[Cite as *State v. Wynne*, 2019-Ohio-1013.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 18AP-531
v.	:	(C.P.C. No. 16CR-6501)
Michael P. Wynne,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 21, 2019

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Valerie Swanson*, for appellee. **Argued:** *Valerie Swanson*.

On brief: *Yeura R. Venters*, Public Defender, and *Ian J. Jones*, for appellant. **Argued:** *Ian J. Jones*.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Michael P. Wynne, appeals from a judgment convicting him pursuant to a no contest plea and imposing sentence. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} Wynne was indicted on one count of aggravated possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11, arising from an incident where he was stopped and questioned by police officers and admitted to having narcotics. Wynne initially entered a not guilty plea and filed a motion to suppress any evidence seized from him, arguing police lacked reasonable suspicion of criminal activity when they stopped him. Plaintiff-appellee, State of Ohio, filed a memorandum in opposition, arguing the police interaction with Wynne was a consensual encounter and therefore did not require reasonable suspicion of

criminal activity. The state further argued Wynne voluntarily admitted to being in possession of drugs and the officers did not search him or seize the drugs until after this admission.

{¶ 3} The trial court conducted a hearing on the motion to suppress. Officer Joseph Bogard of the Columbus Division of Police testified that he and his partner, Officer Kyle Beatty, were patrolling in a marked "paddy wagon" on August 20, 2015. They encountered Wynne while patrolling at a combination gas station and fast-food restaurant in an area known for narcotics activity. Officer Bogard testified they would frequently patrol that location and talk with individuals in the parking lot area. On August 20, 2015, Officer Bogard observed Wynne emerge from a wooded area nearby and enter the gas station/restaurant. Officer Bogard testified Wynne went to the fast-food counter, but did not purchase anything and then appeared to scan the parking lot area as if he was aware of being watched. Officer Bogard stated Wynne patted his pocket as though he was checking for something. Wynne then went to the gas station counter and made a purchase, then returned to the fast-food counter and made a purchase. Officer Bogard testified he believed Wynne was possibly stalling and waiting for the officers to leave. Officer Bogard testified that when Wynne exited the gas station/restaurant, he and Officer Beatty approached Wynne in their vehicle:

> If my memory serves me correctly he had a bag, maybe a drink in his hand. I'm pretty sure there was a bag. And my partner pulled up to him and just asked, you know, basic questions like we always do it. Him and I had worked together before. We pretty much asked simple questions -- hey, how are you? What's going on tonight? What you getting into? What's your name? Where do you live? Things like that. I don't remember the distinct line of questioning, but that's generally just what we ask.

(Mar. 9, 2018 Tr. at 12.) During the questioning, Wynne was standing near the passenger side of the paddy wagon and both officers were inside the vehicle, but Officer Bogard had the passenger door open. Officer Bogard testified Wynne appeared nervous while responding to the officers' questions. The officers asked Wynne for identification. Wynne did not have an identification card in his possession, but provided his name, birthdate, and social security number. Officer Bogard used that information to perform a warrant check. Officer Bogard testified Wynne told the officers he did not want to go back to jail. One of

the officers asked whether Wynne had anything illegal in his possession. Wynne responded that he had a "bump," which Officer Bogard testified generally means some type of narcotics. The officers then searched Wynne and retrieved a syringe containing a brown substance from his pocket. The officers handcuffed Wynne and placed him in the paddy wagon before issuing him a citation in lieu of arrest and releasing him. Officer Bogard testified that the questioning of Wynne lasted approximately two to three minutes before he admitted to having drugs in his pocket.

{¶ 4} Wynne testified he went to the gas station/restaurant on August 20, 2015 to get food. He stated he noticed the paddy wagon driving through the parking lot as he approached the building, then entered the gas station/restaurant and purchased his food. Wynne testified when he exited the restaurant, the paddy wagon was slowly approaching and one of the officers called him over. Wynne testified he walked up to the passenger side of the vehicle and the officer requested his identification:

> A. Well, he started talking to me and asked me for my ID. And I said, well, what's going on? We're just doing a standard -- standard questioning here. And I said, well, I don't have an ID. And that's when I remembered that I had what I had on me.
>
> Q. So did you offer identification information?
>
> A. Yes. Yes, I did.
>
> Q. What was --
>
> A. It was my name, social security, and date of birth.

(Mar. 9, 2018 Tr. at 37.) Wynne testified the officers remained in the vehicle while they spoke to him, but the passenger door was open. He stayed while the officers ran his information and did not recall being told he could leave. Wynne testified one of the officers kept asking him questions after he gave them his personal information. Wynne stated one of the officers asked whether he had anything illegal on him and asked whether they could search him; he admitted to having the syringe because he did not want the officer to get stuck while performing the search.

{¶ 5} Following the hearing, the trial court denied Wynne's motion to suppress, concluding the interaction with police was a consensual encounter and that Wynne was not detained until after he voluntarily admitted to being in possession of drugs. Wynne

subsequently changed his plea and entered a plea of no contest to the charge of aggravated possession of drugs. Pursuant to the plea, the trial court found Wynne guilty of one count of aggravated possession of drugs, a fifth-degree felony, in violation of R.C. 2925.11, and sentenced him to three years of community control supervision.

II. Assignment of Error

{¶ 6} Wynne appeals and assigns the following sole assignment of error for our review:

> The trial court erred in denying appellant's motion to suppress evidence, as police illegally detained appellant before reasonable suspicion of criminal activity existed and before appellant made the alleged statement which led to the search of his person, especially in light of the officers' request for and use of appellant's personal identifying information, including his social security number, to run a warrant check.

III. Discussion

{¶ 7} Wynne argues the trial court erred by denying his motion to suppress because the encounter with police constituted an investigatory detention and the state failed to demonstrate the officers had reasonable suspicion of criminal activity to justify detaining him. The state asserts the trial court did not err by denying the motion to suppress because Wynne's interaction with the officers was a consensual encounter that did not implicate Fourth Amendment protections until Wynne was detained after voluntarily admitting he was in possession of illegal drugs.

A. Standard of Review

{¶ 8} Review of a trial court's decision on a motion to suppress presents a mixed question of law and fact. *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, ¶ 32, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The trial court acts as the finder of fact in evaluating a motion to suppress and therefore is in the best position to resolve factual questions and evaluate the credibility of witnesses. *Burnside* at ¶ 8. We must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.* "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." *Id.* *See also State v. Johnson*, 10th Dist. No. 13AP-637,

2014-Ohio-671, ¶ 6 ("We apply a de novo standard in determining whether the trial court properly denied appellant's motion to suppress.").

{¶ 9} The trial court made the following factual findings, which we must accept as true if they are supported by competent, credible evidence:

> On August 20, 2015 Columbus Police Officers Jay Bogard and Kyle Beatty were on routine patrol and pulled into the McDonalds/Shell gas station on the corner of 104 and Lockbourne road.
>
> On this day, they observed the defendant exit a walking path behind the building and enter the parking lot. He scanned the parking lot before he entered the building. Once inside Officer Bogard testified that he noticed the defendant walk to the counter, initially not purchase anything walk away and return to the counter and buy something. He also observed the defendant patting his pants as if he had something in his pocket, like keys. Officer Bogard testified that he thought the defendant was stalling in the store waiting for them to leave. When the defendant exited the store, they pulled the CPD wagon near him and engaged in conversation. The defendant was standing near the front bumper on the passenger side of the vehicle. Officer Bogard was in the passenger seat inside the wagon with his door open when he talked with the defendant. Officer Beatty remained in the driver's seat.
>
> They asked the defendant questions like, how are you? What's going on tonight? What's your name? Where do you live? He did appear to be nervous during this exchange. The defendant was asked if he had identification and he indicated that he did not but provided his name, social security number and his date of birth to the officers. The defendant continued to act nervous and stated he did not want to go back to jail. They ran his information then asked him if he had anything illegal on him and the defendant told the officers he had a bump. Once he indicated that he had drugs on him the officers told the defendant they were going to pat him down. They asked him if he had anything on him that might stick the officers. The defendant acknowledge that he did. The officers found a syringe with a brown substance in it. This interaction lasted approximately two to three minutes. After discovery of the syringe he was placed under arrest and put into the rear of the wagon. He was issued a summons and released.

