[Cite as *State v. Ruff*, 2011-Ohio-282.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

State of Ohio — Court of Appeals No. H-10-014

Appellant — Trial Court No. CRI 2010 0271

v.

Randy Ruff — **DECISION AND JUDGMENT**

Appellee — Decided: January 21, 2011

* * * * *

Russell Leffler, Huron County Prosecuting Attorney, and
Richard R. Woodruff, Assistant Prosecuting Attorney, for appellant.

George C. Ford, Public Defender and David J. Longo, Chief Assistant Public Defender, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This accelerated appeal is before the court pursuant to Crim.R. 12(K). Plaintiff-appellant, the state of Ohio, contends that the Huron County Court of Common Pleas' July 12, 2010 judgment entry suppressing evidence seized during a traffic stop was

in error. Because we conclude that at the time of the stop there was no reasonable suspicion of criminal activity, we affirm.

{¶ 2} On March 24, 2010, defendant-appellee, Randy Ruff, was indicted on one count of burglary, in violation of R.C. 2911.12(A)(2), one count of theft of firearms, in violation of R.C. 2913.02(A)(1)(B)(4), and one count of carrying a concealed weapon, in violation of R.C. 2923.12(A)(2)(F)(1). The charges stemmed from the March 3, 2010 burglary of firearms and other items from a residence. Appellee entered not guilty pleas to the charges.

{¶ 3} On May 6, 2010, appellee filed a motion to suppress all the evidence obtained following the stop of a pickup truck in which he was a passenger immediately prior to his arrest. Appellee argued that because the stop was warrantless and made without reasonable suspicion of criminal activity the items were illegally seized. The state opposed the motion.

{¶ 4} A hearing on the motion was held on June 15, 2010, and the following evidence was presented. Lieutenant Annette McLaughlin, of the Huron County Sheriff's Office, testified that she has been a law enforcement officer for 30 years. Lt. McLaughlin testified that on March 3, 2010, at the start of her 11:00 p.m. shift, she was called to the Lichoff residence in Willard, Huron County, Ohio, on a reported burglary. Upon arrival, McLaughlin observed that the home had been "ransacked" and Lichoff reported that his television sets and weapons, a pistol and two long guns, and ammunition were missing. Lichoff further indicated that there was no evidence of forced entry into the home and

that he believed that a key was used. Lichoff stated that his ex-girlfriend had a key and that she was now dating appellee. Lt. McLaughlin testified that in 2005, she had been involved in a criminal investigation involving appellee.

{¶ 5} Shortly after leaving the Lichoff residence, Lt. McLaughlin became aware of a traffic stop involving appellee. Just after 1:00 a.m., McLaughlin arrived at the scene and observed appellee with, who she learned was, Peter Haspeslagh. Appellee was driving without a driver's license and Mr. Haspeslagh had come to pick him up. The pickup truck that appellee was driving was towed. During the vehicle's inventory, an orange file box was found with spent ammunition. Lt. McLaughlin testified that she contacted Lichoff and determined that the box had been taken from his home.

{¶ 6} Lt. McLaughlin testified that she broke from the investigation in order to transport a prisoner. Thereafter, at approximately 3:30 a.m., she returned to Willard, Ohio, and began surveillance of Peter Haspeslagh's house on Pearl Street. McLaughlin confirmed the address by running the license plate of the maroon SUV parked in the driveway. Lt. McLaughlin testified that she parked in an adjacent driveway off the alley behind the house. McLaughlin stated that she observed a small light in Haspeslagh's detached garage. Shortly after 4:00 a.m. one of the garage doors opened and a white pickup truck backed out. Lt. McLaughlin testified that the alley was very dark and she could not see the occupants of the vehicle.

{¶ 7} After the vehicle drove by, McLaughlin pulled out and began following the truck on Pearl Street. McLaughlin still could not see who was in the vehicle. Lt.

McLaughlin stated that after the driver made an "abrupt" turn toward the curb, she activated her overhead lights and stopped the vehicle. Lt. McLaughlin testified that she approached the driver's side of the vehicle. Peter Haspeslagh, the individual who picked up appellee at the earlier traffic stop, was the driver. McLaughlin stated that appellee and an unknown individual were the passengers; they had their hands in the air.

{¶ 8} After backup arrived, Lt. McLaughlin took Haspeslagh to her police cruiser. Haspeslagh gave consent for the police to search his vehicle. Haspeslagh further stated that he picked up appellee from the traffic stop and took him to his house. After spending some time together, appellee left. Later, around 4:00 a.m., appellee and Sean Picklesimer knocked on Haspeslagh's bedroom window and asked for a ride. The search of Haspeslagh's vehicle uncovered the stolen long barrel guns in the back cab. The stolen pistol was found, loaded, under appellee's seat. Additional items were recovered in Haspeslagh's garage.

{¶ 9} During cross-examination, Lt. McLaughlin acknowledged that the Lichoff burglary occurred approximately six to eight hours prior to Lichoff's return to the residence. McLaughlin also acknowledged that the vehicle appellee was driving at the 1:00 a.m. traffic stop was not his. McLaughlin had no knowledge of who had driven the vehicle before appellee.

