

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2010-12-124
 :
 - vs - : OPINION
 : 8/22/2011
 :
 BILLY GENE LITTLE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 09 CR 26239

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Martin E. Hubbell, 304 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Billy Gene Little, appeals from the decision of the Warren County Court of Common Pleas denying his motion to suppress evidence obtained following a traffic stop. For reasons outlined below, we affirm.

{¶2} On October 30, 2009 at approximately 7:15 p.m., Officer Eric Abrams of the Springboro Police Department, who, at that time, was monitoring traffic, observed a vehicle traveling through a supermarket parking lot "with its headlights off." Because it was dark,

Officer Abrams followed the vehicle as it approached the parking lot exit onto State Route 73.

{¶3} Once the vehicle reached the exit, Officer Abrams watched the vehicle as it stopped on the sidewalk area extending across the exit "for what seemed [like] a minute or two." Officer Abrams then saw "the passengers exit out, walk around in front of the car, and they traded seats." Finding this to be odd, and believing that a number of traffic violations had already occurred, Officer Abrams initiated his overhead lights and approached the vehicle in order to "investigate what they were doing."

{¶4} Upon approaching the vehicle, Officer Abrams made contact with appellant, who was now sitting in the driver's seat, as well Tammy Napier, who was sitting in the passenger's seat. After receiving appellant's driver's license and Napier's social security number, a computer check revealed Napier, who originally identified herself as Tammy Johnson, had an outstanding warrant for her arrest for driving under suspension. Officer Abrams then placed Napier under arrest and escorted her to the back of his cruiser. Shortly thereafter, while still conducting his investigation and processing Napier's arrest, Officer Abrams requested a canine unit dispatched to the scene when "things just weren't adding up."

{¶5} After the canine unit arrived, which occurred "somewhere from five to ten minutes," or approximately 18 minutes after the initial stop, Officer Abrams asked appellant "if there was anything illegal in the vehicle." Appellant responded by telling Officer Abrams that the vehicle contained two loaded handguns. Once the canine alerted on the vehicle's driver's side door, and after the two loaded handguns were located in the vehicle's center console and backseat, appellant was arrested and charged with, among other things, two counts of improperly handling a firearm in a motor vehicle in violation of 2923.16(B), a fourth-degree felony.

{¶6} On October 11, 2010, after the trial court denied his motion to suppress, a jury

found appellant guilty on both counts of improperly handling a firearm in a motor vehicle. Appellant was then sentenced to serve three years of community control and ordered to pay a fine of \$500.

{¶7} Appellant now appeals from the trial court's decision denying his motion to suppress, raising one assignment of error for review.

{¶8} "THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS."

{¶9} In his sole assignment of error, appellant argues that the trial court erred by denying his motion to suppress. We disagree.

{¶10} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Henriksson*, Butler App. No. CA2010-08-197, 2011-Ohio-1632, ¶9; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility. *State v. Eyer*, Warren App. No. CA2007-06-071, 2008-Ohio-1193, ¶8. In turn, the appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *State v. Lange*, Butler App. No. CA2007-09-232, 2008-Ohio-3595, ¶4; *State v. Bryson* (2001), 142 Ohio App.3d 397, 402. After accepting the trial court's factual findings as true, the appellate court must then determine, as a matter of law, and without deferring to the trial court's conclusions, whether the trial court applied the appropriate legal standard. *State v. Forbes*, Preble App. No. CA2007-01-001, 2007-Ohio-6412, ¶29; *State v. Dierkes*, Portage App. No. 2008-P-0085, 2009-Ohio-2530, ¶17.

{¶11} Initially, appellant argues that the trial court erred by denying his motion to suppress because Officer Abrams did "not have reasonable suspicion to initiate an investigatory stop." This argument lacks merit.

{¶12} The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. *State v. Capehart*, Fayette App. No. CA2010-12-035, 2011-Ohio-2602, ¶8. It is well-recognized, however, "that officers may briefly stop and detain an individual, without an arrest warrant and without probable cause, in order to investigate a reasonable and articulable suspicion of criminal activity." *State v. Good*, Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶18. In other words, "police must be able to cite to articulable facts that give rise to a reasonable suspicion that an individual is currently engaged in, or is about to engage in, criminal activity." *State v. McMullen*, Butler App. No. CA2009-09-235, 2010-Ohio-3369, ¶12, citing *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868. The propriety of an investigative stop "must be viewed in light of the totality of the surrounding circumstances, from the perspective of a reasonably prudent police officer on the scene guided by his experience and training." *State v. Baughman*, 192 Ohio App.3d 45, 2011-Ohio-162, ¶15, citing *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, paragraph two of the syllabus; *State v. Bobo* (1988), 37 Ohio St.3d 177, paragraph one of the syllabus.

