[Cite as *State v. Starr*, 2015-Ohio-2193.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. ROBERT STARR Appellant	C.A. No. 14CA010586 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 14CR086195

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

SCHAFER, Judge.

{¶1} Defendant-Appellant, Robert Starr, appeals the judgment of the Lorain County Court of Common Pleas convicting him of four drug offenses and sentencing him to a total prison term of two years. On appeal, he argues that the trial court erred in failing to suppress evidence obtained from an investigatory stop. For the reasons that follow, we affirm.

I.

{¶2} Starr was indicted on the following counts: (1) one count of trafficking in drugs in violation of R.C. 2925.03(A)(2); (2) one count of possession of drugs in violation of R.C. 2925.11(A); (3) one count of illegal conveyance of drugs of abuse onto the grounds of a specified government facility in violation of R.C. 2921.36(A)(2); and (4) one count of illegal possession of drug paraphernalia in violation of R.C. 2925.14(C)(1). The indictment arose from an incident in which Lorain Police Department officers stopped Starr's vehicle in the parking lot

of a Walmart. After the stop, officers conducted a search in which they found drugs and drug paraphernalia in his possession.

{¶3} Starr moved to suppress the items found after the police conducted the investigatory stop. The asserted basis for suppression was that the officers lacked the requisite reasonable suspicion to effectuate the stop. The trial court conducted a suppression hearing at which it received the testimony of Lorain Police Department Officer Matthew Sedivy. At the time of the stop, Officer Sedivy had been a member of the police force for approximately two years and had been assigned to the Community Impact Unit for less than a year. This specialized unit was designed to target violent crime and drug offenses. Officer Sedivy indicated that he was trained in certain law enforcement techniques relating to drug offenses.

{¶4} Officer Sedivy testified that the department had received multiple complaints regarding drug activity in the parking lot of the Lorain Walmart and consequently assigned teams to conduct drug surveillance at that location. He specifically indicated that the Walmart parking lot was known as a high drug activity area: "Through training, and plus what my C.O. [commanding officer] has told me, commonly they use the parking lot to conduct drug transactions as well as other officers of our police department had made felony drug arrests out of the parking lot before." Officer Sedivy explained that when he conducts drug surveillance activities, he is trained to focus his attention on vehicles in the parking lot that have occupants who are not conducting business at the store since they tend to be involved in illegal activity.

{¶5} On the day of Starr's stop, Officer Sedivy noticed a vehicle in the parking lot that was parked far away from the entrance. The occupant did not get out of the vehicle for 10 minutes, no one else exited or entered it, and instead the occupant just sat there without making any furtive movements. Officer Sedivy, along with the other officers performing the

surveillance, identified the occupant as Gregg Sislowski, an individual known to the Lorain Police Department from his previous drug offense arrests. The officers ran the license plate for Sislowski, but their search returned no hits for active warrants.

{¶6} After Sislowski was identified and the officers observed his vehicle, they noticed a blue Chevrolet Tahoe drive into the parking lot, circle Sislowski's car twice, and then park two aisles away at the very back of the lot. No other cars were around Sislowski's vehicle and the Tahoe. Based on this activity, Officer Sedivy concluded that Sislowski and the occupant of the Tahoe, later identified as Starr, knew each other and were setting up a drug transaction. Officer Sedivy then saw Sislowski get out of his vehicle, walk over to the Tahoe, and get in the backseat. The Tahoe then started to drive away and the police stopped it based on Officer Sedivy's conclusion from his observations and training that a drug transaction had started to occur.

{¶7} After receiving the testimony of Officer Sedivy, the trial court denied Starr's motion to suppress. It found that the totality of the circumstances provided Officer Sedivy with reasonable suspicion to effectuate the stop of Starr's Tahoe. In its judgment entry denying the motion to suppress, the trial court specifically outlined the following factors as supporting its finding of reasonable suspicion:

> the many complaints received of drug activity occurring at [the Walmart parking lot]; the prior felony arrests made at that location; vehicles parked in the back of the parking lot not conducting any business with Wal-Mart; recognizing Sislowski due to his prior criminal involvement including, but not limited to prior drug arrests; the Tahoe entering the parking lot and then driving away after Sislowski enters the Tahoe.

After the trial court's denial of the motion to suppress, Starr pled no contest to all of the charges alleged in the indictment and was subsequently sentenced to a two-year prison term.

{¶8} Starr now appeals his conviction and sentence, presenting one assignment of error for our review.

II.

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE.

