[Cite as *State v. McCraney*, 2010-Ohio-2667.]

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

STATE OF OHIO	C. A. No. 09CA0079-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
DEANGELO T. MCCRANEY	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 07CR0605

DECISION AND JOURNAL ENTRY

Dated: June 14, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Deangelo McCraney, appeals from the judgment of the Medina County Court of Common Pleas, denying his motion to suppress. This Court affirms.

I

{¶2} On the afternoon of December 1, 2007, a juvenile, A.H., reported to the police that three black males wearing "baggy pants" had stolen his money after pushing him off of his scooter, breaking the scooter, and striking him in the chest. A.H. told officers that he had heard one of the men say that he wanted to go to the nearby Marathon Station. When officers patrolled the area surrounding Marathon, they found three individuals who matched the description that A.H. had given. Officers had A.H. view the individuals, and A.H. positively identified them. Police ultimately arrested McCraney, one of the three individuals, for his involvement in the incident.

{¶3} On December 11, 2007, a grand jury indicted McCraney on the following counts: (1) robbery, a second-degree felony, in violation of R.C. 2911.02(A)(2); and (2) robbery, a third-degree felony, in violation of R.C. 2911.02(A)(3). On January 17, 2008, McCraney filed a motion to suppress, arguing that officers had detained him without reasonable suspicion and had arrested him without probable cause. The trial court held a hearing and later denied McCraney's motion on May 15, 2008. The matter proceeded to a jury trial, and the jury found McCraney guilty on both counts of robbery. The trial court identified McCraney's convictions as allied offenses of similar import, and the State elected to proceed solely on McCraney's conviction for second-degree robbery, in violation of R.C. 2911.02(A)(2). The trial court sentenced McCraney to three years in prison.

{¶4} McCraney appealed, and this Court vacated his judgment due to an improper post-release control notification. *State v. McCraney*, 9th Dist. No. 08CA0070-M, 2009-Ohio-4252. Subsequently, the trial court resentenced McCraney and included his post-release control notification. McCraney now appeals from the trial court's denial of his motion to suppress and raises a single assignment of error for our review.

II

Assignment of Error

"THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS[.]"

{¶5} In his sole assignment of error, McCraney argues that the trial court erred by denying his motion to suppress. Specifically, he argues that the police lacked reasonable suspicion to seize him and then arrested him without probable cause by placing him in the back of a police cruiser. We disagree.

{¶6} The Ohio Supreme Court has held that:

> "Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19. 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. *State v. McNamara* (1997), 124 Ohio App.3d 706." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

Accordingly, this Court reviews the trial court's factual findings for competent, credible evidence and considers the court's legal conclusions de novo. *State v. Conley*, 9th Dist. No. 08CA009454, 2009-Ohio-910, at ¶6, citing *Burnside* at ¶8.

{¶7} This Court has identified three types of police encounters in the context of the Fourth Amendment: (1) consensual encounters; (2) investigatory stops; and (3) seizures that equate to an arrest. *State v. Patterson*, 9th Dist. No. 23135, 2006-Ohio-5424, at ¶11. Consensual encounters do not trigger Fourth Amendment guarantees "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." Id. at ¶12, quoting *State v. Taylor* (1995), 106 Ohio App.3d 741, 747-48. "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *United States v. Mendenhall* (1980), 446 U.S. 544, 555.

{¶8} To justify an investigative stop, an officer must point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 299, quoting *Terry v. Ohio* (1968),

392 U.S. 1, 21. In evaluating the facts and inferences supporting the stop, a court must consider the totality of the circumstances as "viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training." *State v. Bobo* (1988), 37 Ohio St.3d 177, 179, quoting *United States v. Hall* (C.A.D.C. 1976), 525 F.2d 857, 859. A totality of the circumstances review includes consideration of "(1) [the] location; (2) the officer's experience, training or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances." *State v. Biehl*, 9th Dist. No. 22054, 2004-Ohio-6532, at ¶14, citing *Bobo*, 37 Ohio St.3d at 178-79.

{¶9} A seizure that equates to an arrest goes beyond a mere investigatory detention and requires the existence of probable cause. *Patterson* at ¶14. "The existence of an arrest is dependent *** upon the existence of four requisite elements: (1) [a]n intent to arrest, (2) under real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested." *State v. Barker* (1978), 53 Ohio St.2d 135, paragraph one of the syllabus. "Officers have probable cause to justify an arrest if 'from the information known to the arresting officers based on reasonably trustworthy information, a reasonably prudent person would be warranted in believing that the arrestee had committed or was committing an offense.'" *State v. Oliver*, 9th Dist. No. 24500, 2009-Ohio-2680, at ¶10, quoting *State v. Scott*, 9th Dist. No. 08CA009446, 2009-Ohio-672, at ¶11.

{¶10} Officer Matt Sobie, a patrol officer with thirty-one years experience, was the only person who testified at the suppression hearing. Officer Sobie testified that, at approximately 1:54 p.m. on December 1, 2007, he received a radio dispatch, indicating that a younger male had called 911 after three black males had taken his money. The juvenile reported that the three males were wearing "baggy pants" and were heading in the direction of the Marathon Station on

foot. Officer Sobie indicated that another officer, Officer Graff, also received the dispatch and arrived at the specified location first. Officer Graff radioed to Officer Sobie and told him that he had stopped two potential suspects and saw a third potential suspect walking South on Lyman Street.

