructing official business, and one count of disorderly conduct.

{¶11} On May 22, 2014, Appellant filed a motion to dismiss/ motion to suppress. The trial court conducted a hearing on Appellant's motion on June 16, 2014. Via Judgment Entry of June 17, 2014, the trial court overruled the motion to dismiss/ motion to suppress.

{¶12} On June 24, 2014, Appellant entered a plea of no contest to the charges. The trial court found Appellant guilty of the charges, and imposed a sentence of twenty-eight days in prison.

{¶13} Appellant appeals, assigning as error:

{¶14} "I. THE TRIAL COURT ERRED IN CONCLUDING THAT THE WARRANTLESS ENTRY AND ARREST OF APPELLANT INSIDE HIS HOME WAS JUSTIFIED AND IN OVERRULING HIS MOTION TO SUPPRESS EVIDENCE."

{¶15} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning,* 1 Ohio St.3d 19 (1982); *State v. Klein,* 73 Ohio App.3d 486 (4th Dist.1991); *State v. Guysinger,* 86 Ohio App.3d 592 (4th Dist.1993). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams,* 86 Ohio App.3d 37 (4th Dist.1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry,* 95 Ohio App.3d 93 (8th Dist.1994); *State v. Claytor,* 85 Ohio App.3d 623 (4th Dist.1993); *Guysinger.*

{¶16} {¶ 22} The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. Without a search warrant, a search is per se unreasonable unless it falls under a few established exceptions. *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

{¶17} A warrantless police entry into a private residence is not unlawful if made upon exigent circumstances, a "specifically established and well-delineated exceptio[n]" to the search warrant requirement. *State v. Applegate,* 68 Ohio St.3d 348, 349–50, 626 N.E.2d 942, 944 (1994), citing *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576, 585 (1967). "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." *Mincey v. Arizona,* 437 U.S. 385, 392–393, 98 S.Ct. 2408, 2413, 57 L.Ed.2d 290, 300 (1978).

{¶18} In *State v. Bethel,* 5th Dist. Tuscarawas No. 10–AP–35, 2011–Ohio–3020, this court addressed the issue raised herein. In *Bethel*, a 911 call was placed by Community Mental Health, reporting the defendant was talking about weapons and shooting someone. Police responded to a dispatched call the defendant had guns in the house and had threatened to commit suicide or hurt others. When officers arrived, they saw the defendant exit the home, and they secured him. However, they entered the home to determine if there were other people in the residence. Once inside, they observed drugs and drug paraphernalia. The trial court found exigent circumstances did not support the entry and search of the home. This Court reversed, finding entry into the home was necessary to protect others possibly in the residence, was reasonably related

to those circumstances, and was necessary to verify the defendant's reports to Community Mental Health. *Id.* at ¶ 30.

{¶19} In this case, Fire Investigator Jackson reported to dispatch he observed Appellant burning tires and fish tailing within the vicinity of a school. He followed Appellant, and Appellant drove his vehicle in a manner purposely burning his tires and coming at Jackson head on; operating his vehicle in a dangerous and reckless manner Jackson veered off to the right to avoid contact with Appellant, circled back, and called dispatch to advise the direction of travel of Appellant.

{¶20} The vehicle came to a stop at an address on Dueber Road in Canton, and Jackson got out of the vehicle in front of Appellant, inquiring as to Appellant's state of mind. Jackson observed Appellant appeared angry and not in a right frame of mind. Appellant acted belligerently with Jackson, threatening him and spitting while yelling expletives.

{¶21} Another resident came out of the apartment and confronted Jackson. Jackson testified the resident did not "make a lot of sense," but kept saying "don’t make him mad." Appellant threatened to get a gun, and threatened to shoot Jackson. All of these facts were realyed to dispatch and law enforcement.

{¶22} As Jackson was backing away from the residence, Appellant appeared on the steps of the residence, holding a handgun in his right hand, and pointing the gun at Jackson. Appellant continued to yell and scream expletives.

{¶23} Jackson again contacted dispatch to report the incident, reporting Appellant had a gun and was using expletives, threatening to shoot.

{¶24} Appellant then entered the residence, returning with his firearm. Appellant waived the gun at Appellant.

{¶25} Appellant was on the porch of the residence when officers responded to the call. Upon seeing the police officers, Appellant retreated into the residence. The officers ordered Appellant to stop, but Appellant continued inside the residence. The officers forced entry into Appellant's home, placing him in handcuffs. A handgun was found on the floor.

{¶26} The officers had knowledge of Appellant's erratic behavior and his reckless and threatening state of mind, as well as the presence of at least one individual inside the home. At the time the officers entered the home, the other resident was inside. Based on the information related from Jackson to dispatch and then to the officers regarding Appellant's actions and statements, as well as the presence of another person inside the residence, we find the trial court correctly concluded exigent circumstances existed to justify the warrantless search of the residence. The search was limited to these circumstances and reasonably related thereto. In addition, we find the officers had probable cause to arrest Appellant based on the incident as described herein.

{¶27} The sole assignment of error is overruled.

{¶28} The judgment entered by the Canton Municipal Court is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur