[Cite as *State v. Williams*, 2009-Ohio-4098.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2008-L-182**
- vs -	:	
ADAM D. WILLIAMS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 08 CR 000359.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Adam D. Williams, appeals from the November 26, 2008 judgment entry of the Lake County Court of Common Pleas, in which he was sentenced for possession of cocaine.

{¶2} On September 10, 2008, appellant was indicted by the Lake County Grand Jury on one count of possession of cocaine, a felony of the fifth degree, in violation of R.C. 2925.11. On September 12, 2008, appellant filed a waiver of his right

to be present at the arraignment and the trial court entered a not guilty plea on his behalf.

{¶3} On September 15, 2008, appellant filed a motion to suppress.[1] Appellee, the state of Ohio, filed a response on September 22, 2008.

{¶4} A suppression hearing was held on October 6, 2008.

{¶5} At that hearing, Sergeant Anthony Powalie ("Sergeant Powalie"), with the PPD, testified for the state that around 4:30 p.m. on June 1, 2008, the PPD received a drug complaint from an anonymous caller. Central dispatch contacted Sergeant Powalie and provided him with the phone number of the complainant. He called the number and spoke with a female who wanted to remain anonymous. Sergeant Powalie was told that a black male was selling narcotics near the fence that separates the Shamrock and Argonne Arms apartment complexes, a high crime area. The caller informed Sergeant Powalie that the man was wearing a black t-shirt and orange and blue plaid shorts, and was waving around an orange toy gun. Sergeant Powalie sent Patrolman Michael DeCaro ("Patrolman DeCaro") and Officer Smith, both with the PPD, to investigate.

{¶6} Patrolman DeCaro testified for the state that he and Officer Smith were dressed in uniforms and traveled in separate, marked patrol cars toward the apartment complexes. While en route, Patrolman DeCaro stated that he observed a male fitting the description of the anonymous caller. Patrolman DeCaro described him as a black

1. In his motion, appellant attempted to suppress any and all evidence obtained by the Painesville Police Department ("PPD") after an encounter on June 1, 2008. Specifically, appellant alleged that no specific and articulable facts existed to warrant his seizure by the PPD. Appellant contended that the evidence was obtained in violation of his due process rights and rights against unreasonable search and seizure as guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 14 of the Ohio Constitution.

male wearing a black t-shirt and blue and orange plaid shorts, and carrying an orange toy gun behind his back. This man was later identified as appellant.

{¶7} The officers approached appellant without activating their sirens or overhead lights. Their vehicles did not impede appellant's path nor did the officers place their hands on appellant. The officers told appellant that they had received a complaint of a person fitting his description, waving a gun around at the Shamrock Apartments. Patrolman DeCaro indicated that appellant handed over the orange gun and explained that it was a toy.

{¶8} The officers asked appellant for identification. According to Patrolman DeCaro, appellant replied that he did not have identification, but voluntarily provided his social security number. The officers checked appellant's social security number through central dispatch and were informed that appellant had a warrant out for his arrest. The warrant had a caution indicator for violent tendencies. At that time, the officers asked appellant to step over to a patrol car so that he could be frisked for weapons. Patrolman DeCaro said that appellant complied, but reached into his right pocket with his right hand. Appellant was instructed to remove his hand from his pocket, but Patrolman DeCaro stated that appellant resisted and struggled with the officers. Patrolman DeCaro testified that he and Officer Smith were concerned that appellant was reaching for a weapon or was trying to conceal or destroy evidence.

{¶9} Appellant eventually took his hand out of his pocket and dropped $30 and a baggie containing a rock of crack cocaine. He was then taken into custody. A further search of appellant's person revealed another rock of crack cocaine.

{¶10} Pursuant to its October 22, 2008 judgment entry, the trial court overruled appellant's motion to suppress.

{¶11} On October 31, 2008, appellant withdrew his former plea of not guilty, and entered a written plea of no contest. The trial court accepted appellant's plea and found him guilty of possession of cocaine, a felony of the fifth degree, in violation of R.C. 2925.11. The trial court deferred sentencing and referred the matter to the Adult Probation Department for a presentence investigation and report, as well as a drug and alcohol evaluation.

{¶12} Pursuant to its November 26, 2008 judgment entry, the trial court sentenced appellant to six months in prison, consecutive to the sentences imposed in Lake County Court of Common Pleas, Case Nos. 08-CR-000474, 08-CR-000475, and 08-CR-000476. Appellant was given credit of one hundred seventy-seven days for time already served. It is from that judgment that appellant filed a timely notice of appeal, raising the following assignment of error for our review:

{¶13} "THE TRIAL COURT ERRED BY DENYING THE APPELLANT'S MOTION TO SUPPRESS IN VIOLATION OF HIS RIGHTS TO DUE PROCESS AND FREEDOM FROM UNREASONABLE SEARCH AND SEIZURE AS GUARANTEED BY THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTIONS 10 AND 14, ARTICLE I OF THE OHIO CONSTITUTION."

{¶14} In his sole assignment of error, appellant argues that the trial court erred by denying his motion to suppress. He presents two issues for our review:

{¶15} "[1.] An anonymous tip which describes only an individual's appearance and location with vague allegations of drug dealing followed by police observation of the individual simply walking down a street is insufficient to justify an investigative stop of the individual.

{¶16} "[2.] The trial court erred when it ruled that the initial stop made by the officers was consensual, not investigatory, in nature."

{¶17} Preliminarily, we note that this court stated in *State v. Jones*, 11th Dist. No. 2001-A-0041, 2002-Ohio-6569, at ¶16:

{¶18} "[a]t a hearing on a motion to suppress, the trial court assumes the role of the trier of facts and, therefore, is in the best position to resolve questions of fact and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366 ***. When reviewing a motion to suppress, an appellate court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594 ***. Accepting these findings of facts as true, a reviewing court must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the appropriate legal standard. *State v. Curry* (1994), 95 Ohio App.3d 93, 96 ***." (Parallel citations omitted.)

{¶19} For ease of discussion, we will address appellant's issues in reverse order.

{¶20} With respect to his second issue, appellant argues that the trial court erred when it ruled that the initial stop made by the officers was consensual rather than investigatory in nature.

{¶21} In *State v. Retherford* (1994), 93 Ohio App.3d 586, 594-595, the court noted the following:

{¶22} "[t]he United States Supreme Court has identified three categories of police contact with persons. The first is referred to as a 'consensual encounter,' in which there is no restraint on the person's liberty. There need be no objective justification for such an encounter. The second type, called 'detention,' involves a seizure of the individual for a limited duration and for a limited purpose. A constitutionally acceptable detention can occur 'if there is an articulable suspicion that a person has committed or is about to commit a crime.' The third type involves seizures in the nature of an arrest, which may occur only if the police have probable cause to arrest a person for a crime. *Florida v. Royer* (1983), 460 U.S. 491 ***. See, also, *State v. Morris* (1988), 48 Ohio App.3d 137, 138 ***, citing *United States v. Poitier* (C.A.8, 1987), 818 F.2d 679." (Footnote omitted.) (Parallel citations omitted.)

{¶23} Pursuant to the first category of police contact, it is clear that "[e]ncounters are consensual where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away. *United States v. Mendenhall* (1980), 446 U.S. 544, 553 ***. The request to examine one's identification does not make an encounter nonconsensual. *Florida v. Rodriguez*, (1984), 469 U.S. 1, 4-6 ***; *Immigration & Naturalization Serv. v. Delgado* (1984), 466 U.S. 210, 221-222 ***. Nor does the request to search a person's belongings. *Florida v. Bostick* (1991), 501 U.S. 429 ***. The Fourth Amendment guarantees are not implicated in such an encounter unless the police officer has by either physical force or show of authority restrained the person's liberty so

that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter. *Mendenhall*, supra[,] at 554; *Terry v. Ohio* (1968), 392 U.S. 1, 16 ***." *State v. Taylor* (1995), 106 Ohio App.3d 741, 747-748. (Parallel citations omitted.)

{¶24} In the case at bar, again, the record establishes the following: the officers pulled their cruisers alongside appellant; the cars were parked on the street and did not impede appellant's travel; no sirens or flashers were used; the officers did not draw any weapons during the duration of the encounter; they did not touch appellant at that time; the officers simply began talking to appellant and explained the nature of the complaint that they had received; appellant handed over the orange toy gun; the officers asked appellant for identification and he voluntarily provided his social security number; Patrolman DeCaro testified that if appellant had stated that he did not want to provide information, he would have been free to leave; Patrolman DeCaro further indicated that if appellant would have run away from the officers, there was nothing they could have done to stop him; the officers checked appellant's social security number through central dispatch and were informed that appellant had a warrant out for his arrest, which had a caution indicator for violent tendencies; the officers frisked appellant for weapons, ultimately revealing crack cocaine.

{¶25} Based on the foregoing, the trial court properly ruled that the initial encounter between the officers and appellant was purely consensual in nature and did not implicate any Fourth Amendment rights.

{¶26} Appellant's second issue is without merit.

{¶27} In his first issue, appellant alleges that the anonymous tip was insufficient to justify an investigative stop.

{¶28} Once a trial court finds that an encounter between police and a defendant does not rise to the level of a stop under the Fourth Amendment (i.e., was consensual), the trial court need not evaluate an anonymous tip, as that issue becomes irrelevant to the case. See *State v. Gay* (Apr. 19, 2002), 2d Dist. No. 18970, 2002 Ohio App. LEXIS 1885, at 9.

{¶29} Here, as we determined in appellant's prior issue that his Fourth Amendment rights were not implicated because his encounter with police was consensual, the reliability and sufficiency of the anonymous tip is irrelevant.

{¶30} Appellant's first issue is without merit.

{¶31} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Lake County Court of Common Pleas is affirmed. The court finds there were reasonable grounds for this appeal.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.