[Cite as *State v. Pittman*, 2012-Ohio-3297.]

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

State of Ohio — Court of Appeals No. L-10-1290

Appellee — Trial Court No. CR0201001252

v.

Alfonzo Pittman — **DECISION AND JUDGMENT**

Appellant — Decided: July 20, 2012

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Kathryn J. T. Sandretto, Assistant Prosecuting Attorney, for appellee.

Tim A. Dugan, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Alfonzo Pittman, appeals from a decision of the Lucas County Court of Common Pleas denying his motion to suppress. For the reasons that follow, we affirm.

{¶ 2} On February 11, 2010, appellant was indicted on one count of carrying a concealed weapon, a violation of R.C. 2923.12 (A)(2) and (F) and a felony of the fourth degree. He filed a motion to suppress evidence of the gun which led to his indictment. A suppression hearing commenced on June 18, 2010.

{¶ 3} Toledo Police Officer Nicholas Bocik testified that he and a partner were on patrol at approximately 1:40 a.m. on February 1, 2010, when they saw a car illegally parked in the middle of the roadway. They pulled their cruiser behind the car and activated their overhead lights. At the same time, Bocik observed appellant walking from the parking lot of a closed business to the passenger side of the stopped car. His partner approached the driver's side of the car while Bocik approached the passenger side, where appellant was now sitting. Bocik asked appellant where he was coming from and appellant told him he was getting a ride from the driver of the stopped car. At the same time, Bocik's partner spoke to the driver and determined that she did not have a driver's license. Bocik asked appellant to step out of the car for his own safety and because he suspected a crime had been committed. He asked appellant if he was carrying anything that Bocik should be aware of. Appellant responded that he had a gun. Bocik took possession of the gun that was located under appellant's clothes. He then placed appellant under arrest.

{¶ 4} On August 4, 2010, the trial court denied the motion. Appellant subsequently entered a no contest plea to the charge of carrying a concealed weapon. He

was sentenced to serve 90 days in jail and complete 5 years of community service. Appellant now appeals setting forth the following assignment of error:

> The Trial Court erred in denying Appellant's motion to suppress evidence.

{¶ 5} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of the trier of fact and is, therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992); *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996). As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). The reviewing court must then review the trial court's application of the law de novo. *State v. Russell*, 127 Ohio App.3d 414, 416, 713 N.E.2d 56 (9th Dist.1998).

{¶ 6} The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Under *Terry*, police officers may briefly stop and/or temporarily detain individuals in order to investigate possible criminal activity if the officers have a reasonable, articulable suspicion that criminal activity may be afoot. *State v. Martin*, 5th Dist. No. 20270, 2004-Ohio-2738, ¶ 10, citing *Terry*, *supra*.

{¶ 7} An investigative stop, or *Terry* stop, is a common exception to the Fourth Amendment warrant requirement. *Terry v. Ohio*, *supra*. In order to effectuate a *Terry* stop, the police need not witness the suspect actually engaged in criminal activity. Otherwise, there would be probable cause to arrest. Rather, it is sufficient that the police witness the suspect engaged in activity that, although not illegal in itself, is sufficient to give rise to a reasonable suspicion that the suspect is engaged in criminal activity. *Toledo v. Penn*, 109 Ohio Misc.2d 1, 741 N.E.2d 242 (M.C.2000).

{¶ 8} Whether a police officer had "an objective and particularized suspicion that criminal activity was afoot must be based on the entire picture—a totality of the surrounding circumstances." *State v. Andrews*, 57 Ohio St.3d 86, 565 N.E.2d 1271 (1991). "[The] circumstances are to be viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *Andrews*, *supra*, at 87-88. "A court reviewing the officer's actions must give due weight to his experience and training and view the evidence as it would be understood by those in law enforcement." *Id*. at 88.

{¶ 9} Here, Bocik, with four years of experience as a police officer, had a reasonable, articulable suspicion that appellant may be involved in criminal activity. He encountered appellant at 1:40 a.m., walking through a parking lot of a closed business and headed towards an illegally parked car. Bocik testified that the general area in which he encountered appellant has been an area of town that has seen a lot of burglaries. We find that, based on the totality of the circumstances, Bocik was justified in making a brief,

investigative stop of appellant. Accordingly, appellant's assignment of error is found not well-taken.

{¶ 10} 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

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
CONCUR.
JUDGE