[Cite as *State v. Muldrow*, 2016-Ohio-4774.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	No. 15AP-1119 (C.P.C. No. 15CR-4093)
v.	:	(REGULAR CALENDAR)
Clifford C. Muldrow,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 30, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellant. **Argued:** *Steven L. Taylor*,

On brief: *Dennis W. McNamara*, for appellee. **Argued:** *Dennis W. McNamara*

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from an entry of the Franklin County Court of Common Pleas granting the motion to suppress of defendant-appellee, Clifford C. Muldrow. For the following reasons, we reverse.

I. Facts and Procedural History

{¶ 2} By indictment filed August 21, 2015, the state charged Muldrow with one count of possession of cocaine in violation of R.C. 2925.11, a first-degree felony. Muldrow entered a plea of not guilty.

{¶ 3} On September 15, 2015, Muldrow filed a motion to suppress, asserting law enforcement officers seized him without reasonable suspicion and arrested him without

probable cause. The state filed a memorandum contra Muldrow's motion, Muldrow filed a supplemental memorandum, and the trial court set the matter for hearing.

{¶ 4} At a hearing on October 23, 2015, Detective Walter Miller of the Columbus Division of Police, Narcotics Bureau, testified he began investigating Muldrow after another detective asked him to look at a narcotics complaint alleging Muldrow and another suspect, Cammi Williams, were involved in the sales and trafficking of drugs from 3988 Fulton Street, Columbus, Ohio. Detective Miller said he began surveillance on the residence and Muldrow's vehicle, and he determined that Muldrow was living at that address. Police then did two trash pulls at that address to confirm that was where Muldrow was living. During the trash pulls, police collected "quite a few * * * sandwich baggies" with "a white powder residue inside," which field tests indicated was residue for cocaine. (Tr. at 9-10.) Police conducted the two trash pulls within one week of each other. Detective Miller testified that police conducted a criminal history search on Muldrow and learned he had "quite a few drug arrests, aggravated drugs, possession of drugs and that sort of thing, quite a few entries." (Tr. at 12.)

{¶ 5} Based on the surveillance and trash-pull information, Detective Miller obtained a search warrant for the house at 3988 Fulton Street and the curtilage thereof, and the state introduced the search warrant as an exhibit at the suppression hearing. The search warrant granted officers "authority to search any person or persons at such premises or curtilage." (State's Ex. 1.) Detective Miller testified he executed the search warrant on December 3, 2014, and that he was on surveillance duty with his team beginning around 6:00 p.m. When he saw Muldrow pull up to the house in his vehicle and then enter the residence, Detective Miller said he called the tactical team, and the tactical team indicated they were on their way to execute the search warrant. However, while the tactical team was en route to the residence, Detective Miller said he saw Muldrow leave the residence, get back into his vehicle, and drive away. Detective Muldrow said he notified the surveillance team that they needed to keep Muldrow in sight and "get him stopped" because police "needed to bring him and talk to him, bring him back to the scene." (Tr. at 14.) Detective Miller testified he was not the person who radioed for a cruiser to stop Muldrow but that "one of the other surveillance people did." (Tr. at 15.)

{¶ 6} Approximately five to eight minutes later, Detective Miller said another police cruiser stopped Muldrow in his vehicle about two or three blocks down the street from his residence. Detective Miller testified he was not there when the other officer stopped Muldrow's vehicle, but he was there when the other officer ordered Muldrow out of his car. Detective Miller said he could see "a large baggie" in Muldrow's hand when he exited the vehicle, and the other officers took possession of that baggie. (Tr. at 16.) Based on all the information he had prior to ordering the stop of Muldrow's vehicle, Detective Miller testified he "believed [Muldrow] might have had drugs on him." (Tr. at 16.) Additionally, Detective Miller testified he believed Muldrow might have drugs in his vehicle because Muldrow had a history of making drug deliveries. When police searched Muldrow's person, they seized crack cocaine in the baggie he was holding when he exited the vehicle as well as $9,568 in cash. The crack cocaine seized from Muldrow's person is the subject of the indictment. Police arrested Muldrow at 6:35 p.m. on December 3, 2014.

{¶ 7} Five minutes after Muldrow's arrest, police executed the search warrant at Muldrow's residence, and the state introduced into evidence the inventory seized during execution of the search warrant. The inventory form indicated police executed the search warrant at 6:40 p.m. on December 3, 2014, and that police seized a plate with residue, a razor blade, a scale, powder cocaine, a firearm, four glass jars with residue, and $9,300 in cash. On cross-examination, the following exchange occurred between defense counsel and Detective Miller:

> Q: Did you have evidence that Mr. Muldrow, and I'm talking now 6:30 or so p.m. on December 3 last year, did you have evidence that Mr. Muldrow had drugs in his possession or in his vehicle?
>
> A: No, sir, I didn't.
>
> Q: I understand you said he might have been carrying because he has a prior record?
>
> A: Yes, sir.
>
> Q: But you didn't have any specific evidence to believe there were certain things in that vehicle or on his person?
>
> A: No, sir.

(Tr. at 19.) Detective Miller also testified he had not applied for a warrant to arrest Muldrow or for a warrant to search Muldrow's vehicle. He also agreed that the location of Muldrow's arrest was approximately one mile away from the residence.

{¶ 8} When he returned to the residence to assist in the execution of the search warrant, Detective Miller testified the only person found inside the house or on the premise's curtilage was Williams, and that he believed she was the tenant of the residence.

{¶ 9} At the close of the hearing, the trial court granted Muldrow's motion to suppress. The trial court noted that the initial issue the parties presented in their briefs was whether the search warrant for 3988 Fulton Street extended to a search of Muldrow's person once he left the premises. The trial court concluded the search warrant was not broad enough to cover a search of Muldrow's person nearly one mile away from his home. Further, the trial court rejected the state's argument that the stop of Muldrow's vehicle was a legitimate *Terry* stop based on reasonable suspicion. The trial court journalized its decision in a December 10, 2015 entry. The state timely appeals.

II. Assignments of Error

{¶ 10} The state assigns the following errors for our review:

> [1.] The trial court erred when it granted the motion to suppress based on the ground that the stopping officer did not testify.
>
> [2.] The trial court erred when it granted the motion to suppress based on the ground that the intermediate officer conveying the directive did not testify.
>
> [3.] The trial court erred factually and legally when it contended that the testifying officer conceded the absence of probable cause to stop defendant's vehicle.
>
> [4.] The trial court erred and abused its discretion when it failed to address or apply the good-faith exception.

III. Standard of Review

{¶ 11} In its four assignments of error, the state argues the trial court erred when it granted Muldrow's motion to suppress.

{¶ 12} " 'Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier

of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.' " (Citations omitted.) *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, ¶ 100, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

IV. First, Second, and Third Assignments of Error – Reasonable Suspicion

{¶ 13} The state's first, second, and third assignments of error are interrelated and we address them jointly. Together, they assert the trial court erred in concluding police lacked reasonable suspicion to conduct an investigatory stop under *Terry v. Ohio*, 392 U.S. 1 (1968). The state argues the trial court made incorrect legal and factual conclusions in granting Muldrow's motion to suppress.

{¶ 14} The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, as well as Article I, Section 14, of the Ohio Constitution, prohibits the government from conducting warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *State v. Mendoza*, 10th Dist. No. 08AP-645, 2009-Ohio-1182, ¶ 11, citing *Katz v. United States*, 389 U.S. 347, 357 (1967), *superseded by statute on other grounds*. Even so, "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred" within the meaning of the Fourth Amendment. *Terry* at 19, fn. 16.

{¶ 15} Under *Terry*, a police officer may stop or detain an individual without probable cause when the officer has reasonable suspicion, based on specific, articulable facts, that criminal activity is afoot. *Mendoza* at ¶ 11, citing *Terry* at 21. Accordingly, "[a]n 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, ¶ 35, *superseded by statute on other grounds*, quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981).

