[Cite as *State v. King*, 2009-Ohio-5465.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C. A. No. 24686
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
CAMERON LEE KING	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 04 1082

DECISION AND JOURNAL ENTRY

Dated: October 14, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} While on patrol, Officer Patrick Mobley saw Cameron King standing in the parking lot of a store near a street corner where Officer Mobley has made a number of drug arrests. As Officer Mobley drove close to the store, Mr. King went inside it. Officer Mobley turned around and drove by the store again. He again saw Mr. King standing outside in the parking lot, but when he got close, Mr. King again went inside the store. On his third pass by the store, Officer Mobley saw Mr. King leaning through the passenger window of a car that had not been in the parking lot before. Suspecting that Mr. King was engaged in a drug sale, Officer Mobley and his partner, Officer Drew Reed, stopped Mr. King as he was walking down the street. When Officer Reed patted Mr. King down for weapons, he felt a large bag in his pocket, which, Officer Reed testified, felt like it contained marijuana. Officer Reed removed the bag from Mr. King's pocket and saw that it contained fourteen smaller bags of marijuana. The Grand

Jury indicted Mr. King for trafficking in and possession of marijuana. Mr. King moved to suppress the State's evidence, arguing it was the product of an illegal search. The trial court denied his motion, concluding the officers had probable cause to stop and search him. Mr. King has appealed, assigning as error that the court incorrectly denied his motion to suppress. This Court affirms because the officers had reasonable suspicion that Mr. King was engaged in criminal activity.

MOTION TO SUPPRESS

{¶2} A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, at ¶8. A reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.* But see *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶14 (Dickinson, J., concurring). The reviewing court "must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Burnside*, 2003-Ohio-5372, at ¶8.

{¶3} Although a police officer generally may not seize a person within the meaning of the Fourth Amendment unless he has probable cause to arrest the person for a crime, "not all seizures of the person must be justified by probable cause . . . ." *Florida v. Royer*, 460 U.S. 491, 498 (1983). In appropriate circumstances, "a police officer may . . . approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." *Terry v. Ohio*, 392 U.S. 1, 22 (1968). "An 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, at ¶35 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

{¶4} "Reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *State v. Jordan*, 104 Ohio St. 3d 21, 2004-Ohio-6085, at ¶35. Officers may "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)). An officer, however, must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

{¶5} Mr. King has argued that Officers Mobley and Reed did not have a legitimate justification for an investigative stop. Officer Mobley testified that he had been a police officer for ten years and had made hundreds of drug arrests. He said he had been assigned to patrol that area of the city for four years and had made "at least 25 drug arrests" on the specific corner where he saw Mr. King. He said he saw Mr. King standing in the parking lot of a store and that the first two times he drove close by, Mr. King went inside the store. He said the third time he drove past, he saw Mr. King leaning into the passenger side of a car that was parked in the parking lot. He explained that, based on his training and the prior drug arrests he had made, "[if] someone is leaning inside of a car window, it is usually a drug deal that's taking place." He further said that, based on his experience as a police officer and the totality of the circumstances, when he saw Mr. King leaning inside the car, he thought that "[s]omething illegal was going on." Officer Reed also testified that the area where they saw Mr. King is a known drug area and that,

"usually people [are] sell[ing] drugs whenever they are posted up on a corner" like Mr. King was.

{¶6} "'The reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately rely' in determining whether an investigative stop is warranted." *State v. Bobo*, 37 Ohio St. 3d 177, 179 (1988) (quoting *United States v. Magda*, 547 F.2d 756, 758 (2d Cir. 1976)). Not only did the officers say that the area of town where they saw Mr. King was a known drug area, Officer Mobley said he had made a number of drug arrests on the very same street corner. The officers could infer from the fact that Mr. King went inside the store every time they drove near him that he was trying to avoid being seen by them. Officer Mobley also saw him leaning inside a parked car, which he said was consistent with drug activity. Having reviewed the totality of the circumstances, this Court concludes that the officers' investigative stop was based on reasonable suspicion that Mr. King was engaged in criminal activity. See *id*. at 179-80 (concluding officers had reasonable suspicion to justify investigative stop based on number of drug transactions in the area, time of day, officer's experience and familiarity with area, and defendant's actions). Mr. King has not challenged Officer Reed's testimony that the large bag in Mr. King's pocket felt like it contained marijuana.

{¶7} Because the facts establish that Officer Reed was allowed to stop Mr. King under the stop-and-frisk doctrine, it is not necessary to examine whether there was probable cause to arrest him, which was the basis of the trial court's decision. Mr. King's assignment of error is overruled.

CONCLUSION

{¶8} The trial court correctly denied Mr. King's motion to suppress because Officers Mobley and Reed had reasonable suspicion to stop him and do a precautionary frisk for weapons. The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
CONCURS

BELFANCE, J.
DISSENTS, SAYING:

{¶9} I respectfully dissent as I cannot conclude that the police officers possessed a reasonable suspicion that King was engaged in criminal activity at the time they stopped him.

{¶10} Pursuant to *Terry v. Ohio* (1968), 392 U.S. 1, 21, in order for an officer to temporarily seize an individual without probable cause, the officer must have reasonable articulable suspicion of criminal activity based on "specific and articulable facts" and "rational inferences from those facts." "The propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances." *State v. Freeman* (1980), 64 Ohio St.2d 291, at paragraph one of the syllabus.

{¶11} In *State v. Bobo* (1988), 37 Ohio St.3d 177, cited by the majority, the Supreme Court of Ohio concluded that officers had reasonable suspicion to stop and conduct a protective search of the defendant based on the presence of the following seven factors:

> "(1) the area in which the actions occurred was an area of very heavy drug activity in which weapons were prevalent; (2) it was nighttime, when weapons could easily be hidden; (3) Sergeant Mandzak, one of the officers who approached the vehicle in which Bobo was sitting, had about twenty years of experience as a police officer and numerous years in the surveillance of drug and weapon activity-included in this experience were about five hundred arrests each for guns or drugs city-wide and over one hundred arrests in the area in which Bobo was parked; (4) Mandzak's knowledge of how drug transactions occurred in that area; (5) Mandzak's observations of Bobo's disappearing from view then reappearing when the police car was close, looking directly at the officers and then bending down as if to hide something under the front seat; (6) Mandzak's experience of recovering weapons or drugs when an individual would make the type of gesture made by Bobo in ducking under his seat; and (7) the police officers' being out of their vehicle and away from any protection if defendant had been armed." Id. at 179.

{¶12} The facts of the instant case reveal the following. On the afternoon of March 31, 2008, around 4:45 p.m., Officer Mobley, a ten-year veteran of the Akron Police Department, and Officer Reed, an officer with approximately one year of experience, were patrolling the area near

a Buy Rite store in Akron. The Officers regarded this area as one of high drug activity and crime. Officer Mobley had made approximately twenty-five drug arrests at the corner of this store in the past four years. The Officers drove by the store twice, and each time they drove by they saw King enter the store from the parking lot. The third time the Officers approached the parking lot of the store, they saw King "leaning into the side of a car that was parked in the parking lot." After the Officers saw King leaning into the car in the parking lot, they believed that they had reasonable suspicion to initiate a stop. Officer Mobley stated that "based on * * * prior drug arrests and my training and experience, he --- when someone is leaning inside of a car window, it is usually a drug deal that's taking place."

