

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No. 25164

Appellee

v.

SHANNON L. SAMMONS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 08 08 2598

Appellant

DECISION AND JOURNAL ENTRY

Dated: November 24, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Lieutenant Terry Pasko and Detective Ted Male saw Shannon Sammons sitting in the driver seat of a car parked in the parking lot of a convenience store for close to ten minutes. Because the parking lot had been the location of numerous drug arrests and the officers did not see Mr. Sammons or the passenger of his car go to or from the store, they became suspicious about whether Mr. Sammons was in the lot to engage in a drug transaction. Detective Male, therefore, pulled his cruiser behind Mr. Sammons’s car and approached the driver’s side window. His partner approached the passenger side. As he was approaching the car, Detective Male saw Mr. Sammons make a “furtive” movement toward the center console. Suspecting Mr. Sammons might have a weapon in the car, Detective Male asked him to step out of it. When Mr. Sammons refused, Detective Male grabbed his arm, removed him from the vehicle, handcuffed him, and searched him and the car. The Grand Jury indicted Mr. Sammons for trafficking in

cocaine, possession of cocaine, and possession of criminal tools. After the trial court denied his motion to suppress, Mr. Sammons pleaded no contest to possession of cocaine, and the trial court found him guilty of that offense. Mr. Sammons has appealed the denial of his motion to suppress. We affirm because, based on the totality of the circumstances, Detective Male had reasonable suspicion that Mr. Sammons might be engaged in illegal activity.

STANDARD OF REVIEW

{¶2} Mr. Sammons’s assignment of error is that the trial court incorrectly denied his motion to suppress. A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, at ¶8. Generally, a reviewing court “must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Id.* But see *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶14 (Dickinson, J., concurring). The reviewing court “must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *Burnside*, 2003-Ohio-5372, at ¶8.

REASONABLE SUSPICION

{¶3} Although a police officer generally may not seize a person within the meaning of the Fourth Amendment unless he has probable cause to arrest the person for a crime, “not all seizures of the person must be justified by probable cause” *Florida v. Royer*, 460 U.S. 491, 498 (1983). In appropriate circumstances, “a police officer may . . . approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Terry v. Ohio*, 392 U.S. 1, 22 (1968). “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.’” *State v. Jordan*, 104

Ohio St. 3d 21, 2004-Ohio-6085, at ¶35 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). An officer must “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968). “[T]he facts [must] be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?” *Id.* at 21-22 (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

{¶4} 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, 87 (1991) (citing *United States v. Cortez*, 449 U.S. 411, 417-18 (1981); *State v. Bobo*, 37 Ohio St. 3d 177, 178 (1988)). “[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*, 57 Ohio St. 3d 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. Officers may “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’” *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). Furthermore, “[t]he reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately rely’ in determining whether an investigative stop is warranted.” *Bobo*, 37 Ohio St. 3d at 179 (quoting *United States v. Magda*, 547 F.2d 756, 758 (2d Cir. 1976)).

{¶5} Lieutenant Pasko testified that he was in an unmarked car around 9:20 p.m. patrolling known problem areas of the City of Akron as part of a gun reduction sweep when he noticed Mr. Sammons's car sitting by itself in the parking lot of a convenience store. He testified that he had made an arrest in the parking lot of that convenience store in the past and knew that other officers had been approached by drug dealers in that parking lot.

{¶6} According to Lieutenant Pasko, he saw three people talking outside the car near its rear passenger side and one person sitting in the car's driver seat. He decided to loop around the block to continue observing the situation. About two minutes later, he drove by the car again and saw that one of the people who had been standing outside the car was now sitting in the passenger seat. The other individuals who had been standing outside the car were about 20 feet from it, walking near a retaining wall. Lieutenant Pasko testified that he turned his car around and stopped so he could watch the occupants of the car. After he watched them for a little while and "realized nobody was doing anything as far as getting out of the car," he called for a uniformed officer to approach it. According to Lieutenant Pasko, his training, experience, and knowledge of the neighborhood, together with his observation of the three individuals outside the car, followed by the lack of activity of the occupants of the car, led him to suspect that a drug transaction had taken place.

{¶7} Detective Male testified that he works for the Street Narcotics Uniform Detail and has been to a number of drug interdiction schools. He testified that, at the time Lieutenant Pasko was observing Mr. Sammons's car, he was in uniform, in a typical police cruiser, participating in the same gun reduction sweep. He testified that he had noticed the same car as Lieutenant Pasko and knew exactly which car he was referring to when his call came in to stop it. He further

testified that, since 2000, his unit has made approximately 50 drug arrests in that convenience store parking lot.

