

[Cite as *State v. Clayton*, 2015-Ohio-663.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27290

Appellee

v.

MICHAEL CLAYTON

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 2013 10 2891

Appellant

DECISION AND JOURNAL ENTRY

Dated: February 25, 2015

WHITMORE, Judge.

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

I

{¶2} At approximately 2:40 a.m., Officer Thomas Parr and his partner heard several gunshots to the east of their parked cruiser. Because the shots sounded as if they had come from only a few blocks away, the two officers immediately started driving east while looking for any suspicious activity. Approximately one block away from where they had been parked, they spotted a GMC Yukon coming from the east and traveling west. Officer Parr and his partner noted that the SUV was the only car on the road and that no pedestrians were in the area. They further observed that the SUV was traveling very slowly. Consequently, they pulled behind the SUV and began to follow it.

{¶3} As soon as Officer Parr and his partner began following the SUV, they were notified that a second shooting had occurred approximately 10 blocks to the west. To expedite matters, the officers stopped the SUV after it turned onto Talbot Avenue. They then questioned the driver and the passenger, Clayton, as to whether they had heard any gunshots and whether they were carrying any weapons in the car. Both the driver and Clayton ultimately consented to a pat down and stepped out of the car. As Officer Parr began patting down Clayton, he glanced inside the car and observed a handgun on the passenger's side floorboard. The discovery of the handgun led to Clayton's arrest.

{¶4} A grand jury indicted Clayton on counts of carrying concealed weapons, improperly handling firearms in a motor vehicle, and using weapons while intoxicated. Clayton pleaded not guilty to the charges and filed a motion to suppress. After the court denied his motion, he withdrew his initial plea and pleaded no contest to the charges of carrying concealed weapons and using weapons while intoxicated. In exchange for his plea, the State dismissed the count for improperly handling firearms in a motor vehicle. The court sentenced Clayton to one year of community control.

{¶5} Clayton now appeals from the trial court's denial of his motion to suppress and raises one assignment of error for our review.

II

Assignment of Error

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY DENYING APPELLANT'S MOTION TO SUPPRESS HIS ARREST AND ANY EVIDENCE SEIZED.

{¶6} In his sole assignment of error, Clayton argues that the trial court erred by denying his motion to suppress. Specifically, he argues that the police lacked reasonable suspicion to stop the SUV in which he was riding as a passenger. We disagree.

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

[a]ppellate 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*, 62 Ohio St.3d 357, 366 (1992). Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning*, 1 Ohio St.3d 19 (1982). 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*, 124 Ohio App.3d 706 (4th Dist.1997).

State v. Burnside, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. *Accord State v. Hobbs*, 133 Ohio St.3d 43, 2012-Ohio-3886, ¶ 6 (*Burnside* applied). 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. Lorain No. 08CA009454, 2009-Ohio-910, ¶ 6, citing *Burnside* at ¶ 8.

{¶8} “[A]n investigative traffic stop does not violate the Fourth Amendment where an officer has reasonable suspicion that the individual is engaged in criminal activity.” *State v. McCallum*, 9th Dist. Medina No. 08CA0037-M, 2009-Ohio-1424, ¶ 9. 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*, 87 Ohio St.3d 295, 299 (1999), quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968). 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*, 37 Ohio St.3d 177, 179 (1988),

quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C.Cir.1976). 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. Summit No. 22054, 2004-Ohio-6532, ¶ 14, citing *Bobo* at 178-179.

{¶9} Officer Parr testified that it was about 2:40 a.m. when he and his partner stopped a car for a traffic violation at the corner of Arlington Street and Fourth Avenue. As they were walking back to the stopped car to return the driver’s identification, Officer Parr and his partner heard several gunshots. He testified that the gunshots came from the east and sounded as if they had been fired from only a few blocks away. Consequently, he and his partner immediately released the car they had stopped and began driving east to investigate.

{¶10} Officer Parr testified that he and his partner drove east down Fourth Avenue and turned south on Chittenden Street. As the two stopped at the intersection of Chittenden Street and Fifth Avenue, they saw an SUV coming from the east and traveling west on Fifth Avenue. Officer Parr testified that the SUV was the only car that he and his partner saw in the area and that they did not observe any pedestrians either. He further testified that the SUV was traveling “very, very slow, under the speed limit.” Because it was dark outside, Officer Parr could not tell how many people were in the SUV. After the SUV passed their cruiser, he and his partner turned west on Fifth Avenue and followed. As they followed, the SUV continued traveling under the speed limit.

{¶11} Officer Parr testified that, as soon as he and his partner pulled behind the SUV, they heard a call come in on their radio about a shooting on Inman Street. He testified that Inman Street was about 10 blocks to the west, so they did not believe that the shooting there was related to the shots they had heard a few moments before. He also testified, however, that the

second shooting meant that he and his partner needed to “speed [] up” their investigation. Accordingly, they stopped the SUV after it turned onto Talbot Avenue.

{¶12} Once they stopped the SUV, Officer Parr approached the passenger’s side while his partner approached the driver’s side. Officer Parr identified Clayton as the passenger. He testified that he and his partner asked Clayton and the driver whether they had heard any gunshots, but the two indicated that they had not. Officer Parr and his partner then asked Clayton and the driver whether they had any weapons in the car. Once again, Clayton and the driver responded in the negative. Officer Parr stated that, at that point, he and his partner asked Clayton and the driver if they would consent to a quick search before they sent them on their way. According to Officer Parr, Clayton and the driver consented to the search.

{¶13} Officer Parr testified that he had Clayton step out of the car and performed a pat down on him. As he was performing the pat down, he glanced into the car and saw a gun lying on the passenger’s side floorboard. He then placed Clayton in handcuffs. Officer Parr testified that the police eventually released the driver of the SUV, but arrested Clayton as a result of the handgun.

{¶14} Clayton argues that the trial court erred by denying his motion to suppress because the police lacked reasonable suspicion to stop the SUV. His brief also includes arguments that Officer Parr obtained his consent to search through coercion, lacked probable cause to arrest him, and violated his *Miranda* rights. Clayton, however, failed to raise any of the latter arguments in the court below. In seeking to suppress the evidence against him, he only challenged the constitutionality of the initial stop of the SUV. Accordingly, he forfeited his additional arguments for purposes of appeal, and we will not address them. *See State v. Oden*, 9th Dist. Summit No. 27151, 2014-Ohio-2752, ¶ 10; *State v. Lanik*, 9th Dist. Summit Nos. 26192

& 26224, 2013-Ohio-361, ¶ 12. We limit our review to his challenge of the initial stop of the SUV.

{¶15} As previously set forth, “an investigative traffic stop does not violate the Fourth Amendment where an officer has reasonable suspicion that the individual is engaged in criminal activity.” *McCallum*, 2009-Ohio-1424, at ¶ 9. “Reasonable suspicion constitutes something less than probable cause.” *Brunswick v. Ware*, 9th Dist. Medina No. 11CA0114-M, 2011-Ohio-6791, ¶ 7. It “requires only that the officers ‘be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an] intrusion.’” *State v. Shorts*, 9th Dist. Lorain No. 11CA009965, 2011-Ohio-6202, ¶ 9, quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Moreover, “[t]he propriety of an investigative stop must be viewed in light of the totality of the circumstances.” *Ware* at ¶ 7.

{¶16} Clayton argues that the police lacked reasonable suspicion to stop the SUV because there was no evidence that it was involved in a shooting and the stop amounted to nothing more than “a stab in the dark.” There was testimony, however, that Officer Parr and his partner spotted the SUV directly after having heard gun shots. Officer Parr specified that the gun shots sounded as if they came from only a few blocks away and that the SUV was traveling from the direction of the shots. He also testified that it was around 2:40 a.m. when they spotted the SUV and that he and his partner did not see any other cars or pedestrians in the area. Moreover, he noted that the SUV was traveling “very, very slow, under the speed limit,” and continued to do so after the cruiser pulled behind it. Although Officer Parr and his partner might have followed the SUV for a longer period of time under different circumstances, he testified that a call about another shooting came in on the radio directly after he and his partner began following

the SUV. As such, there was testimony that Officer Parr and his partner had to expedite their investigation.

{¶17} Given all of the foregoing testimony, we cannot conclude that the police violated Clayton’s constitutional rights when they decided to conduct an investigative stop under these circumstances. *See State v. Norwood*, 83 Ohio App.3d 451, 456 (9th Dist.1992). The close proximity of the SUV to the area the police were investigating, combined with the recency of the gun shots, the SUV’s solitary appearance on the road at that late hour, and its noticeably slow pace amounted to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed] [the] intrusion.” *Shorts* at ¶ 9, quoting *Terry* at 21. *See also Biehl*, 2004-Ohio-6532, at ¶ 14 (setting forth various factors in totality of the circumstances review). Because the police had reasonable suspicion to stop the SUV, the trial court did not err in denying Clayton’s motion to suppress. Consequently, Clayton’s sole assignment of error is overruled.

III

{¶18} Clayton’s sole assignment of error is overruled. The judgment of the Summit 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 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(C). 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

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

BRIAN J. WILLIAMS, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.