{¶9} In his sole assignment of error, Starr asserts that the trial court erred by not suppressing evidence obtained after the stop of his vehicle. Specifically, he claims the totality of circumstances do not support the finding that Officer Sedivy had the requisite reasonable suspicion to effectuate the stop. We disagree.

A. Standard of Review for Motions to Suppress

{¶10} Our review of a trial court's ruling on a motion to suppress "presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In considering this mixed question, we view the trial court as serving as the trier of fact and the primary judge of witness credibility and the weight of the evidence presented. *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Consequently, we must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, ¶ 100. However, we afford no such deference when considering the trial court's application of the law to the facts. Rather, we apply de novo review on this point. *Burnside* at ¶ 8; *accord State v. Clayton*, 9th Dist. Summit No. 27290, 2015-Ohio-663, ¶ 7 ("[T]his Court reviews the trial court's factual findings for competent, credible evidence and considers the legal conclusions de novo.").

B. Fourth Amendment's Protections in Context of *Terry* Stops

{¶11} The Fourth Amendment to the United States Constitution, which is incorporated against the States by the Fourteenth Amendment, relevantly provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" Article I, Section 14 of the Ohio Constitution, which has

language almost identical to the Fourth Amendment, affords Ohioans coextensive protections against unreasonable searches and seizures. *State v. Robinette*, 80 Ohio St.3d 234, 245 (1997). The Fourth Amendment's protections are critical to the preservation of personal liberty as they are all that often stand between a citizen and the intrusive arm of government. *See Alderman v. United States*, 394 U.S. 165, 175 (1969) ("We do not deprecate Fourth Amendment rights. The security of persons and property remains a fundamental value which law enforcement officers must respect."); *Lewis v. United States*, 385 U.S. 206, 209 (1966) ("The various protections of the Bill of Rights, of course, provide checks [on governmental action] for the protection of the individual."); *Lopez v. United States*, 373 U.S. 427, 455 (1963) (Brennan, J., dissenting) ("The informing principle of both Amendments [the Fourth and Fifth] is nothing less than a comprehensive right of personal liberty in the face of governmental intrusion."). But, the Fourth Amendment does not offer blanket protection against governmental searches and seizures; it simply proscribes *unreasonable* searches and seizures. *See Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) ("The ultimate touchstone of the Fourth Amendment is reasonableness."); *Katz v. United States*, 389 U.S. 347, 358 (1967) ("Wherever a man may be, he is entitled to know that he will remain free from *unreasonable* searches and seizures") (Emphasis added.).

{¶12} In considering the reasonableness of police action, we must be mindful that "[s]earches conducted without a warrant are presumptively unreasonable[.]" *State v. Jones*, 9th Dist. Lorain No. 12CA010270, 2013-Ohio-2375, ¶ 8, citing *Payton v. New York*, 445 U.S. 573, 586 (1980). To overcome the presumption of unreasonableness, the State must show that an exception to the warrant requirement applies. *See Katz* at 357 ("Searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated

exceptions."). One such exception is the *Terry* stop exception, which gives the imprimatur of the Fourth Amendment to investigatory seizures that are supported by "articulable suspicion that a person has committed or is about to commit a crime." *Florida v. Royer*, 460 U.S. 491, 498 (1983); *see also State v. Andrews*, 57 Ohio St.3d 86, 87 (1991) ("[A] police officer may stop and investigate unusual behavior, even without probable cause to arrest, when he reasonably concludes that the individual is engaged in criminal activity."). A *Terry* stop is only justifiable under the Fourth Amendment when the officer is able to enunciate "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). The emphasis in a *Terry* analysis is not on one single factor, but rather on the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177 (1988), paragraph one of the syllabus. We have recognized that a totality review requires us to consider "(1) [the] location; (2) the officer's experience, training, or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances." *State v. Biehl*, 9th Dist. Summit No. 22054, 2004-Ohio-6532, ¶ 14, citing *Bobo* at 178-179.

C. Officer Sedivy's Basis for Reasonable Suspicion

{¶13} Officer Sedivy's testimony at the suppression established that the Walmart parking lot was a high drug area. The Lorain Police Department had received multiple complaints of drug transactions there and Officer Sedivy knew that other officers in his department had made felony arrests at the location. *See State v. Curry*, 95 Ohio App.3d 93, 97 (8th Dist.1994) (finding that area where *Terry* stop occurred was "high crime" based on "numerous complaints regarding narcotic activity"). Moreover, while Officer Sedivy is newer to the force, he testified that he has been trained in law enforcement techniques and specifically those relating to drug enforcement. *See Biehl* at ¶ 14 (stating that courts should consider

officer's experience, training, *or* knowledge). As a result of this training and the knowledge he had regarding the Walmart parking lot, Officer Sedivy was able to identify that a drug transaction was afoot when he directly observed the actions of Starr and Sislowski, a known actor in the Lorain drug scene. *See State v. Morales*, 92 Ohio App.3d 580, 584 (8th Dist.1993) (finding that reasonable suspicion existed where the defendant was sitting in car with a "known drug dealer and drug user").

