[Cite as *State v. Lentz*, 2015-Ohio-913.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-14-1091

Appellee — Trial Court No. CR0201302285

v.

Jordan Lentz — **DECISION AND JUDGMENT**

Appellant — Decided: March 13, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Jennifer Liptack-Wilson, Assistant Prosecuting Attorney,
for appellee.

Jerome Phillips, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Jordan Lentz, appeals the April 7, 2014 judgment of the Lucas County Court of Common Pleas which, following the court's denial of his motion to suppress and appellant's no contest plea, sentenced appellant to four years of

community control, with various conditions, following his conviction for aggravated possession of drugs. Because we find that the traffic stop initiated by police was not supported by reasonable articulable suspicion of criminal activity, we reverse.

{¶ 2} On August 1, 2013, appellant was indicted on two counts of aggravated possession of drugs, R.C. 2925.11(A), one a third degree and one a fifth degree felony and two counts of aggravated trafficking in drugs, R.C. 2925.03(A)(2), one a second degree and one a third degree felony. Appellant entered not guilty pleas to the charges.

{¶ 3} On August 27, 2013, appellant filed a motion to suppress evidence seized following the traffic stop of his vehicle. The motion was opposed and the matter came on for a hearing on October 25, 2013, where the following relevant evidence was presented.

{¶ 4} Toledo Police Sergeant Karrie Williams testified that she was a 12-year police veteran and had been assigned to the vice narcotics unit for approximately one year. On the evening of May 26, 2013, Sergeant Williams was conducting surveillance at the Spigot Bar at Western and Langdon Streets in Toledo, Lucas County, Ohio, following numerous complaints about drug activity. Sergeant Williams testified that she had personally observed ten drug transactions take place in the parking lot of the bar. Williams further indicated that the bar was located in a high crime area known for drug trafficking. At the time, Williams was in an unmarked vehicle and in plainclothes with a black face mask.

{¶ 5} At approximately 11:00 p.m., Sergeant Williams observed appellant pull onto the side street, Langdon, and enter the bar through the side door. After about three

minutes, appellant exited the bar's front door and "ran" to his vehicle. At that point, Williams stated that she believed that appellant was involved in drug trafficking and she radioed for a marked police crew to stop appellant's vehicle.

{¶ 6} Sergeant Williams stated that while she was waiting for the crew, she followed appellant who stopped at nearby Fitzpatrick's Bar, at Airport Highway and Spencer Street. Appellant parked in the bar's parking lot by the door. Williams stated that after she pulled into the parking lot she noticed a passenger in appellant's vehicle and that appellant was not in the vehicle. Approximately three minutes later, appellant exited the bar and returned to his vehicle. Appellant then left the parking lot and pulled onto Airport Highway. Sergeant Williams testified that she believed that appellant's actions, i.e. the quick in and out at the establishments, were indicative of drug trafficking.

{¶ 7} On Airport Highway, appellant was stopped by the marked police cruiser. Sergeant Williams stated that she approached the driver's side of the vehicle and spoke with appellant. When asked what he was doing, appellant stated that he was looking for a friend whose truck he wanted to purchase. Appellant responded negatively when asked whether he had been anywhere prior to Fitzpatrick's Bar. Sergeant Williams informed appellant that she had watched him go in and out of Spigot's Bar and then asked him whether he had any contraband either on his person or in his vehicle. Appellant responded negatively.

{¶ 8} Sergeant Williams stated that appellant then gave permission for police to search his person and vehicle. One of the uniformed officers from the police cruiser

performed a pat-down of appellant and a large sum of cash was found on his person. No contraband was found on appellant or during the search of his vehicle.

{¶ 9} At the time of these events, Toledo Police Detective Alanna Whatmore, also assigned to the vice narcotics unit, was on duty in an unmarked vehicle, in plainclothes and with a face mask. She, too, had been surveilling Spigot's Bar but had been called away on another matter. Detective Whatmore heard Sergeant Williams' call to have a vehicle stopped; she pulled up to assist after the vehicle had been stopped. Detective Whatmore stated that she approached the passenger side of the vehicle and talked with appellant's girlfriend; her six- or seven-year-old son was also in the vehicle.

{¶ 10} Detective Whatmore then asked if she could conduct a search of appellant (beyond a weapons pat-down). Appellant said yes and Whatmore stated that in appellant's right front pocket she found an unsealed envelope with several white pills. Whatmore also retrieved money and a cigarette pack which contained more pills. At that point, appellant was placed under arrest.

{¶ 11} Toledo Police Officer Justin Hawkins initiated the traffic stop of appellant. Officer Hawkins stated that he first observed the vehicle in Fitzpatrick's parking lot. Appellant pulled out and drove by the cruiser. Officer Hawkins testified that he saw the vehicle "kind of move over across the center of the road" but that it may have been trying to avoid the parked cars along the side of the road. (The parties later stipulated that appellant was stopped solely at Sergeant Williams' directive following her observations at the Spigot Bar.) Officer Hawkins activated his overhead lights to effectuate the stop.

{¶ 12} The three testifying officers all stated that appellant did not seem overly nervous or upset and did not appear to be under duress when agreeing to the searches. They indicated that he was cooperative.

{¶ 13} Appellant testified that, contrary to Sergeant Williams' testimony, he would not have been running back to his vehicle at the Spigot Bar because he had a titanium rod in his left leg. Appellant stated that he was looking for a man who was selling his truck and that he forgot his cellphone at home and could not call him. Appellant then proceeded to Fitzpatrick's Bar, another establishment frequented by the alleged seller.

{¶ 14} Appellant stated that the police were elusive about the reason he was pulled over. Soon after being stopped, two masked officers arrived on the scene. Appellant stated that he was in "shock" from the masked officers and the visible gun. He admitted that he was not verbally threatened by the officers.

{¶ 15} On January 13, 2014, the trial court denied appellant's motion to suppress. The court found that there was reasonable articulable suspicion of drug trafficking to support the investigatory stop of appellant's vehicle. Specifically, the court found that the location of the bar in a high crime/drug activity area, the lateness of the hour, and appellant's act of entering and leaving the bar (and then a second bar) supported Sergeant Williams' belief that appellant was engaging in criminal activity.

{¶ 16} Following the denial of the motion on March 21, 2014, appellant withdrew his not guilty pleas and entered no contest pleas to two counts of aggravated possession

of drugs, a third degree and a fifth degree felony. The drug trafficking counts were dismissed. On April 7, 2014, appellant was sentenced and this appeal followed.

{¶ 17} Appellant raises the following assignment of error for our review:

The trial court erred in denying appellant's motion to suppress.

{¶ 18} In his sole assignment of error, appellant argues that the motion to suppress should have been granted based on the fact that Sergeant Williams did not have a reasonable articulate suspicion of criminal activity to support the investigatory stop and that appellant did not consent to the searches.

{¶ 19} We initially note that appellate review of a motion to suppress comprises a mixed question of law and fact. An appellate court must not reject the trial court's factual findings if they are supported by competent, credible evidence. If so supported, the appellate court then independently determines whether these facts satisfy the proper legal standard. *State v. Boyd,* 6th Dist. Lucas No. L-04-1173, 2005-Ohio-3044, ¶ 10. *See State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

{¶ 20} Where a police officer has a reasonable suspicion of criminal activity, based upon specific and articulable facts, the officer may make a brief, investigative stop. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The propriety of such a stop is determined upon review of the totality of the circumstances. *State v. Bobo,* 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph one of the syllabus; *State v. Freeman,* 64 Ohio St.2d 291, 414 N.E.2d 1044 (1980), paragraph one of the syllabus. Relevant factors include the area's reputation as a high-crime area, the time of day, and suspicious

behavior by the person stopped. *Freeman* at 295. However, "an officer's reliance on a mere 'hunch' is insufficient to justify a stop." *U.S. v. Arvizu*, 534 U.S. 266, 274, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), citing *Terry* at 27.

{¶ 21} Here, after reviewing the totality of the circumstances, we do not believe that the police possessed a reasonable, articulable suspicion that appellant was engaging in criminal activity to justify the investigatory stop of his vehicle. Appellant arrived at the Spigot Bar at 11:00 p.m., not an overly-late hour. He entered the side door, which is a public entrance, and exited the front door, also a public entrance. Sergeant Williams testified that appellant then ran to his car. Although Sergeant Williams stated that she had observed ten drug transactions in the parking lot, she had not observed any inside the bar. She also agreed that she had no knowledge of what transpired inside the bar. Sergeant Williams did not observe appellant commit any criminal offenses or traffic violations.

{¶ 22} Similarly, in a case involving "suspicious" activity in a high-crime area, the Sixth Circuit found that the officers did not have reasonable suspicion of drug activity to support their stop of the defendant. *U.S. v. Keith*, 559 F.3d 499 (6th Cir.2009). In *Keith*, at approximately 1:45 a.m., the police had just finished aiding in an unrelated arrest when they observed a man on foot approach a vehicle in the drive-through line at a carry out/ liquor store. *Id.* at 501. The store sold items that could be used to smoke crack cocaine. *Id.* After the man leaned into the vehicle, he looked at the officers and walked away. *Id.* The vehicle proceeded through the drive-through and instead of leaving, drove back

around the store and out of the officers' view. *Id.* at 501-502. The officers testified at the suppression hearing that the pedestrian and the defendant driver were out of view for less than a minute. *Id.* at 502.

{¶ 23} Suspicious that the two had engaged in a drug transaction, once they reappeared, the officers split to confront them. The defendant driver was stopped "based solely on [the officer's] suspicion that some kind of criminal activity had occurred in the few seconds that the officers had lost sight of Keith and Crawford (Keith did not commit any kind of traffic infraction.)" *Id.* Based on these facts, the court determined that the officers did not have reasonable suspicion of criminal activity to stop the defendant's vehicle.

{¶ 24} In the present case, upon review of the testimony presented at the suppression hearing and the applicable law, we find that the officers did not have reasonable articulable suspicion of criminal activity to justify the stop of appellant's vehicle. Thus, we find that the trial court erred when it denied appellant's motion to suppress. Because we find that the initial stop of appellant's vehicle was improper, we decline to address appellant's arguments relating to his consent to search. Appellant's assignment of error is well-taken.

{¶ 25} On consideration whereof, we find that appellant was prejudiced and prevented from having a fair proceeding and the judgment of the Lucas County Court of

Common Pleas is reversed and the matter is remanded for proceedings consistent with this decision. Pursuant to App.R. 24, appellee is ordered to pay the court costs of this appeal.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE