

[Cite as *State v. Patterson*, 2009-Ohio-4946.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellant	:	C.A. CASE NO. 23395
vs.	:	T.C. CASE NO. 08CR4771/2
KELLY R. PATTERSON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 18th day of September, 2009.

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GRADY, J.:

{¶ 1} This is an appeal brought by the State pursuant to
 R.C. 2945.67 and Crim.R. 12(K), from a judgment of the trial
 court that granted Defendant Kelly Patterson's Crim.R. 12(C) (3)
 motion to suppress evidence.

{¶ 2} Detective David House is a twelve year veteran of

the Dayton Police Department's narcotics unit. On December 11, 2008 at 5:55 p.m., Detective House was patrolling the 2100 block of Edwin C. Moses Boulevard in Dayton, checking the parking lots of the four businesses in that block for drug activity.

Those businesses include a BP gas station, a Wendy's restaurant, an Econo Lodge motel, and a McDonald's restaurant. People frequent the parking lots of these four businesses on a daily basis, to both purchase drugs and immediately prepare and consume them. Detective House has made hundreds of arrests for drug possession and trafficking in this high drug activity area.

{¶ 3} In Detective House's experience, the typical pattern of conduct he observes is that vehicles, often with out-of-county plates, will park in the far back corner of the parking lot of one of these businesses, away from the entry doors and foot traffic and at the opposite side of the building from the drive-thru, out of the view of employees. The occupants of the vehicle will often prepare and consume the drugs, and will typically sit with their heads down and shoulders hunched forward, concentrating on their lap area where drugs such as heroin are prepared for immediate consumption.

{¶ 4} When Detective House pulled into the Wendy's parking lot he observed a gray Ford Taurus with three occupants parked

in the far back southwest corner of the parking lot. The vehicle was parked in a marked parking space with a chain link fence at the head of the parking space, that separated Wendy's from another business, but the vehicle had not pulled all the way up into the parking space, leaving a six foot gap in front of the vehicle. The parking space was at the rear of the business's parking lot, away from the entry doors and foot traffic, and on the opposite side of the drive-thru window, consistent with what Detective House typically sees at this location when drug activity is involved.

{¶ 5} Detective House drove by the gray Ford Taurus and observed that the occupants had their heads down and shoulders hunched forward, looking down into their lap area. Detective House also noticed that the vehicle had out-of-county plates.

{¶ 6} Detective House drove to the BP station and parked in a location from which he could keep the gray Ford Taurus under observation. Detective House ran an inquiry concerning its license plates, and received a report that they are registered to Defendant, Kelly Patterson, of Middletown, Ohio.

Along with the registration information, the report Detective House obtained noted that, on September 9, 2008, Defendant had been stopped by a sheriff's deputy just outside Lebanon, Ohio, and that the deputy's drug dog "hit" on Defendant's vehicle,

but no drugs were found. At that time Defendant was in the company of a man police knew to be a heroin user.

{¶ 7} Detective House observed the gray Ford Taurus for one or two minutes. The occupants kept their heads down and their shoulders hunched forward. No one got out of the vehicle to go inside the restaurant and none appeared to be consuming any food or drink. Believing that the occupants were preparing drugs for immediate use, Detective House called for back-up and decided to approach the vehicle and make contact with the occupants.

{¶ 8} Detective House drove his unmarked police vehicle to a position directly behind the Ford Taurus and got out. Detective House was wearing plain clothes but had on a utility vest clearly identifying him as a police officer, with his badge pinned to the front of the vest. As Detective House approached the driver's side of the vehicle, the person occupying the front passenger seat saw him and then turned toward the driver, Defendant Patterson, who immediately grabbed the steering wheel and gear shift level and began pulling forward to leave the parking space. Detective House ran up to the driver's door and shouted, "Dayton Police. Stop the car." Defendant complied.

{¶ 9} Detective House observed Defendant's eight month

child in a car seat in the rear of the vehicle, next to the male rear seat passenger, who had a black shoe lace tied around his upper right forearm. Detective House knew from experience that heroin users commonly use such items in that way to help them find veins for injecting the heroin. Detective House also observed that Defendant's right sleeve was pulled up to her elbow, the inside of which had blood on it, which is consistent with a person who has just injected their arm with a hypodermic syringe.

{¶ 10} When Detective House attempted to open the driver's door of the Ford Taurus he discovered that the door was locked.

Detective House ordered Defendant to open the door, and she complied. Detective House ordered Defendant out of the vehicle, and as she got out a gelcap containing heroin residue fell out of her lap onto the pavement. An orange cap from a syringe was on Defendant's seat. Detective House asked Defendant if she had the syringe on her person. Defendant replied that it was on the floorboard.

{¶ 11} Detective House also removed the rear seat passenger from the vehicle. A yellow bottle cap was in his lap, and a syringe and gelcap were located on the floor in front of the rear seat. The front seat passenger was also removed from the vehicle. Her jacket was off one arm and her shirt sleeve was

pushed up past her elbow. After Defendant was advised of her *Miranda* rights and agreed to talk to Detective House, she admitted she had just injected herself with heroin. Defendant was arrested for drug abuse, possession of drug abuse instruments, and child endangerment.

{¶ 12} Defendant was indicted on one count of possessing heroin, less than one gram, in violation of R.C. 2925.11(A), one count of possession of drug abuse instruments, R.C. 2925.12(A), and one count of endangering children, R.C. 2919.22(A). Defendant filed a motion to suppress the evidence, including all evidence obtained by police as a result of the stop of Defendant's vehicle, and her statements to police.

{¶ 13} Following a hearing on April 6, 2009, at which only Detective David House testified, the trial court granted Defendant's motion to suppress on April 14, 2009. The court concluded that police lacked a reasonable, articulable suspicion of drug activity sufficient to support an investigatory stop of Defendant's vehicle under *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. Accordingly, the court held that the evidence seized by police, which included heroin gelcaps, a black shoe string, a bottle cap and two syringes, and Defendant's statements about those items, were fruit of an illegal *Terry* stop that violated Defendant's Fourth

Amendment rights, and therefore those items were inadmissible.

The trial court granted Defendant's motion to suppress all of that evidence.

{¶ 14} The State timely appealed to this court from the trial court's decision granting Defendant's motion to suppress the evidence.

ASSIGNMENT OF ERROR

{¶ 15} "THE TRIAL COURT ERRED WHEN IT SUSTAINED PATTERSON'S MOTION TO SUPPRESS."

{¶ 16} The State argues that, contrary to the conclusion reached by the trial court, the totality of the facts and circumstances in this case are sufficient to give rise to a reasonable, articulable suspicion of drug activity which justified the brief stop and detention of Defendant for further investigation under *Terry*. We agree.

{¶ 17} In reviewing a trial court's decision on a motion to suppress, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence in the record. Accepting those facts as true, the court of appeals then independently determines, as a matter of law and without deference to the trial court's conclusions, whether those facts satisfy the applicable legal standard. *State v. Satterwhite* (1997), 123 Ohio App.3d 322.

{¶ 18} In *State v. Heard*, Montgomery App. No. 19322, 2003-Ohio-906, at ¶14, this court observed:

{¶ 19} "In order to conduct an investigatory stop, police must be able to point to specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the intrusion. *Terry v. Ohio* (1968), 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889; *State v. White* (January 18, 2002), Montgomery App. No. 18731. The propriety of an investigative stop must be viewed in light of the totality of the surrounding facts and circumstances. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489. These circumstances must be viewed through the eyes of a reasonable and prudent police officer on the scene who must react to events as they unfold. *State v. Andrews* (1991), 57 Ohio St.3d 86, 565 N.E.2d 1271. Accordingly, the court must take into consideration the officer's training and experience and understand how the situation would be viewed by the officer on the street. *Id.*"

{¶ 20} The trial court found that a *Terry* stop occurred when Detective House parked his unmarked police vehicle directly behind Defendant's vehicle, because her path was then blocked and she could not back her vehicle up to leave. The State contends that the stop did not occur until Detective House commanded

Defendant to stop her vehicle and she submitted to that show of authority. We conclude that the distinction is not a critical or controlling issue in this case, given the particular facts.

