[Cite as *State v. Gates*, 2020-Ohio-4027.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- DANIEL DALE GATES Defendant-Appellant	JUDGES: Hon. William B. Hoffman, P. J. Hon. John W. Wise, J. Hon. Earle E. Wise, Jr., J. Case No. 2019 CA 00153 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2019 CR 01085
JUDGMENT:	Reversed and Final Judgment Entered
DATE OF JUDGMENT ENTRY:	August 4, 2020

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO PROSECUTING ATTORNEY KRISTINE W. BEARD ASSISTANT PROSECUTOR 110 Central Plaza South, Suite 510 Canton, Ohio 44702-1413	JONATHAN E. MORRIS 116 Cleveland Avenue, NW 418 Courtyard Centre Canton, Ohio 44702

Hoffman, P.J.

{¶1} Plaintiff-appellant Daniel Dale Gates appeals his conviction on one count of Carrying a Concealed Weapon and one count of Using Weapons While Intoxicated entered by the Stark County Court of Common Pleas. Defendant-appellee is the state of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On July 2, 2019, Appellant Daniel Gates was indicted by the Stark County Grand Jury for Carrying a Concealed Weapon, in violation of R.C. §2923.12(A)(2), a fourth degree felony, and Using Weapons While Intoxicated, in violation of R.C. §2923.15(A), a first degree misdemeanor.

{¶3} The charges arose from a stop and subsequent pat down search which occurred on May 30, 2019. The stop was conducted by officers from the Canton Police Department who were responding to numerous 911 calls. The 911 callers told dispatch they observed a man, later identified as Appellant Daniel Gates, holding a firearm.

{¶4} After locating and stopping Appellant, the officers conducted a pat down search of Appellant and found a gun in Appellant's back pocket and a "battle axe" strapped to his leg. The officers detected an odor of alcohol on Appellant during the confrontation.

{¶5} On July 31. 2019, Appellant filed a motion to suppress evidence arguing the police officers did not have a reasonable suspicion Appellant was actively involved in any criminal activity or that criminal activity was afoot; therefore, the stop was illegal.

{¶6} On August 30, 2019, the trial court conducted a hearing on the suppression motion. The State presented the testimony of Canton Police Department Officer Kyle

Slone at the hearing.

{¶7} Officer Slone testified on May 30, 2019, he was working in uniform with his partner. (T. at 5). At around 8:00 p.m. a "man with a gun call went out" and nearby officers responded to the area. Officer Slone and his partner responded in a marked car. As they got into their cruiser, they were given additional information from the responding officers and learned 911 calls had been coming into dispatch. The 911 callers said there was a man walking, with a rifle, possibly an AK or AR (automatic rifle), and he was trying to hide from people driving by.

{¶8} At the scene, other officers spoke with an eyewitness who told the officers the man was behind The Party Store. (T. at 7). The eyewitness further told officers based upon Appellant's behavior he was concerned Appellant was planning to rob The Party Store. *Id*.

{¶9} Officer Slone testified when he and his partner arrived, they found Appellant on the corner of Fourth and Harrison. (T. at 7). Officer Slone stated he could not initially see if Appellant was carrying a firearm because he was approximately 2 blocks away. *Id*. As they drove closer, they saw Appellant carrying what he thought looked like an AK "slung on his arm." (T. at 8).

{¶10} The officers immediately gave Appellant commands to drop the firearm and get down on his knees. (T. at 9). The officers observed Appellant "seemed kind of disoriented". Appellant responded by throwing the shotgun and starting to go down on his knees. (T. at 8). As Appellant was getting down on the ground, Appellant reached his right hand behind his back. *Id*. The officers ordered him to stop and Appellant then brought his hand back out in front of his body and got down on the ground. *Id*. The officers

then held Appellant at gun point until other officers arrived to secure the scene. (T. at 9).

{¶11} Once other officers arrived, the officers collected the shotgun. During the pat down search they found a concealed handgun in Appellant's back right pocket and a battle axe strapped to his side. (T. at 9-10). The officers took Appellant into custody.

{¶12} After they arrived at the jail, the officers asked Appellant to perform field sobriety tests. Appellant failed the horizontal gaze nystagmus test and performed poorly on the walk and turn test. (T. at 11). Office Slone testified the results of the sobriety testing were indicative of impairment. (T. at 12).

{¶13} Officer Slone testified Appellant's behavior from the start seemed odd. (T. at 12). He stated Appellant's behavior "wasn't typical of a person who is open carrying." *Id*. The officer explained based on his experience "an open carry person typically wants to be seen." *Id*. Officer Slone further stated, based on the statements of the other responding officers and the people who had been passing by, Appellant was acting as if he didn't want to be seen. *Id*.

{¶14} By Judgment Entry filed September 16, 2019, trial court overruled Appellant's motion to suppress. In the written decision, the trial court found reasonable suspicion for the stop was supported by the officer's testimony he and his partner were responding to several 911 calls to police dispatch, wherein the callers "indicated that the defendant not only had a gun but was hiding behind buildings and appeared to be attempting to rob The Party Store." The trial court also found, based on his experience, Officer Slone considered the fact that Appellant was deliberately avoiding people, "which was contradictory to someone who was open carrying ***."

{¶15} On September 25, 2019 Appellant entered a plea of no contest to the

indicted offenses. The trial court entered a finding of guilty and by Judgment Entry filed September 27, 2019, the trial court sentenced Appellant to three (3) years of community control.

{¶16} Appellant now appeals, raising the following errors for review:

> I. THE TRIAL COURT'S FINDINGS THAT REASONABLE ARTICULABLE SUSPCION [SIC] EXISTED FOR APPELLANT'S SEIZURE WERE CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.
>
> II. THE TRIAL COURT'S CONCLUSION THAT THE SEIZURE OF APPELLANT WAS JUSTIFIED UNDER THE FOURTH AMENDMENT WAS IN ERROR AS WAS ITS DENIAL OF APPELLANT'S SUPPRESSION MOTION.

{¶17} We elect to address Appellant's two assignments of error together as they are interrelated.

Motion to Suppress – Applicable Law

{¶18} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154-155, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate witness credibility. *See State v. Dunlap*, 73 Ohio St.3d 308, 314, 1995-Ohio-243, 652 N.E.2d 988; *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists

to support those findings. *See Burnside*, *supra*; *Dunlap*, *supra*; *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist. 1998); *State v. Medcalf*, 111 Ohio App.3d 142, 675 N.E.2d 1268 (4th Dist. 1996). However, once this Court has accepted those facts as true, it must independently determine as a matter of law whether the trial court met the applicable legal standard. *See Burnside*, *supra*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist. 1997); *See, generally*, *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). That is, the application of the law to the trial court's findings of fact is subject to a *de novo* standard of review *Ornelas*, *supra*. Moreover, due weight should be given "to inferences drawn from those facts by resident judges and local law enforcement officers." *Ornelas*, *supra* at 698, 116 S.Ct. at 1663.

{¶19} To determine whether a finding of fact is against the manifest weight of the evidence, an appellate court examines the entire record, the weight of the evidence and all reasonable inferences; considers the credibility of the witnesses; and determines whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed." *State v. Thompkins,* 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶20} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118. *Accord*, *Glasser v. United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 86 L.Ed. 680 (1942); *Marshall v. Lonberger*, 459 U.S. 422, 434, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983). As an appellate court, we neither weigh the evidence nor judge the credibility

of witnesses. *State v. Mills*, 62 Ohio St.3d 357, 582 N.E.2d 972 (1992). Our role is to determine whether there is relevant, competent and credible evidence, upon which the fact finder could base its judgment. *Cross Truck Equipment Co., Inc. v. Joseph A. Jeffries Co.*, 5th Dist. Stark No. CA–5758, 1982 WL 2911 (Feb. 10, 1982). Reviewing courts should accord deference to the trial court's decision because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller*, 37 Ohio St. 3d 71, 523 N.E.2d 846 (1988).

{¶21} In *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 81, 461 N.E.2d 1273 (1984), the Ohio Supreme Court explained: "[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *See, also State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), syllabus 1.

{¶22} When an officer who conducts an investigatory stop relies solely on the information provided through dispatch, "the state must demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity." *Maumee v. Weisner,* 87 Ohio St.3d 295, 299). When, in turn, the dispatch is based on information provided by an informant's tip, "the determination of reasonable suspicion will be limited to an examination of the weight and reliability due that tip. The appropriate analysis, then, is whether the tip itself has sufficient indicia of reliability to justify the investigative stop." *Id.* at 299, 720 N.E.2d 507. Relevant factors in this

determination include "the informant's veracity, reliability, and basis of knowledge." *Id.,* citing *Alabama v. White,* 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990). In making this determination, courts consider whether the informant can be classified as an anonymous tipster, a known confidential informant, or an identified citizen informant. *Weisner* at 300, 720 N.E.2d 507. *See State v. Loop* (Mar. 14, 1994), Scioto App. No. 93CA2153, unreported, 1994 WL 88041, the court reasoned that " '[i]nformation from an ordinary citizen who has personally observed what appears to be criminal conduct carries with it indicia of reliability and is presumed to be reliable.' " *Id.* at 5, quoting 301. *See also State v. Carstensen* (Dec. 18, 1991), Miami App. No. 91–CA–13, unreported, at 4, 1991 WL 270665, the court found a stop based upon a 911 call describing a drunk driver sufficiently justified, although the informant there was unidentified. *See, also, Fairborn v. Adamson* (Nov. 17, 1987), Greene App. No. 87–CA–13, unreported, at 4–5, 1987 WL 20264; *State v. Jackson* (Mar. 4, 1999), Montgomery App. No. 17226, unreported, at 5, 1999 WL 115010, observing generally that " 'a tip from an identified citizen informant who is a victim or witnesses a crime is presumed reliable, particularly if the citizen relates his or her basis of knowledge,' " quoting *Centerville v. Gress* (June 19, 1998), Montgomery App. No. 16899, unreported, at 4–5, 1998 WL 321014.

{¶23} With regard to the credibility to be given to the 911 callers specifically, the United States Supreme Court has found tips received through 911 calls are more reliable because 911 callers can be identified through tracing and recording, and false calls are subject to prosecution. *Navarette v. California,* 134 S.Ct. 1683, 1688–1690, 188 L.Ed.2d 680, 2014 U.S. LEXIS 2930 (2014). Therefore, "a reasonable officer could conclude that a false tipster would think twice before using such a system," thus enhancing the reliability

of 911 calls. *Id.* at 1690. According to the United States Supreme Court in *Navarette,* observing an event firsthand "entitles [a] tip to greater weight than might otherwise be the case." *Id.* at 1689 (citing *Gates* at 234). Also, when an anonymous caller reports an incident soon after it occurs, it is treated as "especially reliable." *Id.* Finally, the United States Supreme Court found a caller's use of the 911 emergency system is another indicia of veracity. *Id.*

{¶24} 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 v. Ohio,* 392 U.S. 1, 19 (1968), fn. 16.

{¶25} 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).

{¶26} 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." *Id.* 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.

{¶27} Under *Terry*, a police officer may conduct a limited pat-down of a person if the officer reasonably believes that "the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others." *State v. Evans*, 67 Ohio St.3d 405, 408, 618 N.E.2d 162 (1993), quoting *Terry v. Ohio*, 392 U.S. 1, 24, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). An officer is permitted to take reasonable steps to assure the safety of himself and others. *Terry* at 24. To justify a pat-down, an officer must have a reasonable, objective basis to conduct the frisk. *State v. Andrews*, 57 Ohio St.3d 86, 565 N.E.2d 1271 (1991).

ANALYSIS

{¶28} The trial court found on the night in question, Officer Slone and his partner were responding to several 911 calls wherein the callers "indicated that the defendant not only had a gun, but that he was hiding behind buildings and appeared to be attempting to

rob The Party Store." The trial court also based its decision on Officer Slone's testimony that in his experience, Appellant's behavior of hiding and deliberately avoiding people was contrary to someone who was open carrying.

{¶29} Appellant specifically challenges the following four findings made by the trial court:

> 1. "The calls received indicated that the defendant not only had a gun, but was hiding behind buildings;" (Judgment Entry at 4)
>
> 2. [Appellant] "appeared to be attempting to rob the Party Store." *Id*.
>
> 3. Officer Slone, based on his experience, deemed alarming "the fact that defendant was deliberately avoiding people, which was contradictory to someone who was open carrying." *Id*.
>
> 4. Upon making contact with defendant, while compliant with officers' commands, he appeared to be disoriented. *Id*.

{¶30} Upon review of the record, we find the record does not support the trial court's factual findings.

{¶31} At the suppression hearing, Officer Slone stated he and his partner, as well as other officers in the area, responded to a "man with a gun call." (T. at 6). While he and his partner were on route, more calls were coming in reporting "that there was a man walking, I believe they described it as a rifle or possibly an AR, which he was trying to hide from passersby as they drove by." (T. at 6-7). Officers on the scene reported they

spoke with an eyewitness who stated the man was behind The Party Store and "feared that he was going to rob The Party Store." (T. at 7).

{¶32} Upon arrival, Officer Slone and his partner went to the area where the man was last seen, Fourth and Smith Avenue Northwest. They first saw Appellant at the corner of Fourth and Harrison, heading eastbound down Fourth Street. (T. at 7). As they got closer, Officer Slone's partner stated Appellant had a shotgun. (T. at 8). Officer Slone testified he thought the weapon looked more like an AK. *Id*. He stated Appellant had the firearm slung on his arm as he was walking. *Id*. Officer Slone testified when they got out of their cruiser and gave Appellant commands to drop the firearm and get down on his knees, "he seemed kind of disoriented." (T. at 8-9). Appellant then threw the shotgun and as he was getting down on the ground, "he reaches his right hand behind his back." (T. at 8). Officer Slone warned Appellant if he didn't "stop doing that I'm going to shoot you." *Id*. Once on the ground, Appellant was fidgeting with his fingers, taking his rings off and moving around on the ground, which Officer Slone described as odd behavior. (T. at 8-9). Officer Slone testified it was "a fairly tense situation … and I couldn't tell what was wrong with him at that time but something was wrong." (T. at 9). The officers then held Appellant until other officers arrived on scene. (T. at 9). At that time the shotgun was removed and Patrolman LeFever located another firearm in Appellant's back, right pocket where Appellant had been reaching and also a battle axe strapped to Appellant's side. (T. at 10). Officer Slone stated Appellant was then placed in the cruiser and Mirandized. (T. at 10). Office Appellant seemed agitated and was repeating himself. (T. at 10-11). At the police station, during the booking process, Officer Slone detected an odor of alcohol and asked Appellant to perform field sobriety tests, to which Appellant consented. (T. at

11). During the field sobriety tests, Officer Slone observed clues on the Horizontal Gaze Nystagmus test and poor performance on the walk-and-turn test. (T. at 11). The one-leg-stand test was not attempted because Appellant started to complain of leg pain. *Id*. Later, during an interview with Appellant, he admitted to drinking. (T. at 12). Officer Slone again stated Appellant's "whole behavior right from the start just seemed odd." (T. at 12).

{¶33} Appellant argues the only inference that could be made in this case by the officers was Appellant was walking on the sidewalk openly carrying a firearm, a constitutionally protected activity in Ohio. In support of his argument, Appellant cites *Northrup v. City of Toledo Police Dept.*, 785 F.3d 1128, 1131 (6th Cir. 2015) which held the stop of the defendant in that case was unlawful under *Terry* because police had no reason to think an individual openly carrying a firearm was dangerous.

{¶34} Appellant and Appellee agree the fact someone walks along a public street carrying an exposed rifle is not a crime. While certainly unusual, suspicious, and alarming to the average citizen, said conduct, in and of itself, is nevertheless legal conduct.

{¶35} Officer Slone testified he and his partner were informed 911 calls had been received by dispatch of a man walking with a rifle, trying to hide from people driving by. The calls did not report Appellant was attempting to hide the rifle. Appellant's attempt to hide, a conclusion made by the callers without further description, was obviously unsuccessful based upon the fact the callers were able to observe Appellant carrying a rifle as they were driving by.

{¶36} Other officers at the scene spoke with an eyewitness who told them the man with the rifle was behind The Party Store. The eyewitness related his concern and fear Appellant was going to rob The Party Store. There was no additional description of what

specific conduct gave rise to the eyewitness's "concern" or "fear" other than "Appellant's behavior." The trial court found the testimony sufficient to conclude Appellant "appeared to be **attempting** to rob The Party Store." (Emphasis added). We find to extrapolate from the eyewitness's lay opinion as to what he or she feared Appellant might do is insufficient to support the trial court's factual finding Appellant appeared to be attempting to rob the store. Fear of what Appellant might do is merely the citizen eyewitness's speculation and is not based on specific articulable facts actual criminal activity was afoot.

{¶37} It is noteworthy when Officer Slone first encountered Appellant, he was not hiding behind The Party Store or any other building, but rather was on a street corner in Canton. As the officers approached, they observed Appellant walking, not running or fleeing the area, with what looked like an AK [rifle] "slung on his arm." Appellant was not attempting to hide either himself or the rifle at this point in time and there had been no robbery reported at The Party Store. Appellant's behavior as observed first hand by the officers was inconsistent with the initial description given by the 911 callers and the eyewitness's fear of an imminent robbery. Officer Slone's observation of Appellant stands in stark contrast to someone deliberately avoiding people, and is consistent, not contradictory, to someone who was open carrying - another finding made by the trial court to support its decision.

{¶38} Upon observing Appellant with a rifle slung on his arm, the officers immediately commanded Appellant to drop the firearm and get down on his knees. It is at this exact point in time Appellant was stopped and no longer free to go. Any testimony concerning Appellant's subsequent actions and his intoxication cannot be used retroactively to support the original stop.

{¶39} The trial court found the 911 calls indicated Appellant not only had a gun, but was also hiding behind buildings. Officer Slone testified Appellant was trying to hide from passersby as they drove by. That is markedly different from saying Appellant was hiding behind buildings. The eyewitness observed Appellant was behind The Party Store, not "hiding" behind it. We do not find the testimony supports the trial court's finding. While factual information from an ordinary citizen who has personally observed criminal conduct carries with it indicia of reliability and is presumed to be reliable, such applies to the facts observed by the citizen. We do not believe the indicia of reliability applies to the citizen's concerns, fears or speculation as to what Appellant may or may not have been going to do. At no point in time did the citizen informant see a crime committed.

{¶40} To be sure, the officers had every right to initiate a consensual encounter with Appellant to investigate the situation, since they described Appellant's behavior as "kind of disoriented" upon their initial contact with him. Had they done so, their firsthand observations of Appellant's unusual behavior and intoxication could have been used to support probable cause to arrest Appellant for handling a weapon while intoxicated. Such would have then supported a lawful search of Appellant incident to his arrest and seizure of his concealed weapon. However, the law is clear, subsequent discovery of the firearm on Appellant's person cannot be used as grounds to support the initial stop or seizure.

{¶41} Appellant's first and second assignments of error are sustained. The judgment of the trial court is reversed and the charges against Appellant ordered dismissed.

By: Hoffman, P.J.
Wise, Earl, J., concurs and
Wise, John, J., dissents

Wise, John, J., dissents

{¶42} I respectfully dissent from the majority's finding in this case. I would find that the officers in this case had a reasonable suspicion of criminal activity to justify the investigative detention of Appellant based on the 911 calls, the eye witness account, and their own observations at the scene.

{¶43} The investigative stop exception to the Fourth Amendment warrant requirement allows a police officer to stop and briefly detain an individual if the officer possesses a reasonable suspicion, based upon specific and articulable facts, that criminal activity "may be afoot." *Terry v. Ohio,* 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *see, also*, *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000); *State v. Andrews*, 57 Ohio St.3d 86, 565 N.E.2d 1271 (1991). To justify an investigative stop, the officer must be able to articulate specific facts that would warrant a person of reasonable caution in the belief that the person stopped has committed or is committing a crime. *See*, *Terry*, 392 U.S. at 27, 88 S.Ct. 1868, 20 L.Ed.2d 889.

{¶44} A valid investigative stop must be based upon more than a mere "hunch" that criminal activity is afoot. *See, e.g.*, *Arvizu,* 534 U.S. at 274, 122 S.Ct. 744, 151 L.Ed.2d 740; *Wardlow*, 528 U.S. at 124, 120 S.Ct. 673, 145 L.Ed.2d 570; *Terry*, 392 U.S. at 27, 88 S.Ct. 1868, 20 L.Ed.2d 889. Reviewing courts should not, however, "demand scientific certainty" from law enforcement officers. *Wardlow*, 528 U.S. at 125, 120 S.Ct. 673, 145 L.Ed.2d 570. Rather, a reasonable suspicion determination "must be based on commonsense judgments and inferences about human behavior." *Id.* Thus, "the likelihood of criminal activity need not rise to the level required for probable cause, and it falls

considerably short of satisfying a preponderance of the evidence standard." *Arvizu,* 534 U.S. at 274, 122 S.Ct. 744, 151 L.Ed.2d 740; *Wardlow*, 528 U.S. at 123, 120 S.Ct. 673, 145 L.Ed.2d 570.

{¶45} As set forth above, Officer Slone testified that he and other officers responded to a "man with a gun call". As he and his partner got into their cruiser, they were given additional information from the responding officers and learned 911 calls had been coming into dispatch. The 911 callers said there was a man walking, with a rifle, possibly an AK or AR (automatic rifle), and that he was trying to hide from people driving by. At the scene, other officers spoke with an eyewitness who told the officers the man was behind The Party Store. The eyewitness further told officers based upon Appellant's behavior he was concerned Appellant was planning to rob The Party Store. Upon locating Appellant, Officer Slone saw Appellant carrying what he thought looked like an AK "slung on his arm."

{¶46} As stated in *Navarette v. California*, *supra*, 911 calls are more reliable than other tips because 911 callers can be identified through tracing and recording, and false calls are subject to prosecution.

{¶47} I would find that the action of the officers upon encountering Appellant and asking him to drop the weapon and get down on the ground was justified in this case. In *Terry v. Ohio*, *supra*, the Court held that a police officer may conduct a limited pat-down of a person if the officer reasonably believes that "the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others."

{¶48} Based on these factors, I would conclude that Officer Slone's observations and interaction with Appellant, as well as the concerns expressed the 911 callers relayed to him through dispatch and the observations from the eye witness at the scene, gave him probable cause to believe that Appellant may be engaged in criminal activity.

{¶49} I would affirm the decision of the trial court that overruled Appellant's motion to suppress.