{¶ 10} Peter Haspeslagh testified on behalf of appellee. Haspeslagh stated that he is married to appellee's niece and that he is a corrections officer at Mansfield Correctional

Institution. Haspeslagh noted that at the initial 1:00 a.m. traffic stop, he and his wife picked up appellee in their Jeep.

{¶ 11} Describing the incident that led to appellee's arrest, Haspeslagh stated that at approximately 4:00 a.m. appellee and another individual asked him for a ride. As they were pulling out of the driveway, he noticed the police cruiser sitting in a neighbor's driveway with its lights off. Haspeslagh testified that the cruiser turned its headlights on and began following him; it pulled up "right on [his] bumper."

{¶ 12} Haspeslagh stated that he proceeded to turn left onto Pearl Street and the cruiser continued to follow him. Haspeslagh testified that once the cruiser's overhead lights were activated he veered off to the right side of the road. Haspeslagh stressed that the lights were activated prior to him veering to the curb.

{¶ 13} Haspeslagh stated that Lt. McLaughlin frisked him against the police cruiser. According to Haspeslagh, McLaughlin stated that he would lose his job if he did not produce the stolen property. Haspeslagh felt that he was coerced into giving consent to search the vehicle. Haspeslagh was not charged with any crimes in connection with the burglary and was not issued a traffic citation.

{¶ 14} During cross-examination, Haspeslagh acknowledged that he was familiar with appellee's criminal history. Haspeslagh indicated that in the morning of March 4, 2010, appellee knocked on his bedroom window and wanted a ride across town. It was not a usual occurrence.

{¶ 15} Haspeslagh denied knowledge of the stolen items in his pickup truck or in his garage. He agreed that the items must have been "stashed" before they knocked on the window.

{¶ 16} Following the hearing and post-hearing memoranda, on July 12, 2010, the trial court granted appellee's motion to suppress finding that because the officer did not know the identities of any of the individuals in the vehicle prior to the stop and that, even assuming that she correctly surmised that Mr. Haspeslagh was driving the vehicle, she had no reasonable basis to believe that criminal activity was afoot. The state then filed a certification stating that its case had been so weakened by the granting of the motion that any reasonable possibility of effective prosecution had been destroyed. This appeal followed.

{¶ 17} The state now raises the following assignment of error for our review:

{¶ 18} "The trial court erred by granting the appellee's motion to suppress because Lt. McLaughlin's investigatory stop was supported by reasonable suspicion and a minimal level of objective justification."

{¶ 19} Initially we note that review of a trial court's grant or denial of a motion to suppress presents mixed questions of law and fact. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. An appellate court defers to a trial court's factual findings made with respect to its ruling on a motion to suppress where the findings are supported by competent, credible evidence. Id.; *State v. Brooks* (1996), 75 Ohio St.3d 148, 154. "[T]he appellate court must then independently determine, without deference to the

conclusion of the trial court, whether the facts satisfy the applicable legal standard." *State v. Burnside* at ¶ 8, citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707.

{¶ 20} At issue is the validity of Lt. McLaughlin's stop of Haspeslagh's vehicle. The state contends that the trial court erroneously applied a probable cause standard in addressing the validity of the strop rather than the lesser, reasonable suspicion standard. The state asserts that, based on the circumstances including that appellee was with Haspeslagh earlier in the evening and the late hour of the stop, it was reasonable to conclude that appellee was still in Haspeslagh's company. Conversely, appellee maintains that is was unreasonable to stop the vehicle at issue because Lt. McLaughlin could not identify the occupants, the vehicle had not been involved in any past police encounters, and the vehicle was being operated lawfully.

{¶ 21} In *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, the Supreme Court of Ohio discussed the reasonable suspicion threshold when assessing the validity of an investigative stop. The court stated:

{¶ 22} "An 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.' *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621. Reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Alabama v. White* (1990), 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301. But it requires something more than an 'inchoate and unparticularized suspicion or "hunch."' *Terry v.*

Ohio (1968), 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889. '[T]he Fourth Amendment requires at least a minimal level of objective justification for making the stop.' *Illinois v. Wardlow* (2000), 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570." Id. at ¶ 35.

{¶ 23} In determining whether there was reasonable suspicion of criminal activity to justify the stop, court must look at the totality of the circumstances, including considering those circumstances "through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88.

{¶ 24} At the hearing on the motion to suppress, Lt. McLaughlin acknowledged that she did not know who was either driving or riding in the white pickup truck. The truck was not the vehicle at the earlier traffic stop. She stopped the truck based on the assumption that appellee was inside. Although McLaughlin stated that she activated her overhead lights after Mr. Haspeslagh made an abrupt swerve toward the curb, Haspeslagh testified that he proceeded to the curb after observing the cruiser's overhead lights. The trial court found Haspeslagh's testimony to be credible and that Lt. McLaughlin initiated the stop. While Lt. McLaughlin's assumption proved correct, we agree with the trial court that she lacked reasonable suspicion to initiate the stop. Lt. McLaughlin acted on a hunch, such action is constitutionally invalid. See *Terry v. Ohio*, 392 U.S. at 27.

{¶ 25} Based on the foregoing, we find that the trial court did not err when it granted appellee's motion to suppress the evidence seized as a result of the warrantless search. Appellant's assignment of error is not well-taken.

{¶ 26} On consideration whereof, we find that substantial justice was done the party complaining and the judgment of the Huron County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE