[Cite as *State v. Hull*, 2005-Ohio-2526.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2003-A-0068**
- vs -	:	
RHAMAUD HULL,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2002 CR 32.

Judgment: Affirmed.

Thomas L. Sartini, Ashtabula County Prosecutor and *Angela M. Scott*, Assistant Prosecutor, Ashtabula County Courthouse, 25 West Jefferson Street, Jefferson, OH 44047 (For Plaintiff-Appellee).

Marie Lane, Ashtabula County Public Defender, 4817 State Road, #202, Ashtabula, OH 44004 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Rhamaud Hull ("Hull") appeals from the judgment of the Ashtabula County Common Pleas Court, which denied his motion to suppress. We affirm.

{¶2} On November 11, 2001, Office John Koski of the Ashtabula Police Department was patrolling the Ashtabula Metropolitan Housing Authority ("AMHA"). Officer Koski saw two men get out of a car in front of the apartment unit. The two men saw Officer Koski and began to walk away quickly. Officer Koski called to the men to

stop and both walked away more quickly, and one of the men, Hull, began to run. When Hull refused to stop as repeatedly instructed to, Officer Koski chased him and released his canine partner.

{¶3} Officer Koski rounded a corner of the building and saw his canine partner catch Hull. Officer Koski also saw Hull make a throwing motion toward a shed. Officer Koski called off his canine and arrested Hull for obstructing official business.

{¶4} Officer Koski then searched the area near the shed and found a bag that field-tested positive for cocaine. Officer Koski testified the bag was dry but laying on top of wet leaves.

{¶5} Hull was indicted on one count of possession of crack cocaine, R.C. 2925.11(A) and (C)(4)(b); and one count of tampering with evidence, R.C. 2921.12(A)(1). Hull pleaded not guilty and moved to suppress the evidence seized as a result of his arrest.

{¶6} In support of his motion, Hull argued Officer Koski lacked reasonable suspicion to justify his stop of Hull. Hull argued he was free to refuse Officer Koski's request because it was a consensual encounter, and that refusal to engage in a consensual encounter with a police officer does not give that officer reasonable suspicion to justify a stop. The trial court denied Hull's motion finding that once Hull relinquished possession of the bag by throwing it, Hull lost all constitutional protection concerning the evidence.

{¶7} After the trial court denied his motion to suppress, Hull pleaded no contest to one count of possession of crack cocaine and the trial court dismissed the charge of tampering with evidence.

{¶8} Appellant timely appealed the trial court's denial of his motion to suppress, raising one assignment of error, "The trial court erred when ruling that appellant lost all constitutional protections when he relinquished possession of the crack cocaine by throwing it away."

{¶9} Hull argues the trial court erred in denying his motion to suppress because the trial court never reached the threshold issue of whether Officer Koski's stop of Hull was supported by reasonable suspicion. While the trial court's judgment entry does not directly address this issue, we conclude the stop did not violate Hull's fourth amendment rights.

{¶10} "When considering an appeal of a ruling on a motion to suppress we review the trial court's findings of fact only for clear error and give due weight to inferences the trial judge drew from the facts. We must accept the trial court's factual determinations when they are supported by competent and credible evidence. We determine only whether the findings of fact were against the manifest weight of the evidence. We review the trial court's application of law to those facts de novo and independently determine whether the facts meet the appropriate legal standard." (Internal citations omitted.) *State v. Hummel*, 154 Ohio App.3d 123, 2003-Ohio-4602, ¶11.

{¶11} In *Illinois v. Wardlow* (2000), 528 U.S. 119, the United States Supreme Court held that presence in a high-crime area, coupled with unprovoked flight at the sight of a police officer constituted reasonable suspicion to justify a stop. Id. at 124-125. In reaching this conclusion, the Court stated:

{¶12} "Such a holding is entirely consistent with our decision in *Florida v. Royer, 460 U.S. 491, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983),* where we held that when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. *Id., at 498.* And any 'refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.' *Florida v. Bostick, 501 U.S. 429, 437, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991).* But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning." See, also, *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 43 - 55.

{¶13} In the instant case, Officer Koski testified AMHA was known as a high crime area. Upon seeing Officer Koski, Hull and his companion began to walk away quickly. When Officer Koski called to the men, Hull began to run. Such flight, coupled with the location of the encounter gave Officer Koski reasonable suspicion to justify the stop. While Hull was free to go about his business and refuse Officer Koski's request, he did not do so, but fled. As the Court stated in *Wardlow*, when Hull fled, he was no longer going about his business. For these reasons, we conclude Officer Koski's stop of Hull was supported by reasonable suspicion.

{¶14} Hull does not challenge the trial court's conclusion that he forfeited his right to challenge the admissibility of the evidence once he relinquished control of it by

throwing it away. Thus, the judgment of the Ashtabula County Court of Common Pleas denying appellant's motion to suppress is affirmed.

DIANE V. GRENDELL, J., concurs,

WILLIAM M. O'NEILL, J., dissents with Dissenting Opinion.

WILLIAM M. O'NEILL, J., dissenting.

