[Cite as *State v. Young*, 2012-Ohio-519.]

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

State of Ohio — Court of Appeals No. H-10-021

Appellee — Trial Court No. CRB 1001012

v.

Robert J. Young — **DECISION AND JUDGMENT**

Appellant — Decided: February 10, 2012

* * * * *

Richard R. Woodruff, New London Law Director, for appellee.

David J. Longo, Interim Huron County Public Defender,
for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Norwalk Municipal Court finding appellant guilty of one count of interference with custody following the denial of a motion to suppress evidence obtained from a search of appellant's home pursuant to a warrant. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} The following undisputed facts are set forth in the affidavit for a search warrant for an apartment rented by appellant, issued on June 30, 2010, by a judge of the Huron County Court of Common Pleas, Juvenile Division. The affidavit was prepared by Sergeant James Fulton, a detective with the Norwalk Police Department. On June 7, 2010, 17-year-old A.O. ("A.") was reported missing from her grandparents' home in Norwalk, Ohio, by her mother, R.O. A. had been living with her grandparents due to her parents' disapproval of her relationship with appellant, who was 20 years old. During the subsequent investigation, Norwalk police learned that appellant and A. had exchanged text messages during the early morning hours of June 6, 2010. Appellant had told A. when to leave the house and indicated that someone would pick her up. Based on the text messages and the fact that appellant denied any contact with A. on the day she left her grandparents' residence, appellant was arrested on June 14, 2010, and charged with obstruction of justice. Police reported that appellant did not cooperate with their investigation.

{¶ 3} According to the affidavit, Norwalk police received information that appellant had recently rented an apartment in New London, Ohio and that he and A. were planning to get married. One of A.'s friends reported that A. had shown her a wedding ring in May, and a relative of appellant reported that appellant had purchased wedding rings in late May.

{¶ 4} The affidavit further stated that on or about June 16, 2010, two women reported seeing A. crouched down in the rear of appellant's car while it was parked

outside a grocery store in New London. Additionally, police gained access to more text messages between appellant and his sister indicating that appellant was taking food and water to someone. The overall content of the messages led police to believe that appellant was taking the food and water to A.

{¶ 5} Shortly after midnight on June 30, 2010, the Huron County Sheriff's Office received an anonymous phone call from a man who stated that A. was staying in the upstairs apartment at 227 1/2 East Main Street in New London. Immediately thereafter, Deputy Leroux of the Huron County Sheriff's Office went to that location with another officer. They spoke with the downstairs resident, who confirmed that a male fitting appellant's description had been frequenting the residence in the early morning hours, staying only for short periods of time; she also described appellant's vehicle. The neighbor further stated that she had heard someone moving about the apartment that night, even though appellant's vehicle was not there at the time. The owner of the residence confirmed to police that appellant had rented the apartment approximately three weeks earlier.

{¶ 6} Believing that A. was being hidden in the residence, Norwalk police prepared an affidavit in support of their request for a warrant to search the New London apartment. Police stated that the apartment had been secured since the anonymous phone call was received and that no one had entered or left the premises since that time. The warrant was issued on June 30, 2010, and executed at approximately 3:30 a.m. on that date. When police entered, they found A. hiding in the attic. Appellant was also in the

apartment; he was arrested and charged with interference with custody in violation of R.C. 2919.23(A)(1).

{¶ 7} On August 11, 2010, appellant filed a motion to suppress all evidence obtained as a result of the search of his home. A hearing was held on the motion on August 18, 2010. Sergeant Fulton, the detective who prepared the search warrant affidavit, testified as to his involvement with the investigation and the information he included in the affidavit. At the conclusion of the hearing, the trial court denied the motion to suppress. Appellant then changed his plea to no contest. The trial court found appellant guilty and imposed sentence.

{¶ 8} Appellant sets forth the following as his sole assignment of error:

> I. The trial court erred to the prejudice of the Defendant-Appellant in denying his motion to suppress evidence obtained through an unreasonable search, in violation of his rights under the U.S. and Ohio Constitutions.

{¶ 9} Appellate review of a ruling on 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 witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). A disputed motion to suppress judgment supported by competent, credible evidence must not be disturbed. *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982).

{¶ 10} In *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the United States Supreme Court adopted a "totality of the circumstances" test to be applied to the determination and review of the sufficiency of probable cause in an affidavit submitted in support of a search warrant. In so doing, *Gates* abandoned the "two-pronged test" which had long governed the determination of this issue as set forth in *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and *Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969), which required that an affiant reveal his informant's "basis of knowledge" and provide sufficient facts to establish the informant's "veracity" or the "reliability" of the informant's report.

{¶ 11} As set forth in *Gates*, before issuing a warrant, the magistrate is to make a "practical, common-sense decision" as to whether, given all the circumstances set forth in the affidavit, there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Gates* emphasizes that "the duty of a reviewing court is simply to ensure that the magistrate had a 'substantial basis for * * * conclud[ing]' that probable cause existed. *Jones v. United States*, 362 U.S. at 271, 80 S.Ct. at 736." *Gates*, *supra*, at 238-239, 103 S.Ct. at 2332.

{¶ 12} *Gates, supra,* at 235, elaborates further as to the "fair probability" standard applicable to a magistrate's probable cause determination prior to issuing a search warrant:

> [R]ecently, we said that "the quanta * * * of proof" appropriate in ordinary judicial proceedings are inapplicable to the decision to issue a

warrant. *Brinegar v. United States*, 338 U.S., at 173, 69 S.Ct. at 1309, [93 L.Ed. 1879 (1949)]. * * * [I]t is clear that "only the probability, and not a prima facie showing, of criminal activity is the standard of probable cause." Spinelli, supra, 393 U.S. at 419, 89 S.Ct. at 590.

{¶ 13} In support of his assignment of error, appellant argues that although the search of his residence was pursuant to a warrant, it was unreasonable because the affidavit failed to provide the judge with a substantial basis for a determination of probable cause. Appellant asserts that the search warrant was issued based solely on the statement of the unidentified informant who provided the telephone tip that A. was staying at 227 1/2 East Main Street in New London, Ohio. The affidavit, however, contained much more, including information assembled by law enforcement over a period of several weeks based on text messages retrieved from appellant's cell phone, background provided by A.'s family, and interviews with numerous individuals, including the owner of the apartment building, the downstairs occupant, and the women who observed A. hiding in appellant's car.

{¶ 14} Based on the foregoing, we find, first, that the supporting affidavit established a fair probability that evidence of a crime would be found in appellant's apartment and, second, that the judge had a substantial basis for concluding that probable cause existed. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration whereof, the judgment of the Norwalk Municipal Court is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

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

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE