[Cite as ***State v. Hill***, **2011-Ohio-2019.]**

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	JUDGES:
	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	Hon. Sheila G. Farmer, J.
	Hon. John W. Wise, J.
-vs-	
	Case No. 10CA96
DUANE J. HILL	
Defendant-Appellant	OPINION

CHARACTER OF PROCEEDING:	Appeal from the Richland County Common Pleas court, Case No. 2009CR985
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT ENTRY:	April 25, 2011

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JAMES J. MAYER, JR. PROSECUTING ATTORNEY RICHLAND COUNTY, OHIO	DAVID HOMER 13 Park Avenue West, Suite 609 Mansfield, Ohio 44902
BY: KIRSTEN L. PSCHOLKA-GARTNER Assistant Richland County Prosecutor 38 South Park Street Mansfield, Ohio 44902	

Hoffman, P.J.

{¶1} Defendant-appellant Duane J. Hill appeals his conviction in the Richland County Court of Common Pleas on two counts of possession of drugs with forfeiture specifications, in violation of R.C. 2925.11(A), and two counts of trafficking in drugs with forfeiture specifications, in violation of R.C. 2925.03(A)(2). Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On December 19, 2009, Officer Korey Kaufman of the Mansfield Police Department responded to a call of shots fired, where a woman reported her baby had been shot by someone who had fled the area. The dispatch indicated two suspects were involved, specifically naming Michael Martin and Nick Beem. Upon arrival at the scene, Officer Kaufman spoke with two neighbors who reported seeing a black man in a "newer" vehicle, possibly black with four doors. The officer looked for tracks in the snow, but found nothing. Officer Kaufman never saw a gunshot victim while at the scene.

{¶3} Officer Kaufman then began patrolling the area looking for a black male in a "newer" black vehicle. Two or three blocks from the scene of the incident, he observed a black vehicle in a driveway with the lights on backing out into the street. The vehicle, a black 2001 Oldsmobile Alero, had two doors. Officer Kaufman blocked the vehicle, and ordered the driver to exit the vehicle. Upon observing the driver to be a black male, Officer Kaufman began a pat down "for my safety and the safety of the officers who were standing there with me." Officer Kaufman knew Appellant by name from an incident which occurred a few weeks prior to the events at issue herein. Thus,

Officer Kaufman knew Appellant was neither Martin or Beem as identified in the shots fired call.

{¶4} During the pat down, Officer Kaufman felt a golfball-sized bulge in Appellant's right pocket, and could feel "rocks." He testified he immediately knew the bulge to be crack cocaine. Upon seizing the crack cocaine and continuing the pat down search, Officer Kaufman retrieved a bundle of cash from Appellant's other pocket.

{¶5} The Richland County Grand Jury indicted Appellant on two counts of possession of drugs with forfeiture specifications, in violation of R.C. 2925.11(A), each a felony of the fourth degree, and two counts of trafficking in drugs with forfeiture specifications, in violation of R.C. 2925.03(A)(2), each a fourth degree felony. Appellant was also charged with possession of a Schedule IV controlled substance, a fifth degree felony.

{¶6} Appellant filed a motion to suppress the illegal search and seizure. Following a hearing on the motion, the trial court denied the same. Appellant proceeded to enter a plea of no contest to the charges, and was sentenced to eighteen months in prison. Appellant now appeals, assigning as error:

{¶7} "I. THE TRIAL COURT ERRED PREJUDICIALLY BY FAILING TO GRANT THE MOTION TO SUPPRESS AND TO RECOGNIZE THAT THE SEARCH AND SEIZURE INVOLVED WAS UNCONSTITUTIONAL, UNREASONABLE AND ILLEGAL."

{¶8} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial

court's findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583 and *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. Second, an appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Claytor* (1994), 85 Ohio App.3d 623, 620 N.E.2d 906.

{¶9} Both the Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Section 14, Article I, of the Ohio Constitution, prohibit the government from conducting warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *State v. Mendoza* (10th Dist.), 2009 Ohio 1182, 2009 Ohio App. LEXIS 993 at P11, citing *Katz v. United States* (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 514. One of those exceptions is the rule regarding investigative stops, announced in *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, which provides that a police officer may stop an individual to investigate unusual behavior, even absent a prior judicial warrant or probable cause to arrest, where the officer has a reasonable, articulable suspicion that specific criminal activity may be afoot. Id.

{¶10} An officer's inchoate hunch or suspicion will not justify an investigatory

stop. Rather, justification for a particular seizure must be based upon specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant that intrusion. The facts must be judged against an objective standard; whether the facts available to the officer at the moment of seizure or search would warrant a man of reasonable caution in the belief that the action taken was appropriate. Id. See also, *State v. Grayson* (1991), 72 Ohio App.3d 283, 594 N.E.2d 651.

{¶11} Whether an investigative stop is reasonable must be determined from the totality of the circumstances that surround it. *State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044. The totality of the circumstances are "* * * to be viewed from the eyes of the reasonable and prudent police officer on the scene who must react to the events as they unfold." *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271, citing *United States v. Hall* (C.A. D.C. 1976), 174 U.S. App. D.C. 13, 525 F.2d 857, 859; Freeman, 64 Ohio St.2d at 295.

{¶12} In this case, the record reflects Officer Kaufman responded to the call from dispatch stating shots had been fired in the area. There were two named suspects, Michael Martin and Nick Beem. When he arrived at the scene, he spoke with several neighbors and the 911 caller. They reported hearing four gunshots and seeing the shooter, a black male, leave the scene in a "newer" black vehicle, possibly with four doors. The witnesses reported seeing the driver drive down Superior toward the area of Cleveland Avenue.

{¶13} Officer Kaufman testified at the suppression hearing he remained at the scene for approximately ten to fifteen minutes before leaving in his cruiser to patrol the

area for the suspect. He drove the direction the witnesses indicated, and was two to three blocks away from the scene when he observed a two door, 2001 black Oldsmobile Alero exiting a driveway, being driven by a black male. At the time, Officer Kaufman had only departed the scene of the shooting four or five minutes prior.

{¶14} Officer Kaufman blocked the vehicle and ordered the driver to exit. Kaufman knew Appellant from a previous incident. He then conducted a pat down search, during which he found the drugs and cash.

{¶15} Upon review, we find the stop was not jusitifed under the totality of the facts and circumstances herein. The black vehicle was not a “newer” vehicle, and had two doors, not the “possible” four. Appellant was not one of the two suspects mentioned in the dispatch call. Appellant’s proximity to the scene of the shooting is of little, if any, import, in that he was stopped between fourteen to twenty minutes after Officer Kaufman arrived at the scene of the incident. If anything, such may mitigate against the stop as a suspect fleeing the scene would likely be much farther away after fourteen minutes plus than two to three blocks. Discounting the above discrepancies, we are left with the stop of a black man in a black car. We do not find this reaches the necessary level of reasonable and articulable facts to support the stop.

{¶16} Accordingly, the judgment of the Richland County Court of Common Pleas is reversed, and the matter remanded to the trial court for further proceedings in accordance with the law and this opinion.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman ___________________
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer_____________________
HON. SHEILA G. FARMER

s/ John W. Wise_______________________
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
DUANE J. HILL	:	
Defendant-Appellant	:	Case No. 10CA96

For the reasons stated in our accompanying Opinion, the judgment of the Richland County Court of Common Pleas is reversed, and the matter remanded to the trial court for further proceedings in accordance with the law and this opinion. Costs to Appellee.

s/ William B. Hoffman ___________________
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer ____________________
HON. SHEILA G. FARMER

s/ John W. Wise _______________________
HON. JOHN W. WISE