(Footnote omitted.) (Entry Denying Motion to Suppress at 1-2.)

B. Constitutional Protections

{¶ 10} The Fourth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, 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, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or other things to be seized." Article I, Section 14 of the Ohio Constitution contains a nearly identical provision:

> The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

{¶ 11} Historically, the protections afforded by Article I, Section 14 of the Ohio Constitution have been construed as coextensive with the protections of the Fourth Amendment to the United States Constitution. *State v. Geraldo*, 68 Ohio St.2d 120, 125-26 (1981) ("[W]e are disinclined to impose greater restrictions in the absence of explicit state constitutional guarantees protecting against invasions of privacy that clearly transcend the Fourth Amendment. * * * It is our opinion that the reach of Section 14, Article I, of the Ohio Constitution * * * is coextensive with that of the Fourth Amendment."); *State v. Robinette*, 80 Ohio St.3d 234, 239 (1997) (stating that courts "should harmonize * * * interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise"); *State v. Jones*, 88 Ohio St.3d 430, 434 (2000), *modified in State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, syllabus. However, it is well recognized that states may "rely on their own constitutions to provide broader protection for individual rights, independent of protections afforded by the United States Constitution." *Robinette* at 238. *See Arnold v. Cleveland*, 67 Ohio St.3d 35, 38 (1993), paragraph one of the syllabus ("In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall."). Thus, in certain circumstances, the Supreme Court of Ohio has construed Article I, Section 14 of the Ohio Constitution as providing greater protection than the Fourth Amendment to the United States Constitution. *Brown* at ¶ 22;

State v. Brown, 143 Ohio St.3d 444, 2015-Ohio-2438, ¶ 23 ("Article I, Section 14 of the Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest."). *See Robinette* at 238 (noting that a "state may impose greater restrictions on police activity pursuant to its own state constitution than is required by federal constitutional standards").

{¶ 12} Not all interactions between police officers and the public constitute searches or seizures under the Fourth Amendment. The United States Supreme Court has recognized three categories of police interactions with members of the public: (1) a consensual encounter, which requires no objective justification, (2) a brief investigatory detention, which must be supported by reasonable suspicion of criminal activity, and (3) a full arrest, which must be supported by probable cause. *State v. Goodloe*, 10th Dist. No. 13AP-141, 2013-Ohio-4934, ¶ 7. Only in the latter two categories, where an officer restrains an individual's liberty through some means of physical force or show of authority, does a seizure occur for purposes of the Fourth Amendment. *State v. Westover*, 10th Dist. No. 13AP-555, 2014-Ohio-1959, ¶ 12, citing *Terry v. Ohio*, 392 U.S. 1, 19 (1968), fn. 16, and *Brendlin v. California*, 551 U.S. 249, 254 (2007).

{¶ 13} The present appeal involves the distinction between a consensual encounter and an investigatory detention. In determining whether an encounter constitutes a seizure and implicates Fourth Amendment protections, the question is whether, in light of all the circumstances surrounding the encounter, a reasonable person would believe he or she was not free to leave. *Westover* at ¶ 13. Under this objective test we consider not whether the individual believed he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person. *Columbus v. Body*, 10th Dist. No. 11AP-609, 2012-Ohio-379, ¶ 14. "Factors suggesting that a person has been seized include: a threatening presence of several officers; the display of a weapon by an officer; some physical touching of the person; the use of language or tone of voice indicating that compliance with the officer's request might be compelled; approaching the person in a nonpublic place; and blocking the person's path." *Westover* at ¶ 17, citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

C. Analysis

{¶ 14} Wynne claims the interaction with the officers was an investigatory detention because the officers' actions constituted a show of authority that would lead a reasonable person to believe he was not free to leave or terminate the encounter. Wynne asserts that by using his personal information to run a warrant check the officers implicitly commanded him to remain where he was and indicated they suspected him of criminal activity. This court has previously held that a consensual encounter with a police officer became an investigatory detention when the officer requested an individual's identification card and retained it while running a warrant check. *Westover* at ¶ 21; *State v. Jones*, 188 Ohio App.3d 629, 2010-Ohio-2854, ¶ 24-26 (10th Dist.). In those cases, the court reasoned that "no reasonable person would believe that he or she is free to terminate the encounter and simply drive away when an officer retains his or her driver's license for the purpose of running a computer check for outstanding warrants." *Jones* at ¶ 25.