{¶8} According to Detective Male, when he first passed by Mr. Sammons's car, he saw a "group hanging out next to the passenger side" and someone sitting in the driver seat. He drove by the store again six to ten minutes later. At that point, there were individuals sitting in the driver and passenger seats and nobody standing outside the car. When Lieutenant Pasko's instruction came in a short time later, he turned his cruiser around and pulled in right behind Mr. Sammons's car, which was still parked in the same location.

{¶9} Detective Male testified that he got out of his cruiser and approached the driver's side of the car and his partner approached the passenger's side. He testified that, as he approached the car, he saw Mr. Sammons "leaning across the center console" making a "furtive movement near the center console." According to Detective Male, when he got to the car, he tapped on the driver's side window. He recognized Mr. Sammons, who he had known for about a decade, but, at first, Mr. Sammons would not roll down the window. When Mr. Sammons finally rolled his window down, Detective Male asked him for his identification. Detective Male testified that, because Mr. Sammons appeared nervous and was being evasive, and because he was concerned, considering Mr. Sammons's furtive movement, that Mr. Sammons might have a weapon, he asked Mr. Sammons to step out of the car. According to Detective Male, Mr. Sammons started to step out of the car, but then stopped, telling him that he did not have to exit the car. Detective Male testified that Mr. Sammons's reluctance to exit the car raised his concerns about his safety. He, therefore, "grabbed [Mr. Sammons's] left wrist, . . . placed him in a wristlock, and . . . escorted him" from the car. After he got Mr. Sammons out of the car, Mr.

Sammons “attempted to pull away.” Detective Male, therefore, handcuffed him and patted him down for weapons. During the pat-down, he found drugs on Mr. Sammons.

{¶10} Mr. Sammons has argued that the police officers did not articulate facts indicating that they had reasonable suspicion that the occupants of his car were engaged in criminal activity. He has argued there was nothing about his conduct that justified a police stop. He has further argued that the duration and extent of his detention exceeded the scope of a *Terry* stop.

{¶11} The officers saw Mr. Sammons sitting in the driver’s seat of his car in a convenience store parking lot for up to ten minutes. During that time, neither Mr. Sammons nor the passenger of his car went to or from the store. Both officers knew that the parking lot had a history of being associated with drug and other criminal activity. Although it is possible that Mr. Sammons and his passenger were merely waiting for someone who was inside the convenience store, the officers could reasonably infer that they were not waiting for anyone, considering the amount of time that they were sitting in the parking lot and the fact that there was only one other car in the lot, suggesting that the store was not crowded. We, therefore, conclude that Lieutenant Pasko and Detective Male had reasonable suspicion to begin an investigatory stop.

{¶12} Regarding the extent of the stop, the United States Supreme Court has recognized that “[t]he scope of the intrusion permitted will vary to some extent with the particular facts and circumstances of each case.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). “[A]n investigative detention must . . . last no longer than is necessary to effectuate the purpose of the stop.” *Id.* Furthermore, “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Id.*

{¶13} Having validly begun an investigatory stop, Detective Male saw Mr. Sammons engage in additional conduct that heightened his suspicions. He saw Mr. Sammons make a

furtive movement toward the center of his car, which he said, given his knowledge of the area and his previous history with Mr. Sammons, suggested that Mr. Sammons had a weapon. He also noticed that Mr. Sammons was reluctant to open his window, was “evasive,” and appeared “nervous” and “excited.” Giving due weight to Detective Male’s training, experience, and his concern for his safety, we cannot say that he was not permitted to ask Mr. Sammons to exit his car, to remove Mr. Sammons from the car when he refused, or to handcuff him and pat him down for weapons when Mr. Sammons attempted to pull away from him after being removed from the car. See *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (concluding that officer’s order to get out of the car was de minimis inconvenience to driver when balanced against officer’s legitimate concerns for his safety); *State v. Evans*, 67 Ohio St. 3d 405, 409 (1993) (holding that an officer may conduct a pat-down search for weapons after ordering an individual from a car if, under the totality of the circumstances, he “had a reasonable, objective basis” for frisking the individual).

{¶14} The trial court correctly concluded that Lieutenant Pasko and Detective Male articulated specific, objective facts which, taken together with rational inferences from those facts, reasonably warranted their investigatory stop of Mr. Sammons’s car. Mr. Sammons’s assignment of error is overruled.

CONCLUSION

{¶15} The trial court correctly denied Mr. Sammons’s motion to suppress. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

CHARLES R. QUINN, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN R. DIMARTINO, assistant prosecuting attorney, for appellee.