{¶ 21} Even if the stop or seizure occurred when Detective House first pulled up and parked his police vehicle directly behind Defendant's vehicle, and regardless of whether or not that conduct restrained Defendant's liberty, the totality of the facts and circumstances observed by Detective House prior to parking his vehicle behind Defendant's created a reasonable suspicion of drug activity that was sufficient to justify the Terry investigative stop that occurred.

{¶ 22} Detective House explained that the location is a very high drug activity area where he has made hundreds of arrests for drug possession and consumption. Detective House explained the pattern of conduct he frequently sees at this location that is consistent with drug activity, and the significance of vehicles with out-of-county plates frequenting the parking lots of one of the four businesses in the 2100 block of Edwin C. Moses Boulevard, parking in a secluded far back corner of the parking lot away from the business's entry doors and foot traffic and on the opposite side of the business from the drive-thru window. Detective House also explained the

significance of the vehicle's occupants keeping their heads down, shoulders hunched forward, and focusing on the area of their laps. Detective House testified that the conduct he observed involving Defendant and the other occupants of the gray Ford Taurus, in his experience, was consistent with drug activity he had observed in the past at this location.

{¶ 23} Detective House's familiarity with how drug activity occurs in this area is a relevant factor in evaluating the totality of the circumstances to determine whether they justify an investigatory stop. *State v. Oglesby*, Montgomery App. No. 21648, 2006-Ohio-6229. We conclude that based upon his experience, Detective House recognized a course of events and conduct that reasonably could constitute drug activity. *State v. Jarnigan*, Montgomery App. No. 22682, 2009-Ohio-1640.

{¶ 24} The trial court instead concluded that police lacked a reasonable, articulable suspicion of criminal activity sufficient to justify a *Terry* investigative detention, because the facts and circumstances Detective House observed prior to making contact with Defendant's vehicle were not inconsistent with many purely innocent activities, such as reading a map, getting money out for food, playing a scratch-off game, or using a cell phone for texting.

{¶ 25} When establishing a reasonable, articulable

suspicion of criminal activity, the State need not exclude each and every possibility of innocent activity that might imply non-criminal behavior. Such an exercise may be appropriate to a probable cause inquiry, in which the issue is likelihood of criminal activity. To satisfy the *Terry* standard, which instead involves suspicion, the State must simply articulate facts and circumstances, including observed conduct, which in their totality and in the officer's experience, reasonably suggest criminal activity that may be afoot. That was done here. While certain events when viewed separately can appear innocent, taken together the same events may warrant further investigation. *United States v. Sokolow* (1989), 490 U.S. 1, 9-10, 109 S.Ct. 1581, 104 L.Ed.2d 1; *Oglesby, supra*.

{¶ 26} The totality of the facts and circumstances in this case, when viewed through the eyes of Detective House, and understood as he viewed them in relation to his training, knowledge and experience, present reasonable suspicion of drug activity sufficient to justify the minimal intrusion that a brief *Terry* investigative stop involves. Defendant's Fourth Amendment rights were not violated by the *Terry* investigative stop in this case. The trial court therefore erred when it suppressed the evidence police obtained as a result of the stop.

{¶ 27} The State's assignment of error is sustained. The

judgment of the trial court granting Defendant's motion to suppress the evidence will be reversed, and this cause remanded to the trial court for further proceedings consistent with this opinion.

DONOVAN, P.J., And FAIN, J. concur.

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