{¶13} This case is clearly distinguishable from *Bobo*. Unlike in *Bobo,* the alleged suspicious behavior here took place in the afternoon, and not in the middle of night under the cover of darkness. Also, unlike in *Bobo*, King made no furtive gestures or movements. Further, while the defendant in *Bobo* "ben[t] down as if to hide something under the front seat[,]" upon eyeing the police, id. at 177, there was no testimony in the instant case evidencing similar eye contact or corresponding suspicious behavior by King. The Officers here did not even see King pass anything, or accept anything, from anyone in the vehicle. Nor did King flee the scene upon leaving the parked car. All the Officers saw was an individual go into a store twice and lean into a vehicle in the parking lot. While the activities described above *may* have indicated to the Officers that something was not quite right, I cannot conclude that the Officers possessed reasonable suspicion based on articulable facts that King was engaged in criminal activity. Based only on the facts above and the holding of the majority, any average law abiding citizen living in a high crime area could be legally stopped by the police for doing no more than

stopping and conversing with someone in a parked car. Such a result clearly violates the protections afforded by the Fourth Amendment.

{¶14} While it is true that "[t]he reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately rely in determining whether an investigative stop is warranted[,]" (Quotations and citations omitted.) Id. at 179, "[t]he [mere] fact that [King] was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that [King] himself was engaged in criminal conduct." *Brown v. Texas* (1979), 443 U.S. 47, 52. In this case, the police officer based the stop on the fact that King leaned into a car window while in an area where there had been prior drug arrests. Although King made no eye contact with the police, the police further assumed that King's going into the drug store twice was suspicious. I do not see how doing something so completely and undeniably legal, such as going into a store and leaning into a parked car, causes one to conclude that because the activity was conducted in a high crime area, reasonable articulable suspicion that a crime has occurred exists. See, e.g., *Akron v. Rowland* (1993), 67 Ohio St.3d 374, 382 (In addressing the constitutionality of a loitering ordinance, the Court noted that "[t]here is no evidence that [Rowland] committed a drug or any other offense. He spoke to people in two stopped cars, he stood in and around a convenience store, and he attempted to avoid the police when he was not in custody. None of these acts is illegal.")

{¶15} I find persuasive the reasoning and analysis of the Eighth District in *State v. Crosby* (1991), 72 Ohio App.3d 148. There the court held that "the trial court reasonably could conclude that the officers relied on *nothing more* to justify their search than the fact that two occupants of a car were engaged in some sort of conversation with an individual leaning against the vehicle. This activity in and of itself does not amount to the articulable suspicion sufficient

to justify a stop and search of the defendant." (Emphasis in original.) Id. at 151. "It is not illegal for [people] to assemble by a car and engage the occupant in conversation. * * * [.]" Id. at 151-152, quoting *State v. Arrington* (1990), 64 Ohio App.3d 654, 657. "[A]lthough drugs are often sold to occupants of cars by people who gather near them it is just as likely that those merely by a car are engaged in an innocent activity as it is that they are engaged in an illegal one." Id. at 152, quoting *Arrington*, 64 Ohio App.3d at 658.

{¶16} The Officers in this case were certainly free to continue investigating King to determine if reasonable suspicion or probable cause could be developed; however, the Officers were not free to stop King under the facts of the instant case. Here, I believe the testimony presented confirms only that the Officers had a hunch that King might be involved in something that might warrant further investigation. "'The inarticulate hunch, the awareness of something unusual, is reason enough for officers to look sharp. Their knowledge and experience identify many incidents in the course of a day that an untrained eye might pass without any suspicion whatever. But awareness of the unusual, and a proper resolve to keep a sharp eye, is not the same as an articulated suspicion of criminal conduct. Defendant's acts, as reported, were too innocuous to warrant the intrusion of a temporary seizure for questioning.'" *Freeman*, 64 Ohio St.2d at 300, (Celebrezze, C.J, dissenting), quoting *United States v. Montgomery* (C.A.D.C.1977), 561 F.2d 875, 879; see, also *State v. Douglas*, 9th Dist. No. 24069, 2008-Ohio-5568, at ¶24 (Moore, J., dissenting), quoting *United States v. Arvizu* (2002), 534 U.S. 266, 274 ("'[A]n officer's reliance on a mere 'hunch[,]' [however,] is insufficient to justify a stop[.]'"). Consequently, I would reverse.

APPEARANCES:

JAMES W. ARMSTRONG, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and RICHARD S. KASAY, assistant prosecuting attorney, for appellee.