{¶15} I must respectfully dissent, for I believe the majority and the trial court have applied an inappropriate standard of review in this matter. The United States Supreme Court has held that an individual, when approached by a police officer, is well within his rights to go about his business.[1] I believe we are on a constitutionally impermissible, slippery slope when we modify that right.

{¶16} This court clearly defined the different levels of encounters that are permissible between police and citizens in *State v. Adams*, where we held:

{¶17} "Contact between the police and citizens fall within three main types: (1) a consensual encounter; (2) a brief detention pursuant to *Terry v. Ohio*;[2] and (3) a full fledged arrest.[3] An officer may approach an individual in a street or other public place for the purposes of a consensual encounter. A consensual encounter is not a seizure,

---

1. *Florida v. Bostick* (1981), 501 U.S. 429, 434.
2. *Terry v. Ohio* (1968), 392 U.S. 1.
3. *State v. Long* (1998), 127 Ohio App.3d 328, 333.

so no Fourth Amendment rights are invoked.[4] The individual must be free to terminate the consensual encounter or decline the officer's request.[5] A Fourth Amendment seizure has taken place 'only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.'[6]

{¶18} " ***

{¶19} "Police may approach an individual, engage in conversation, and request identification, all under the purview of a consensual encounter.[7] The Supreme Court has identified a variety of factors that may cause an encounter between the police and a citizen to lose its consensual character.[8] Among the factors are the presence of multiple police officers, the displaying of a weapon by the police, the use of language suggesting that compliance with police requests is compelled, and the physical touching of the citizen.[9] An encounter that is consensual at the outset can transform into a Fourth Amendment seizure if the police utilize one or more of these coercive tactics.[10]

{¶20} "The second category is the investigatory detention, otherwise known as a '*Terry* stop.' A *Terry* stop occurs when a police officer justifiably conducts an investigative stop of an individual based upon a reasonable and articulable suspicion that the individual is engaged in criminal activity.[11]"[12]

{¶21} The majority incorrectly determines that the officer was justified in stopping Hull because Hull walked and, then, ran away.

---

4. *Florida v. Bostick*, supra.
5. Id. at 439.
6. *United States v. Mendenhall* (1980), 446 U.S. 544.
7. *Florida v. Bostick*, 501 U.S. at 434-435.
8. *United States v. Mendenhall*, 446 U.S. at 554.
9. Id.
10. *Willowick v. Sable* (Dec. 12, 1997), 11th Dist. No. 96-L-189, 1997 Ohio App. LEXIS 5562, at *11.
11. *Terry v. Ohio*, 392 U.S. at 21.
12. *State v. Adams*, 11th Dist. No. 2003-L-014, 2004-Ohio-3852, at ¶12-15.

{¶22} I believe the record in this matter was clear that the "encounter" began with Officer Koski shouting "Stop, Police." At that point, a reasonable individual would not believe he is free to leave. Thus, the situation was not a consensual encounter but, rather, a *Terry* stop. Therefore, Officer Koski needed an articulable, reasonable suspicion that criminal conduct was occurring *prior* to ordering Hull and his companion to stop. What occurred after the "stop, police" order was given is irrelevant for determining whether the officer had justification to initiate the stop.

{¶23} I acknowledge that the United States Supreme Court has held that "unprovoked flight" from a police officer in a high-crime area constitutes reasonable suspicion to substantiate a stop.[13] The court reasoned that "headlong flight" is an evasive act, suggestive of wrongdoing. Further, the Supreme Court held that "unprovoked flight" is not "going about one's business."[14]

{¶24} By definition, "unprovoked flight" occurs prior to an officer's order to "stop, police." Officer Koski testified that Hull began to run *after* he gave the "stop, police" order. He testified that Hull was "walking quickly" prior to the "stop, police" order. Accordingly, any evidence that Hull was running should not be considered in the "unprovoked flight" analysis.

{¶25} The question becomes, at what speed do one's movements become "unprovoked flight"? Is it walking, walking quickly, jogging, skipping, running, or is an all-out "sprint" required? I do not know the answer to this question. However, walking, even quickly, is not "unprovoked flight." To hold otherwise would contravene the holding of *Florida v. Bostick*, which established a constitutional right to go about one's

---

13. See *Illinois v. Wardlow* (2000), 528 U.S. 119, 124-125.
14. Id.

business when approached by the police for a "consensual" encounter.[15] When an individual is walking on a public street, "going about one's business" would be to continue walking away from the questioning officer.[16]

{¶26} The facts of this case are that a vehicle dropped off Hull at the curb in front of an apartment building. Presumably, Hull and his companion did not intend to remain standing on the curb. Rather, they were walking away from the place they exited the vehicle. Such actions clearly meet the definition of "going about their business." The fact they noticed a police officer does not transform their act of walking from "going about their business" to "unprovoked flight."

{¶27} As a matter of law, I would hold that the trial court erred in overruling the motion to suppress. Absent some evidence of criminal activity, I believe individuals on public streets are free to walk away from police officers at whatever speed they deem appropriate. It is important to note that the police officer in this matter, unlike the officer in *Adams*, was not conducting an investigation of a known crime. As such, he did not have the authority to violate Hull's constitutional rights and command him to halt or stop.

---

15. *Florida v. Bostick*, 501 U.S. at 434.
16. Id. at 435.