{¶11} Officer Sobie proceeded toward Lyman Street and saw an individual walking. He noted that the individual was a black male and was wearing baggy pants. He estimated that the individual, later identified as McCraney, was approximately 200-300 feet from the area where Officer Graff had stopped to detain his two suspects. According to Officer Sobie, he did not see anyone else in the area that matched the description he received from dispatch. Officer Sobie observed McCraney walking fast and looking back over his shoulder toward the location where Officer Graff had stopped the two other suspects. Officer Sobie then blew his horn, and McCraney stopped walking. According to Officer Sobie, he blew his horn because he believed that McCraney might be preparing to run based on his quick walking pace and his glances in Officer Graff's direction. Officer Sobie exited his cruiser and spoke with McCraney.

{¶12} McCraney does not take issue with the trial court's factual findings. Instead, he argues that the trial court erred as a matter of law by concluding that Officer Sobie had reasonable suspicion to stop him. Specifically, he argues that Officer Sobie stopped him based on a "hunch." We disagree.

{¶13} Even assuming the encounter between Officer Sobie and McCraney amounted to an investigatory stop rather than a consensual encounter, the record supports the conclusion that Officer Sobie had reasonable suspicion to stop McCraney. Officer Graff saw McCraney leaving the area after he stopped two suspects, and Officer Sobie found McCraney in the exact area where Officer Graff directed him. Officer Sobie stopped McCraney within approximately 200-

300 feet of the two suspects that Officer Graff had stopped. Officer Sobie testified that McCraney's appearance matched the description that dispatch received from A.H., the victim of the alleged attack. He specified that he did not see anyone else in the area that matched that description. Moreover, he observed McCraney walking quickly away and glancing over his shoulder in Officer Graff's direction. Given Officer Sobie's thirty-one years of experience, the information that he received from dispatch and Officer Graff, and his foregoing observations, the trial court did not err in concluding that he possessed reasonable suspicion based on the totality of the circumstances. See *Biehl* at ¶14.

{¶14} Officer Sobie testified that when he stopped McCraney he explained the basis for the stop. Specifically, he informed McCraney that: (1) someone had reported a crime that "possibly involv[ed] him and his friends"; (2) Officer Graff had stopped "his two friends"; and (3) he would "like to take [McCraney] up there and meet up with them so [they] could decide what happened[.]" Officer Sobie testified that McCraney "acknowledged that was okay." Officer Sobie then explained to McCraney that he would place him in the back of his cruiser for the ride over to his friends and that "before we put someone in the police car, we pat them down[.]" Officer Sobie performed the pat down, placed McCraney in the back of the cruiser, and drove him approximately 200-300 feet to the location where Officer Graff was waiting with the other two suspects. Officer Sobie never handcuffed McCraney or indicated that he was under arrest. When the two arrived, other officers brought A.H. to the scene, and he positively identified McCraney as his assailant. Officer Sobie placed McCraney back in his cruiser and Mirandized him. McCraney indicated that he understood his rights. He then admitted that he had taken A.H.'s money, but stated he "was just messing around."

{¶15} McCraney argues that, even if Officer Sobie properly stopped him, Officer Sobie's "subsequent detention and placement of [McCraney] in his police car amounted to a warrantless arrest that lacked probable cause." Specifically, he challenges the period of time when Officer Sobie placed him in the police cruiser to drive him over to Officer Graff and the other suspects. He relies upon the factors set forth in *State v. Barker* to argue that Officer Graff arrested him and that the arrest had to be supported by probable cause.

{¶16} As set forth above, *Barker* held that "[t]he existence of an arrest is dependent *** upon the existence of four requisite elements: (1) [a]n intent to arrest, (2) under real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested." *Barker*, 53 Ohio St.2d at paragraph one of the syllabus. There is no evidence in the record that McCraney was under arrest when Officer Sobie placed him in his cruiser to drive him to Officer Graff. He placed McCraney in the back of his cruiser for the purpose of transporting him 200-300 feet and rejoining Officer Graff. He did not handcuff McCraney. Further, he testified that he always places people in the back of his cruiser to transport them because "all [his] notebooks, [his] briefcase, [and] all [his] equipment is on [the front passenger's] seat and it's strapped in[.]" Officer Sobie testified that he did not arrest McCraney until after A.H. positively identified him. He had no intention to arrest McCraney when he placed him in the back of his cruiser to transport him. And in any event, McCraney consented to the transport. There is no evidence that McCraney himself believed that Officer Sobie was arresting him.

{¶17} The evidence does not support McCraney's argument that his detention went beyond an investigatory detention and equated to an arrest such that probable cause was necessary. *Patterson* at ¶14. Because Officer Sobie did not arrest McCraney when he placed

him in his cruiser, McCraney's argument that Officer Sobie lacked probable cause is meritless. McCraney's sole assignment of error is overruled.

III

{¶18} McCraney's sole assignment of error is overruled. The judgment of the Medina County Court of Common Pleas 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 Medina, 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.

BETH WHITMORE
FOR THE COURT

MOORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

DAVID C. SHELDON, Attorney at Law, for Appellant.

DEAN HOLMAN, Prosecuting Attorney, and RUSSELL A. HOPKINS, Assistant Prosecuting Attorney, for Appellee.