{¶ 16} Reasonable suspicion entails some minimal level of objective justification, "that is, something more than an inchoate and unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *State v. Jones*, 70 Ohio App.3d 554, 556-57 (2d Dist.1990), citing *Terry* at 27. Accordingly, "[a] police officer may not rely on good faith and inarticulate hunches to meet the *Terry* standard of reasonable suspicion." *Jones* at 557. An appellate court views the propriety of a police officer's investigative stop or detention in light of the totality of the surrounding circumstances. *State v. Bobo*, 37 Ohio St.3d 177 (1988), paragraph one of the syllabus, approving and following *State v. Freeman*, 64 Ohio St.2d 291 (1980), paragraph one of the syllabus.

A. Collective Knowledge of the Officers

{¶ 17} In its first and second assignments of error, the state asserts the trial court erroneously concluded it could not determine whether there was reasonable suspicion to conduct an investigatory stop of Muldrow because neither the arresting officer nor the officer who called the arresting officer and instructed him to stop Muldrow testified at the suppression hearing. More specifically, in granting Muldrow's motion to suppress, the trial court stated:

> With regard to [the argument that this was a valid *Terry* stop], I find there was no evidence presented at this hearing because I think that, number one, we didn't hear from an officer who made the stop or made the arrest at that time to determine whether there was or was not good grounds for stopping Mr. Muldrow's vehicle.
>
> Further, while there has been discussion of communication with officers, we didn't have the testimony of either the officer who made the call to the vehicles that stopped or the officers that received the call. We don't know what the content of that communication was.

(Tr. at 59-60.)

{¶ 18} The state argues this case implicates what is often known as the "collective knowledge doctrine," also known as the " 'fellow officer' rule," in which knowledge of law enforcement officers is imputed to other officers. *See, e.g., State v. Ojezua*, 2d Dist. No. 26787, 2016-Ohio-2659, ¶ 30; *State v. Robinson*, 8th Dist. No. 98564, 2013-Ohio-1345, ¶ 17. The collective knowledge doctrine recognizes that "[a] police officer need not always

have knowledge of the specific facts justifying a stop and may rely, therefore, upon a police dispatch or flyer." *Maumee v. Weisner*, 87 Ohio St.3d 295, 297 (1999), citing *United States v. Hensley*, 469 U.S. 221, 231 (1985). "[T]he admissibility of the evidence uncovered during such a stop does not rest upon whether the officers *relying upon a dispatch or flyer* 'were themselves aware of the specific facts which led their colleagues to seek their assistance.' It turns instead upon 'whether the officers who *issued* the flyer' or dispatch possessed reasonable suspicion to make the stop.' " (Emphasis sic.) *Maumee* at 297, quoting *Hensley* at 231.

{¶ 19} Initially, Muldrow argues the state waived its argument under the collective knowledge doctrine for failing to properly raise that argument in the trial court. Though the state initially argued in its brief to the trial court that the scope of the search warrant would authorize the stop of Muldrow once he left the scene, at the hearing, the state also argued this was a valid *Terry* stop based on the theory of collective knowledge of the police officers. At the conclusion of the suppression hearing, the following exchange occurred:

> THE COURT: Counsel, let me say that I understand that you may want to take a look at this. If you want to file, if you in doing further research if you want to file a motion for reconsideration on that *Terry* stop, if you in doing your research and you think that's justified, I'm willing to entertain that, and certainly [defense counsel] can brief that issue also.
>
> * * *
>
> [THE STATE]: The State will be filing a notice of appeal after motion to reconsider. It will by criminal rules stay the case because the Court basically suppressed all of the evidence in this case, so there is nothing to do.
>
> * * *
>
> [THE STATE]: In my motion to reconsider, if I am able to find the case law that indicates that the imputation of knowledge, would the Court still want to hear from the patrol officer if the Court reopens the motion?
>
> THE COURT: Brief the issue on that and then I'll take a look at it.