{¶ 15} Wynne testified he did not have a physical identification card, but gave the officers his name, birthdate, and social security number. Officer Bogard used that information to perform a warrant check while Officer Beatty continued talking to Wynne. Wynne acknowledges his case differs from *Westover* and *Jones* because the police did not retain possession of a physical identification card while running the warrant check, but claims no reasonable person would believe he was free to leave while the warrant check was being performed. Wynne argues the performance of a warrant check communicates to a reasonable person that he is not free to leave, and that it was not necessary for the officers to retain possession of a physical identification card to create an investigatory detention.

{¶ 16} In support of his argument, Wynne cites this court's decision in *State v. McDowell*, 10th Dist. No. 13AP-229, 2013-Ohio-5300, and the court's later discussion of that case in *Westover*. In *McDowell*, a police officer encountered McDowell walking in an alley while on patrol during the early morning. After speaking to McDowell for one to two minutes, the officer asked for his identification; McDowell complied and handed over his identification card. *McDowell* at ¶ 4. The officer later testified at a suppression hearing that he wrote down the information from the card in a notepad, holding the card just long enough to write this information down and then handing it back to McDowell. *Id*. at ¶ 5. After handing the identification card back, the officer continued talking to McDowell and

asked if he was carrying a weapon. McDowell admitted to being in possession of a gun; the officer confiscated the gun and arrested McDowell. *Id.* at ¶ 6. The trial court denied McDowell's motions to suppress his statements to the police and evidence obtained by the police. *Id.* at ¶ 12. This court affirmed, finding the interaction to be a consensual encounter. With respect to the request for McDowell's identification, the court reasoned that because McDowell was on foot, the officer's brief retention of his identification card for long enough to copy down certain information did not have the same immobilizing effect as retaining the identification of a driver while running a warrant check. *Id.* at ¶ 29. Subsequently, in *Westover*, this court noted that the key distinguishing factor in the *McDowell* decision was that the officer did not retain McDowell's identification card while conducting a warrant check. *Westover* at ¶ 28 ("We find the running of a warrants check to be the critical distinction between *Jones* and *McDowell*. * * * An officer in receipt of an individual's identification may accordingly jot down the information presented on the identification without implicating the Fourth Amendment. However, when an officer takes the further action of retaining an individual's identification to run a warrants check, the officer has implicitly commanded the individual to remain on the scene, as no reasonable person would abandon their identification, and has demonstrated that they suspect that criminal activity is afoot."). Wynne argues that this reasoning extends to his case, where the officers performed a warrant check using his personal information, despite not having physical possession of his identification.

{¶ 17} As noted above, we apply an objective test in determining whether an encounter constitutes a seizure for purposes of the Fourth Amendment. *See Body* at ¶ 14. Based on the testimony presented at the suppression hearing, we conclude the use of Wynne's identifying information, which he provided verbally to the officers, to conduct a warrant check did not constitute an implicit command to remain on the scene, and that a reasonable person in Wynne's position would not believe he was not free to leave or otherwise terminate the encounter. There was no evidence Wynne knew that Officer Bogard was conducting the warrant check. Officer Bogard did not testify he advised Wynne that he was checking for warrants or requested Wynne wait while the warrant check was underway. Instead, the warrant check was performed while Officer Beatty continued the conversation with Wynne. Wynne testified the officers continued asking questions after he

gave his personal information and he *assumed* they were running his information and checking for warrants:

> Q. Were you put in the paddy wagon when they were running your identification?
>
> A. That -- I mean -- that I don't remember. I don't remember if he did it at the same time or prior or what. I just know he kept asking questions after I gave the information. So I assumed that they were working on that.

(Mar. 9, 2018 Tr. at 39.) Under the circumstances of this case, without other factors indicating seizure, we cannot conclude the officers' request for identifying information and possible use of that information to perform a warrant check would have communicated to a reasonable person that he was not free to refuse the request or to terminate the encounter after giving the information.

{¶ 18} Wynne further argues the officers engaged in a show of authority by ordering him to come over and speak with them and through pointed questioning about whether he had a weapon. With respect to Wynne's testimony that the officers told him to "come here," we note the trial court did not include that testimony in its findings of fact. As explained above, we defer to the trial court's findings of fact if they are supported by competent, credible evidence. In *Goodloe*, this court held that a police officer's questions about criminal activity and whether an individual had any firearms were of such an "accusatory nature" that they "create[d] an air of authority that could further cause a reasonable person to believe that he was not free to leave and that he had to answer the officer's questions." *Goodloe* at ¶ 14. Wynne argues the officers' questions in this case had the same effect.

{¶ 19} In *Goodloe*, two officers approached Goodloe while on patrol and noticed bulges on each side of his pants; the officers could identify one bulge as a cell phone, but could not identify the other. *Id.* at ¶ 2. The officers parked their cruiser and approached Goodloe on the sidewalk. One officer walked up beside Goodloe and the other stood on the sidewalk in front of him. One officer asked Goodloe if he knew of anyone looking into cars in the parking lot he had just walked through. When Goodloe responded he did not, the officer asked whether he had any firearms. Goodloe did not respond verbally, but sighed, slumped his shoulders, and dropped his head. The officer perceived this to be an admission and reached for the bulge in Goodloe's pocket; it was a gun, which he took from Goodloe.

Id. The trial court granted Goodloe's motion to suppress, finding the officers' actions were a sufficiently strong showing of police authority to convert a consensual encounter into a seizure. *Id*. at ¶ 3. On appeal, this court affirmed, finding that, under the totality of the circumstances, the officers' show of authority would have caused a reasonable person to believe he was not free to leave. *Id*. at ¶ 15.

{¶ 20} There are several key factors that distinguish *Goodloe* from the present case. The police officers got out of their cruiser and one of them stood directly in front of Goodloe, blocking his path on the sidewalk. The trial court and this court found that factor to be significant. *Id*. at ¶ 12-13. By contrast, in this case, Officers Beatty and Bogard did not exit the paddy wagon; although Officer Bogard had the passenger door open, Wynne was standing on the other side of the door. Additionally, the questions asked of Goodloe directly related to a suspicion of potential criminal activity—i.e., whether he knew about someone looking into nearby cars (potentially to break into them) and whether he had a concealed firearm. In the present case, Officer Bogard testified that while questioning Wynne, he referred to having seen Wynne touch his pocket multiple times and indicated this led the officers to believe Wynne might have a weapon or drug paraphernalia in his possession. However, the overall nature of the officers' questions appears to have been more general—e.g., where Wynne lived and what he was doing that evening. Wynne testified the officers characterized it as standard questioning. Thus, the officers' actions in this case did not constitute the same type of show of authority in *Goodloe*.

{¶ 21} Wynne was approached by two officers, who were in a marked vehicle, wearing the uniform of the day, and presumably armed. However, the officers did not get out of the vehicle, display their weapons, touch Wynne, or block his path. The officers engaged Wynne in a general line of questioning, although they also referred to the possibility that he was in possession of illegal material. The officers requested, but did not demand, identification, which Wynne provided by giving his name, birthdate, and social security number. One of the officers used that information to perform a warrant check on Wynne while the other officer continued talking to him, but there was no evidence Wynne knew the warrant check was underway. Based on the totality of the circumstances in this case, we conclude that a reasonable person would not believe that he or she was not free to leave or otherwise terminate the encounter. Thus, the interaction was a consensual

encounter until the point when Wynne was seized after admitting to being in possession of illegal drugs.

{¶ 22} Therefore, we find the trial court did not err in denying Wynne's motion to suppress. Accordingly, we overrule Wynne's sole assignment of error.

IV. Conclusion

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

Judgment affirmed.

BROWN and LUPER SCHUSTER, JJ., concur.