{¶13} After a thorough review of the record, we find Officer Abrams had a reasonable and articulable suspicion to initiate an investigatory stop of the vehicle. As noted above, Officer Abrams saw the vehicle travelling through the supermarket parking in the dark with its headlights off. Officer Abrams then observed the vehicle stop on the sidewalk area extending across the supermarket parking lot exit for approximately two minutes before witnessing appellant and Napier get out of the vehicle and trade seats. Based on the totality of the circumstances, Officer Abrams was certainly justified in conducting the investigatory stop to, as he stated, "investigate what they were doing," as these facts gave rise to a reasonable and articulable suspicion that appellant was engaged in, or about to engage in, criminal activity. See R.C. 4513.03(A)(1) (requiring vehicles operated on street or highway to display lighted lights from sunset to sunrise); R.C. 4511.431(A) (requiring driver of vehicle to

stop prior to driving onto or across sidewalk); see, e.g., *State v. Tournoux*, Portage App. No. 2009-P-0065, 2010-Ohio-2154, ¶11-13. Appellant's first argument is overruled.

{¶14} Next, appellant argues that even if Officer Abrams "had a legitimate basis to stop [his] vehicle, [he] was still unlawfully detained" because "[t]here was no lawful justification" for his continued detention once Napier had been arrested. However, as the record clearly indicates, not only was Officer Abrams still conducting his investigation into the odd behavior exhibited in the supermarket parking lot, Officer Abrams had also discovered additional facts giving rise to a reasonable and articulable suspicion that appellant had engaged in other criminal activity beyond that which prompted the initial stop; namely, a violation of R.C. 4511.203(A)(2) by wrongfully entrusting the vehicle to Napier.¹

{¶15} As this court has previously stated, "if an officer, during the initial detention of a motorist, ascertains additional specific and articulable facts that give rise to a reasonable suspicion of criminal activity beyond that which prompted the stop," such as the case here, "the officer may further detain the motorist and conduct a more in-depth investigation." *State v. Williams*, Clinton App. No. CA2009-08-014, 2010-Ohio-1523, ¶18; *State v. Hernandez*, Preble App. No. CA2006-10-022, 2007-Ohio-5190, ¶13; *State v. Griffith* (Aug. 10, 1998), Madison App. No. CA97-09-044, at 7-8. Therefore, because Officer Abrams discovered additional facts upon his initial stop that gave rise to a reasonable and articulable suspicion to justify appellant's continued detention, appellant's second argument is likewise overruled.

{¶16} In light of the foregoing, we find no merit to either argument appellant advanced under his single assignment of error, and therefore, we find no error in the trial court's decision denying appellant's motion to suppress. Accordingly, appellant's sole assignment of

1. R.C. 4511.203(A)(2) provides, in pertinent part, that "[n]o person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if * * * [t]he offender knows or has reasonable cause to believe that the other person's driver's * * * license [has] been suspended[.]"

error is overruled.

{¶17} Judgment affirmed.

POWELL, P.J., concurs.

PIPER, J., concurs separately.

PIPER, J., concurring separately.

{¶18} While I desire to emphasize a few points, I concur wholeheartedly with the majority that there were reasonable and articulable facts that justified both the initial investigation and the continued detention as matters further unfolded before the officer.

{¶19} Little contends that his situation is differentiated because the events occurred in a private parking lot. The Ohio Supreme Court, however, made no such differentiation in *State v. Freeman* (1990), 64 Ohio St2d. 291, 296, when discussing multiple cases wherein a police officer's investigation was warranted despite the circumstances arising in a private parking lot. *Freeman* emphasizes that the totality of the circumstances should not be dissected and analyzed separately from one another. Even if arising within a private parking lot, a law enforcement officer is often required to "maintain the status quo momentarily while obtaining more information." *Id.*, quoting *Adams v. Williams* (1972), 407 U.S. 143, 146.

{¶20} After Little and his female companion had stopped of their own accord, the officer observed a noteworthy delay. This vehicle, with its headlights not illuminated, was about to enter the roadway and potentially into traffic.

{¶21} An officer has a sworn duty to protect the public and preserve the peace. R.C. 737.11. In observing suspicious activity, and with the vehicle about to enter the stream of public traffic, the officer could not ignore the responsibilities of his oath to protect the occupants of the car as well as the public at large.

{¶22} Upon contact with the officer, one occupant prevaricated regarding her identity, while the other occupant shortly thereafter acknowledged having a loaded gun in the car. This is certainly not the first case where an occupant's admission to having a loaded gun in the vehicle warranted further detention for investigation. *State v. Williams* (1990), 51 Ohio St.3d 58, 63.

{¶23} The officer reasonably performed his responsibilities in light of the compounding circumstances he was confronted with, and therefore Little's arguments are unpersuasive.