{¶14} Sislowski sat in his vehicle for 10 minutes while parked near the back of the parking lot away from the other cars. He did not go into the Walmart nor did anyone else enter or exit his car for the purpose of going into Walmart. *See State v. Sammons*, 9th Dist. Summit No. 25164, 2010-Ohio-5731, ¶ 14 (finding reasonable suspicion of drug activity where car was in convenience store parking lot for 10 minutes and none of the car occupants were seen going into the store). Officer Sedivy then saw Starr drive his Tahoe into the lot and suspiciously circle around Sislowski's vehicle twice before pulling into a parking spot two aisles away at the very back of the lot. At that time, Sislowski got out of his vehicle, walked to the Tahoe, and got into the backseat. Based on the observation of this behavior, his training, and his experience, Officer Sedivy reasonably concluded that a drug transaction was occurring and he took constitutionally sustainable action to stop the Tahoe and investigate. *See State v. Chadwell*, 182 Ohio App.3d 256, 2009-Ohio-1630, ¶ 24 (2d Dist.) (finding that reasonable suspicion of drug activity existed where the defendant drove repeatedly to the same street without entering a residence before stopping and being approached by an individual who was under drug surveillance). In light of all these circumstances, we see no error in the trial court's finding that the investigatory stop of Starr was based on reasonable suspicion and passed constitutional muster.

D. Starr's Unavailing Arguments

{¶15} Starr fails to persuasively show how these circumstances, taken together, fall below the standard of reasonable suspicion. *See State v. Davison*, 9th Dist. Summit No. 26825, 2004-Ohio-3251, ¶ 15 ("Each of the factors articulated by the officers, standing alone, may not have given rise to reasonable suspicion * * *; however, when the six facts are viewed together * * *, they provide clear justification to stop Defendant's car and pursue a limited investigation."). Starr's first argument relates to the location of the *Terry* stop. He asserts that "[n]o evidence was introduced to support" the conclusion that the Walmart parking lot was a high drug area. He further describes Officer Sedivy's description of the area as a high drug area as "disingenuous at best." Starr's criticisms are contradicted in the record. Officer Sedivy testified to the complaints of drug transactions in the parking lot and the previous occurrence of felony drug arrests in the parking lot. This constitutes some competent, credible evidence to support the trial court's finding that the parking lot was a high drug area and we see no reason to disregard that finding as clearly erroneous. *See State v. Oden*, 9th Dist. Summit No. 27151, 2014-Ohio-2752, ¶ 5 ("The area of the apartment building was a known drug area, as a number of drug complaints and arrests had been made at that location."); *State v. Shorts*, 9th Dist. Lorain No. 11CA009965, 2011-Ohio-6202, ¶ 15 (describing area as "high crime, high drug activity" due to the leveling of citizen complaints); *Curry*, 95 Ohio App.3d at 97 (finding that the area was "high crime" based on "numerous complaints regarding narcotic activity").

{¶16} Also, in regard to location, Starr alternatively contends that even if the Walmart parking lot was a high drug area, his presence there does not by itself create reasonable suspicion. Indeed, this is a correct statement of law. *See, e.g., State v. Floyd*, 9th Dist. Lorain No. 11CA010033, 2012-Ohio-990, ¶ 5 ("[A] person's mere presence in a high crime area is

insufficient to justify an investigatory stop."). But, our decision here does not rely simply on Starr's presence in the Walmart parking lot. Rather, as required by *Terry*, we rely on the totality of the circumstances of which Starr's presence in the parking lot is but one factor. *See Davison* at ¶ 14-15 (rejecting the defendant's argument that there is no reasonable suspicion simply based on his presence in a high crime area since "the officers had substantial indicators of criminal activity").

{¶17} Starr's second argument is that his conduct in the parking lot did not have any indicia of criminal activity or suspicion. Specifically, he claims that there were other "possible innocent, lawful conclusions" that Officer Sedivy could reach from the behavior that he observed. Starr suggests two such possible conclusions: (1) Sislowski was waiting in his vehicle to pick up a family member from the store; or (2) Sislowski was experiencing car trouble and waiting for a ride. Based on the evidence presented at the suppression hearing, we find that neither of these possible explanations precludes a finding of reasonable suspicion.