(Tr. at 60-62.) The state never filed a motion for reconsideration in the trial court or any supplemental briefing, instead filing an appeal from the trial court's journalization of its decision granting Muldrow's motion to suppress. Muldrow argues the state's failure to file a properly briefed motion for reconsideration constitutes waiver of the issue. *See, e.g., State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶ 19 (10th Dist.) (stating it is well-established "that a party cannot raise new issues or legal theories for the first time on appeal").

{¶ 20} Although the state did not file any supplemental briefing with the trial court, we do not agree with Muldrow that the state waived its argument regarding the collective knowledge doctrine. In its argument at the suppression hearing, the state argued the stop was a valid *Terry* stop, saying:

> [t]he thing I want to cite because I'm almost entirely certain of this: Detective Miller can say: Go pull that car over, and that is a reasonable stop as long as Detective Miller has reasonable suspicion. He doesn't have to articulate his reasonable suspicion to the officer who then has to have articulable suspicion to pull the car over.

(Tr. at 47-48.) Additionally, when the trial court asked the state what, specifically, it would like to brief, the state responded:

> The point I want to brief is the patrol officer who stops the car is not the person who has to articulate suspicion. If another officer orders him to stop the car, so long as there is reasonable suspicion in that chain of events, that's what the law says is a determining factor as to whether or not that stop is reasonable. It's not, as I think [defense counsel] is trying to say, the officer didn't know anything, so he couldn't stop it even if the other officer said he just murdered somebody. That is the thing I want to brief if necessary.

(Tr. at 48.) Thus, the state argued the crux of its collective knowledge theory to the trial court, albeit without extensive briefing or citation to relevant authority. Even though the state did not fully develop this argument in the trial court, the state did raise the issue before the trial court, and, thus, we will consider the merits of the state's collective knowledge doctrine argument.

{¶ 21} Muldrow concedes the existence of the collective knowledge doctrine. He argues, however, that the state was required to present the testimony of either the officer

who made the dispatch call or the officer who arrested Muldrow, or both, to establish what information was relayed to the arresting officer. However, Muldrow does not point to any case law supporting his theory that the state must present testimony from each officer in the "chain of custody" of the reasonable suspicion. Instead, in applying the collective knowledge doctrine, the Supreme Court of Ohio has held that "[w]here an officer making an investigative stop *relies solely upon a dispatch*, the state must demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity." (Emphasis sic.) *Maumee* at 298, citing *Hensley* at 231. Though nothing would prohibit the state from calling every officer who was involved in relaying or receiving the information, the critical inquiry for a court in considering a motion to suppress based on the collective knowledge doctrine is whether the facts precipitating the dispatch supported a finding of reasonable suspicion. *State v. Taylor*, 10th Dist. No. 05AP-1016, 2006-Ohio-5866, ¶ 7.

{¶ 22} Here, Detective Miller testified he did not personally make the dispatch call for another officer to stop Muldrow. However, Detective Miller testified that he observed Muldrow leaving the residence, so he "notified [the] surveillance team that the suspect was leaving and that we needed to keep him in sight and get him stopped," and then another member of the surveillance team radioed for the cruiser to stop Muldrow's vehicle. (Tr. at 14.) The facts adduced at the suppression hearing indicated that although Detective Miller was not the one to physically radio the cruiser to make the stop, it was Detective Miller who ordered the stop. Thus, the inquiry into whether "the facts precipitating the dispatch justified a reasonable suspicion of criminal activity" would focus on whether Detective Miller had reasonable suspicion to make a *Terry* stop. Because Detective Miller testified at the suppression hearing, we agree with the state that the trial court erroneously concluded it could not engage in the reasonable suspicion analysis without having testimony from either the intermediary radioing officer or the arresting officer.

B. The Trial Court's Characterization of Detective Miller's Testimony

{¶ 23} Additionally, by its third assignment of error, the state argues the trial court erroneously concluded that Detective Miller conceded in his testimony that he lacked probable cause to stop Muldrow. In announcing its decision to grant Muldrow's motion to suppress, the trial court stated:

> And finally, I think it was established on cross-examination that the officer who did testify acknowledged that he didn't have probable cause to stop Mr. Muldrow from leaving the premises or getting into his car or driving away.

(Tr. at 60.) The state asserts this statement demonstrates that the trial court applied the wrong legal standard in granting Muldrow's motion to suppress. We agree.

{¶ 24} First, we note that the proper inquiry into whether an investigatory stop was a legitimate *Terry* stop focuses on whether the officer or officers had reasonable suspicion that criminal activity was afoot. As the United States Supreme Court has explained, "[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990). *See also State v. Bly*, 10th Dist. No. 13AP-909, 2014-Ohio-1261, ¶ 15 (reasonable suspicion is less than the level of suspicion required for probable cause). The legal question before the trial court was whether police had reasonable suspicion to conduct a *Terry* stop of Muldrow in his vehicle a few blocks from his residence. To the extent the trial court instead considered the more demanding standard of whether police had probable cause to stop Muldrow's vehicle, the trial court erred.

{¶ 25} Second, in what appears to be the trial court's further confusion of the applicable legal standard, we agree with the state that the trial court relied on an inapplicable portion of Detective Miller's testimony. On cross-examination, Detective Miller testified he lacked "specific evidence" regarding what might be in Muldrow's vehicle at the time he ordered officers to stop Muldrow's vehicle. (Tr. at 19.) He also agreed he did not have a warrant for Muldrow's arrest. To the extent the trial court is correct that Detective Miller conceded in his testimony that he lacked probable cause to

arrest Muldrow at the moment he ordered the stop of Muldrow's vehicle, such a concession has no bearing on a reasonable suspicion analysis. In determining whether officers had reasonable suspicion to conduct a *Terry* stop, a court must consider the totality of the circumstances. *Bobo* at paragraph one of the syllabus. Thus, Detective Miller's testimony that he lacked "specific evidence" of the contents of the vehicle can hardly be characterized as a concession that he could not lawfully conduct a *Terry* stop to prevent Muldrow from leaving the scene or stop Muldrow's vehicle.

C. The Appropriate Remedy

{¶ 26} In reviewing the record of the suppression hearing, we agree with the state that the trial court committed legal errors when it granted Muldrow's motion to suppress. First, the trial court incorrectly concluded it could not engage in the reasonable suspicion analysis without the testimony of the arresting officer or the dispatching officer. Second, the trial court appeared to apply the wrong legal standard when it stated that Detective Miller conceded he lacked probable cause to stop Muldrow from leaving the property. And third, the trial court relied on an inapplicable portion of Detective Miller's testimony in making its decision. The accumulation of these errors prevented the trial court from engaging in the proper legal analysis. Accordingly, we must remand to the trial court for the trial court to apply the collective knowledge doctrine and determine, based on the evidence the state presented at the suppression hearing, whether police had reasonable suspicion to stop Muldrow. Accordingly, we sustain the state's first, second, and third assignments of error.

V. Fourth Assignment of Error – Good-Faith Exception

{¶ 27} In its fourth assignment of error, the state argues the trial court erred when it failed to address or apply the good-faith exception to the exclusionary rule. However, our resolution of the state's first three assignments of error renders moot its argument regarding the good-faith exception, and we need not address it. Thus, we overrule as moot the state's fourth and final assignment of error.

VI. Disposition

{¶ 28} Based on the foregoing reasons, the trial court erred when it failed to apply the collective knowledge doctrine and when it applied the standard of probable cause rather than reasonable suspicion. Having sustained the state's first three assignments of

error and rendered moot the state's fourth assignment of error, we reverse the decision and entry of the Franklin County Court of Common Pleas and remand the matter to that court with instructions for the court to consider the evidence presented at the hearing and determine whether police had reasonable suspicion to conduct a *Terry* stop of Muldrow in his vehicle.

Judgment reversed;
cause remanded with instructions.

BROWN and BRUNNER, JJ., concur.