[Cite as *State v. Williams*, 2011-Ohio-5909.]

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

State of Ohio — Court of Appeals No. L-10-1303

Appellee — Trial Court No. CR0200903453

v.

Vincent Williams — **DECISION AND JUDGMENT**

Appellant — Decided: November 10, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer L. Donovan, Assistant Prosecuting Attorney, for appellee.

Ernest E. Bollinger, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This is an appeal from a judgment entered by the Lucas County Court of Common Pleas, denying appellant's motion to suppress evidence that was seized as a result of appellant's arrest. Because we conclude that the trial court properly denied the motion to suppress, we affirm.

{¶ 2} Appellant, Vincent Williams, was indicted on three counts: Count 1, felonious assault, in violation of R.C. 2903.11(A)(2); Count 2, carrying a concealed weapon, in violation of R.C. 2912.12(A)(2) and (F); and Count 3, having weapons while under disability, in violation of R.C. 2923.12(A)(3). The charges stemmed from incidents related to appellant's arrest on December 22, 2009. Appellant pled not guilty and moved to suppress evidence seized during the arrest.

{¶ 3} On February 4, 2010, the trial court conducted a hearing on the motion to suppress. On June 15, 2010, appellant moved to submit newly obtained evidence, which the trial court granted on September 22, 2010. The following facts were presented at the February hearing and included within the later admitted evidence:

{¶ 4} On December 22, 2009, a task force of Toledo area police officers was conducting special surveillance in an area where several burglaries had occurred. The officers were in plain clothes and unmarked police vehicles. A Sylvania Township Police Officer, Detective William Hunt, testified they were looking for "suspicious activity, persons indicative of burglaries, commercial or residential burglaries." He stated that he had received a dispatch that several calls had come in about a black male wearing black clothing, in a purple vehicle who was acting suspicious. The suspect was knocking on doors and walking around the outside of houses, looking into windows.

{¶ 5} Hunt said that he drove to the Crestwood Road location specified by these calls. He saw a male dressed in black, who got out of a purple car, parked in the street with its lights on. The man walked up to a house to the door. Hunt momentarily lost

sight of the man while looking for a driveway to pull into and watch the man. Hunt then saw the man hurry back to his car and start to drive off. He advised others in the task force of the moving vehicle, and then followed it. When the car turned south on Belmar, another task force police officer, Detective Jeff Kozak, began to follow him, and Hunt then turned onto the next street and drove parallel to the suspect's car.

{¶ 6} While police were following the purple car, another call came in that a resident reported seeing a black male wearing dark clothing kick in the door of a house across the street. Hunt heard Kozak say that the car was slowing down, which indicated he might be getting ready to "bail out" from the car and run. At this point, the suspect was stopped at an intersection by two other unmarked police cars. Hunt pulled up just as officers were taking the man from his vehicle. Hunt stated that he believed that the person identified as kicking a door was the same person that he had been following, and identified appellant in court as that man.

{¶ 7} Detective Lewandowski, another officer on the task force, testified that he had also heard the dispatcher's call describing a black male in dark clothing, driving a purple vehicle, who was "trying doors at Amesbury and Bradmore." A short time later, an additional 911 call came in from 1543 Crestwood, two or three blocks from the first call location, stating that a black male had approached the side of the house, and then walked up to the front and was pounding on the door.

{¶ 8} Lewandowski stated that he drove to the area of the Crestwood address, where Officer Hunt was already in pursuit of a purple vehicle. Hearing the dispatcher's

broadcast of the location of the vehicle, Lewandowski drove to that area. As the purple vehicle approached the corner of Eleanor and Belmar and stopped, Lewandowski pulled in front of the vehicle and stopped about 15 feet away. Another officer, Lieutenant Schultz, also pulled up, boxing in the purple vehicle. Lewandowski said Detective Kozak then pulled up and stopped approximately ten feet behind the vehicle .

{¶ 9} Lewandowski testified that the officers got out of their cars and identified themselves as police officers. Lewandowski said that he and Schultz were both wearing badges on cords hanging from their necks and had radios in their hands. They told the driver, later identified as appellant, to exit the vehicle. When appellant refused to open his door or exit the vehicle, Schultz tried to break open appellant's car window. Appellant then backed up his car, hitting and damaging Detective Kozak's vehicle. Lewandowski said that the officers then removed appellant from the vehicle, at which point they "observed a handgun in the door handle of the vehicle." Appellant was then taken into custody.

{¶ 10} After the trial court denied appellant's motion to suppress on September 22, 2010, appellant entered a guilty plea pursuant to *North Carolina v. Alford*, on the charge of carrying a concealed weapon, and was sentenced to two years of community control with 30 days of electronic monitoring. He reserved the right to appeal the court's denial of his motion to suppress. Counts 1 and 3 were dismissed.

{¶ 11} Appellant asserts the following sole assignment of error:

{¶ 12} "The trial court erred when it denied Defendant-Appellant's motion to suppress in violation of his rights under the constitutions of Ohio and the United States."

{¶ 13} Appellate review of a motion to suppress "presents a mixed question of law and fact. 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. * * * Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. * * * Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." (Internal citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003–Ohio–5372, ¶ 8.

{¶ 14} The Fourth Amendment to the United States Constitution restrains warrantless searches and seizures and renders them per se unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 357. One common exception to the Fourth Amendment warrant requirement is an investigative, or *Terry*, stop. See *Terry v. Ohio* (1968), 392 U.S. 1. A police officer is permitted for a short period to stop and detain a person, without an arrest warrant and without probable cause, for the purposes of investigating a reasonable and articulable suspicion of criminal activity. See id.; *State v. Bobo* (1988), 37 Ohio St.3d 177; *State v. Good*, 12th Dist. No. CA2007–03–082, 2008–Ohio–4502, ¶ 18. In other words, "police must be able to cite to articulable facts that give rise to a reasonable suspicion that an individual is currently

engaged in, or is about to engage in, criminal activity." *State v. McMullen*, 12th Dist. No. CA2009–09–235, 2010–Ohio–3369, ¶ 12, citing *Terry*, supra.

{¶ 15} The propriety of an investigative stop must be considered under the totality of the surrounding circumstances, from the view of "a reasonably prudent police officer on the scene guided by his experience and training." *Bobo*, supra, at 179; *State v. Baughman*, 192 Ohio App.3d 45, 2011–Ohio–162, ¶ 15, citing *State v. Batchili*, 113 Ohio St.3d 403, 2007–Ohio–2204, paragraph two of the syllabus. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.

{¶ 16} A second exception permitting a police officer to initiate contact is when the officer has "probable cause to believe a crime has been committed and the person stopped committed it." *State v. Richardson*, 5th Dist. No.2004CA00205, 2005–Ohio–554, ¶ 23–27; *United States v. Flowers* (6th Cir.1990), 909 F.2d 145, 147. To have probable cause, the arresting officer must have sufficient information, derived from a reasonably trustworthy source, which would warrant a reasonably prudent person to believe that the person to be arrested has committed a crime. *State v. Timson* (1974), 38 Ohio St.2d 122, paragraph one of the syllabus. See, also, *Beck v. Ohio* (1964), 379 U.S. 89 and *State v. Fultz* (1968), 13 Ohio St.2d 79.

{¶ 17} "The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and

then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause." *Ornelas v. United States* (1996), 517 U.S. 690, 696. A police officer may draw inferences based on his own experience in deciding whether probable cause exists. See, e.g., *United States v. Ortiz* (1975), 422 U.S. 891, 897. The "quantum of information" constituting probable cause for a warrantless arrest must be measured by the facts of each particular case. *Wong Sun v. United States* (1963), 371 U.S. 471, 479. In addition, "probable cause generally focuses on the actions of the accused just prior to the arrest." *State v. Young*, 6th Dist. 04-CA-013, 2005-Ohio-3369, ¶ 20.

{¶ 18} In this case, police officers heard the dispatch description of a person in dark clothing driving a purple car who had been looking through windows and jiggling doorknobs of homes in the area. An additional call came in that a man dressed in dark clothing had kicked or pounded on the door of a home on the nearby Crestwood Street. Shortly thereafter, a police officer observed appellant , dressed in dark clothing, approach the side of a house on Crestwood, go up on the porch area, and then, hurry back to a purple car. At minimum, the officer had reasonable suspicion at this point that a crime had either been committed or was about to be committed, warranting a *Terry* stop. When officers stopped appellant's vehicle and identified themselves as police officers, appellant then refused to exit his car. The officers then had enough facts to infer that appellant was the suspect who had been attempting to break into homes, establishing probable cause to arrest appellant. While removing appellant from his vehicle, officers

observed and properly seized the handgun, which was in plain sight in the car door. Therefore, because the gun was seized pursuant to a valid warrantless stop or arrest, the trial court properly denied the motion to suppress.

{¶ 19} Appellant's sole assignment of error is not well-taken.

{¶ 20} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App. R. 24.

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.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE