[Cite as *In re M.P.*, 2015-Ohio-1533.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: M.P.	:	APPEAL NO. C-140373 TRIAL NO. 13-3430Z
	:	
	:	*O P I N I O N.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: April 24, 2015

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Melynda J. Machol*, Assistant Prosecuting Attorney, for Plaintiff-Appellee the State of Ohio,

Gordon C. Magella, for Defendant-Appellant M.P.

Please note: this case has been removed from the accelerated calendar.

FISCHER, Presiding Judge.

{¶1} Appellant M.P. was adjudicated delinquent for carrying a concealed weapon in violation of R.C. 2923.12. M.P. now appeals the juvenile court's decision denying suppression of the physical evidence seized during his encounter with police. Because the detention and frisk of M.P. were within the bounds of the Fourth Amendment, we affirm the court's judgment.

Events Leading to M.P.'s Arrest

{¶2} On April 15, 2013, the Mt. Healthy police accompanied by the SWAT team executed a "no-knock" search warrant at an apartment on Clovernook Avenue. The search warrant authorized the police to enter the residence at night to search, in general, for any evidence related to child pornography or sexual activity involving minors. Officer Pat Kemper had signed an affidavit in support of the search warrant, which detailed information he had received from a high school principal and students at the school regarding sexual acts of minors being recorded on cell phones.

{¶3} A source told Officer Kemper that the acts had occurred at the Clovernook Avenue apartment of J.L., a minor. According to Officer Kemper, one of the minors had told him that J.L. was a member of a local gang and carried a handgun. The gang was known to have access to weapons. And three days earlier, officers had responded to a report of shots fired from J.L.'s apartment and had found live ammunition rounds in the apartment and on the back patio. Thus, Officer Kemper requested the nighttime, secretive entry for the safety of the executing officers.

{¶4} When Officer Kemper, the SWAT team, and other Mt. Healthy police officers arrived to execute the search warrant, Officer Kemper saw, in the parking lot next to J.L.'s apartment building, J.L., M.P., and another individual walking toward

them. Officer Kemper yelled out J.L.'s name, to which J.L. responded, "Huh?" or "What?" Officer Kemper then yelled to the rest of the officers, "Target," and the officers immediately ordered J.L. and the two others with him to the ground at gunpoint.

{¶5} All three were placed in handcuffs. Once the officers entered the apartment, Officer Deshawn Brooks separated M.P. from the others and conducted a pat-down search for weapons. Officer Brooks recovered a handgun from M.P.'s waistband and placed M.P. in the back of a police cruiser.

Juvenile Court Proceedings

{¶6} The next day, the state filed a complaint against M.P., alleging that he had been delinquent for carrying a concealed weapon. M.P. filed a motion to suppress both his statements to police and the physical evidence against him. He argued that the police officers' detention of him at gunpoint had constituted an arrest without probable cause, and that even if such detention had not amounted to an arrest for which probable cause was required, the officers lacked the authority to stop him because they lacked a reasonable suspicion that he was involved in criminal activity.

{¶7} Officers Kemper and Brooks testified at the motion-to-suppress hearing as to the search warrant and M.P.'s subsequent detention and arrest. A magistrate granted suppression of M.P.'s statements, but denied suppression of the physical evidence. M.P. filed objections. Following a hearing on those objections, the juvenile court determined that the detention and pat-down search of M.P. had been appropriate under the circumstances and adopted the magistrate's decision adjudicating M.P. delinquent. The juvenile court ordered M.P.'s disposition on June 5, 2014, and this appeal followed.

The Juvenile Court Properly Denied M.P.'s Motion to Suppress

{¶8} In his sole assignment of error, M.P. argues that the trial court erred by denying suppression of the physical evidence against him and by adjudicating him delinquent. Because M.P.'s arguments do not address his adjudication, but relate solely to the suppression of the evidence against him, he has effectively abandoned that portion of his assignment of error challenging his adjudication.

{¶9} Appellate review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. We must accept the trial court's findings of fact if they are supported by competent and credible evidence, but we review de novo the court's application of the relevant law to those facts. *Id.*

Detention Incident to a Search Warrant

{¶10} We first address the constitutionality of M.P.'s initial detention by the officers at gunpoint. M.P. argues, as he did before the trial court, that his detention by police during the execution of the search warrant at J.L.'s apartment, and the subsequent weapons frisk, constituted a de facto arrest and, therefore, must have been supported by probable cause to satisfy the Fourth Amendment. M.P. further argues that even if his detention did not constitute an arrest, the police officers lacked a reasonable, articulable suspicion to stop him as required by *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 734 (1968). We determine that the officers did not need probable cause to detain M.P., or even a reasonable suspicion that M.P. had been involved in criminal activity or posed a specific danger to the officers, under the Fourth Amendment exception articulated in *Michigan v. Summers*, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981). *See Bailey v. United States*, ___ U.S. ___, 133 S.Ct. 1031, 1037-1038, 185 L.Ed.2d 19 (2013).

{¶11} The *Summers* court held that police officers executing a search warrant may detain the occupants of the premises during the search without violating the Fourth Amendment. *See Summers* at 705. *Summers* involved the execution of a search warrant for narcotics at a private residence. The court determined that a danger to the police officers was implicit in these circumstances and that the officers' detention of a person on the steps outside the residence to be searched did not violate that individual's Fourth Amendment rights, based upon the following law-enforcement justifications: minimizing the risk of bodily harm to the officers, facilitating the orderly completion of the search, and preventing flight. *See Summers* at 702-703; *United States v. Fountain*, 2 F.3d 656, 663 (6th Cir.1993). The United States Supreme Court clarified that an occupant need not be detained inside the premises during the execution of the warrant, but that an occupant's detention must be limited to the "immediate vicinity of the premises," meaning "the area in which an occupant poses a real threat to the safe and efficient execution of a search warrant." *Bailey* at 1042.

{¶12} Officers executing a search warrant may also use reasonable force to detain the occupants. *Muehler v. Mena*, 544 U.S. 93, 98-99, 125 S.Ct. 1465, 161 L.Ed.2d 299 (2005). Reasonable force may include the use of handcuffs and the display of firearms, where the officers have a justifiable fear for their safety. *See, e.g.*, *Ingram v. City of Columbus*, 185 F.3d 579, 591-592 (6th Cir.1999).

{¶13} In this case, although the police officers did not have a specific reason to suspect M.P.'s involvement in criminal activity prior to the execution of the search warrant, the officers had received information that J.L., the target of the search warrant, was a member of a gang and carried a weapon. Mt. Healthy police officers had been to J.L.'s apartment in the days prior to the search, responding to reports of

gunfire, and officers had found ammunition both inside and outside the apartment. When the officers began their descent on the apartment to execute the search, they came across J.L., M.P., and another individual outside the apartment, walking toward them. Based upon what the officers believed about J.L., they justifiably detained all three under *Summers* to prevent bodily harm to themselves and the juveniles, while the SWAT team entered J.L.'s apartment.

{¶14} Although M.P.'s detention did not occur inside J.L.'s apartment, but in the parking lot, his detention nevertheless comported with the "immediate vicinity" rule of *Bailey*. The officers had already begun their approach to J.L's apartment with the SWAT team to execute the no-knock warrant, when they came across M.P. outside the apartment, accompanied by J.L., the target of the search. Thus, the officers reasonably believed M.P. threatened the safe, efficient performance of the search. *See Bailey*, ___ U.S. ___, 133 S.Ct. at 1037-1038, 185 L.Ed.2d 19. Given that the officers believed J.L. might be an armed gang member, they justifiably detained M.P., who was standing within close range of J.L., by displaying guns and using handcuffs. *See Muehler* at 98-99. Therefore, M.P.'s initial detention by the officers did not violate the Fourth Amendment.

Weapons Frisk

{¶15} Because we have determined that M.P.'s initial detention was constitutionally permissible, we must now examine whether Officer Brooks's subsequent pat-down of M.P. to check for weapons violated M.P.'s Fourth Amendment rights.

{¶16} An officer can conduct a pat-down search of an individual to find weapons "where he has reason to believe that he is dealing with an armed and dangerous individual." *Terry*, 392 U.S. at 27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

The "issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.*

{¶17} M.P. argues that the officers had no reason to believe that he was armed and dangerous, which would justify a pat-down search under *Terry*. We disagree. The officers had reason to believe that M.P. might be armed and dangerous based upon his close proximity to J.L. and J.L.'s apartment, where the officers had reason to suspect J.L. was a gun-wielding gang member. Thus, Officer Brooks could permissibly conduct a pat-down of M.P. for weapons for the safety of everyone on the scene.

{¶18} Because the detention and frisk of M.P. were within the bounds of the Fourth Amendment, the trial court did not err in overruling M.P.'s motion to suppress to the extent that it sought to suppress the physical evidence seized from his person. Consequently, we overrule M.P.'s sole assignment of error and affirm the judgment of the trial court.

Judgment affirmed.

MOCK and **HILDEBRANDT, JJ.,** concur.

LEE HILDEBRANDT, JR., retired, from the First Appellate District, sitting by assignment.

Please note:

The court has recorded its own entry on the date of the release of this opinion.