{¶18} As to the possibility that Sislowski was waiting to pick up a family member, Officer Sedivy's testimony succinctly refuted Starr's argument: "And if they are waiting for somebody inside the store, you are going to park a little closer than all the way in the back. It would have been an odd place [to park]." Additionally, the possibility that Sislowski was waiting for a family member in the store was rendered even less likely when Officer Sedivy observed him exit his vehicle and get into the backseat of Starr's Tahoe. If he was truly waiting for a family member, as suggested, Sislowski would not have left his vehicle before his purported family member's return and gotten into the backseat of a newly arrived car. In regard to the possibility that Sislowski was experiencing car trouble, we find that Officer Starr had no

basis to expect this scenario. He did not observe Sislowski making any repairs to the vehicle nor was there any indication, such as an opened hood or a flat tire, of car trouble.

{¶19} In support of his "innocent explanation" argument, Starr analogizes to *State v. Klein*, 73 Ohio App.3d 486 (4th Dist.1991). There, a police officer observed the defendant's parked vehicle in a private parking lot at 1:35 a.m. The area surrounding the parking lot suffered from a "continual problem * * * with people tearing up cars and stealing items from cars[.]" *Id.* at 488. Once the officer pulled into the lot, the defendant pulled out and started to drive away from the scene. This led to the officer immediately pulling the vehicle over. The Fourth District Court of Appeals concluded that these facts did not give rise to articulable reasonable suspicion since the defendant's "activities prior to the investigative stop were equally consistent with innocent behavior." *Id*. at 489.

{¶20} The circumstances here are markedly different from those addressed in *Klein*. Rather than merely seeing a parked car, as the officer did in *Klein*, Officer Sedivy observed Sislowski's vehicle parked near the back of a parking lot, known for drug activity, and sitting there for 10 minutes without any of its occupants entering or exiting the store. He also observed Starr drive his Tahoe around Sislowski's vehicle twice before pulling two aisles away at the very back of the lot. And, finally, Officer Sedivy saw Sislowski get out of his vehicle, walk over to the Tahoe, and then get into the backseat. These circumstances have far greater indicia of criminality than the defendant's mere parking of his car in *Klein*.[1] Consequently, we decline to follow *Klein*'s guidance here and we reject Starr's innocent explanation argument. *See State v. Peak*, 11th Dist. Lake No. 2004-L-124, 2005-Ohio-6422, ¶ 21 (distinguishing *Klein* where

[1] We note that *Klein* predates the United States Supreme Court's judgment in *Illinois v. Wardlow*, 528 U.S. 119 (2000). There, the Court found that there was reasonable suspicion where the defendant was seen in a high crime area and he fled from police. *Id*. at 124.

trained security guards observed activity with indicia of criminality); *Barberton v. Rhines*, 9th Dist. Summit No. 16548, 1994 WL 431413, * 2 (Aug. 10, 1994) (distinguishing *Klein* since police officers observed behavior suggesting that criminal activity was afoot).

{¶21} After reviewing the record, we believe "that the officer was only performing his duties in a conscientious manner." *State v. Freeman*, 64 Ohio St.2 291, 295 (1980). The Fourth Amendment does not require police officers performing surveillance in high crime areas to presume innocent explanations and stick their heads in the sand when blatantly suspicious activity occurs before their eyes. *See Adams v. Williams*, 407 U.S. 143, 145 (1972) ("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."); *Freeman* at 295 ("It is contra to the very nature of the duty of an officer to patrol in a high crime area and to be oblivious to [facts giving rise to reasonable suspicion]."). Rather, the officers are legally able to make an investigatory stop when faced with suspicious behavior and circumstances that suggest criminal activity is afoot. *See Terry*, 392 U.S. at 30 (stating that a police officer may make an investigatory stop "where [he or she] observes unusual conduct which leads him reasonably to conclude * * * that criminal activity may be afoot"). That is exactly what Officer Sedivy did here and we can find no error in the trial court's denial of Starr's motion to suppress.

{¶22} In sum, we find that Officer Sedivy had articulable reasonable suspicion to effectuate the stop of Starr's vehicle. Accordingly, we overrule Starr's sole assignment of error.

III.

{¶23} Having overruled Starr's sole assignment of error, we affirm the judgment of the Lorain County Court of Common Pleas.

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 Lorain, 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(C). 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.

JULIE A. SCHAFER
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

KENNETH M. LIEUX, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and NATASHA RUIZ GUERRIERI, Assistant Prosecuting Attorney, for Appellee.