

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

State of Ohio

Court of Appeals No. L-11-1271

Appellee

Trial Court No. CR0201101583

v.

Calvin Hopkins

**DECISION AND JUDGMENT**

Appellant

Decided: January 11, 2013

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Michael J. Loisel, Assistant Prosecuting Attorney, for appellee.

Nicole I. Khoury, for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} Appellant, Calvin Hopkins (“Hopkins”), appeals the judgment of the Lucas County Court of Common Pleas, following a jury trial, in which he was found guilty and sentenced to a total of nine years in prison. We affirm.

## **A. Facts and Procedural Background**

{¶ 2} The events giving rise to Hopkins' conviction occurred on the evening of April 9, 2011. Earlier that day, Hopkins' son, Calvin Hopkins, Jr. ("Jr.") and Hopkins' daughter-in-law, Megan Hopkins ("Megan"), took their daughter to Robbie McCrary's house to be babysat. Hopkins and McCrary were romantically involved. Although Hopkins maintained a bedroom at Jr. and Megan's house, he stayed the night with McCrary on a regular basis, and would travel back and forth from the houses in order to pick up clean clothes and drop off dirty clothes to be laundered.

{¶ 3} On April 9, 2011, Hopkins made two trips to Jr. and Megan's house. Hopkins' first trip to Jr.'s house was uneventful. However, when Hopkins returned, at about 4:30 a.m., he brought Estafana Vasquez with him. The two of them went into a private bedroom and began to "make love." Frustrated, Megan knocked on the bedroom door in order to confront Hopkins. A verbal disagreement followed.

{¶ 4} After the shouting match was over, Jr. and Megan got dressed and decided to go to McCrary's house to pick up their daughter in order to get her away from Hopkins. However, when they attempted to exit the house, another confrontation arose, resulting in Hopkins grabbing Megan by the throat and, while holding a gun to her head, threatening to kill her. When Jr. observed this, he attempted to run into the house. As Jr. was running in, Hopkins fired several rounds in his direction. While Hopkins was firing at Jr., Megan made her escape. Hopkins ultimately shot at Megan as well. The bullets missed their target in both cases.

{¶ 5} After leaving her house, Megan phoned 9-1-1 twice. The first call was made while Megan was traveling to McCrary's house. In that call, she stated that Hopkins had shot at her and her husband. Further, Megan provided identifying information such as the type of vehicle Hopkins was driving, Hopkins' physical characteristics, and the type of vehicle she was driving. She stated that she was traveling to McCrary's house, located at 25 East Central, Toledo, Ohio, in order to pick up her daughter, whom she felt was in danger.

{¶ 6} Megan made the second call after she arrived at McCrary's house. Megan asked to see her daughter, but McCrary refused to release her. Realizing Hopkins had already arrived at McCrary's house, Jr. and Megan fled the scene, and Megan called 9-1-1 again. In her second call to 9-1-1, Megan stated that Hopkins was at McCrary's house, and was inside the residence. She requested immediate police assistance, and she once again stated that Hopkins had fired multiple shots at her and her husband.

{¶ 7} Several police units responded to McCrary's house. Officer Joseph Okos was one of the first officers on the scene. He testified that he responded to the call with lights and sirens "because of the possibility of loss of life or severe damage to life." Upon arrival, Okos knocked on the front door. McCrary answered the door, at which point Okos attempted to identify her. McCrary refused. Thereafter, Okos informed her that she was under arrest for obstruction. McCrary responded by retreating into the home and closing the door on the officers. As a result, Okos entered through the threshold and completed the arrest.

{¶ 8} While McCrary was being arrested, Hopkins appeared and demanded that the officers get out of the house. At that time, Officer Michael Haynes noticed that Hopkins fit the description of the suspect. Haynes asked Hopkins for his name, and Hopkins provided his name. Satisfied that Hopkins was indeed the suspect, Haynes arrested him.

{¶ 9} During the time Okos and Haynes were making the arrests, Officer Reuben Jurva searched the house in order to locate the daughter and to ensure her safety. The daughter, along with other children, was ultimately located on the second floor. However, while searching the first floor of the house, Jurva noticed an open drawer in the kitchen that contained “a gun that appeared to be the same type of gun that was in the [9-1-1] call.” Next to the gun, Jurva noticed a clear plastic bag with several rounds of ammunition inside. After consulting with his supervisor, Jurva seized the gun and the ammunition.

{¶ 10} Hopkins was subsequently arraigned on three counts of felonious assault with gun specifications, all felonies of the second degree, in violation of R.C. 2903.11(A)(2) and 2941.145. On May 11, 2011, Hopkins filed a motion to suppress the evidence obtained as a result of the warrantless, non-consensual search conducted by Jurva. A hearing on the motion was held on May 26, 2011.

{¶ 11} On July 20, 2011, the trial court denied Hopkins’ motion to suppress. In its journal entry, the trial court stated that the prosecution had met its burden of demonstrating that exigent circumstances justified the warrantless search in this case.

The court went on to state that the police officers “had an objectively reasonable basis for believing that one or more of the minor occupants believed to be [in McCrary’s house] were seriously injured or in immediate risk of serious injury.” Further, the court determined that McCrary’s behavior, which was described as “belligerent and uncooperative,” did nothing to dispel the officers’ belief that the children may have been seriously injured and were in need of assistance. Finally, the court noted that McCrary’s testimony did not contradict Jurva’s testimony that the gun and ammunition was in plain view in the kitchen.

{¶ 12} On September 12, 2011, a jury was selected, and the trial commenced. At the conclusion of the trial, the jury returned a guilty verdict as to each count as well as the gun specifications. Pursuant to the guilty verdict, Hopkins was sentenced to three years on each of the felonious assault counts, to be served concurrently. In addition, Hopkins received another three years for each of the gun specifications, which merged together. The felonious assault counts and the gun specifications were ordered to be served consecutively, for a total prison term of six years. It is from this judgment that Hopkins timely appeals.

### **B. Assignments of Error**

{¶ 13} Hopkins assigns the following errors for our review:

1. The trial court erred by denying the Defendant’s Motion to Suppress Evidence obtained through a warrantless search.

2. Mr. Hopkins' conviction was not supported by Sufficiently Credible Evidence and was against the Manifest Weight of the Evidence.

## II. Analysis

### A. Motion to Suppress

{¶ 14} In his first assignment of error, Hopkins argues that the trial court erred by denying his motion to suppress. Specifically, Hopkins argues that the trial court's admission of the firearm and the ammunition, obtained as a result of the officers' warrantless, non-consensual entry into McCrary's home, violated his Fourth Amendment rights and his rights under the Ohio Constitution. The prosecution disagrees, and argues that the search was justified under the exigent circumstances exception.

{¶ 15} A challenged suppression ruling typically presents mixed questions of law and fact. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 50. We must accept the trial court's factual findings if supported by competent and credible evidence. *Id.* In taking those facts as true, however, we afford no deference to the court's legal conclusions. Those conclusions are reviewed de novo to assess whether its ruling comported with the applicable legal standard. *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist.1997).

{¶ 16} The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. *United States v. Mendenhall*, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). This privilege is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct.

1684, 6 L.Ed.2d 1081 (1961). Generally, Article I, Section 14, of the Ohio Constitution has been construed to contain an identical privilege. *State v. Murrell*, 94 Ohio St.3d 489, 493, 764 N.E.2d 986 (2002); *see also State v. Robinette*, 80 Ohio St.3d 234, 238-239, 685 N.E.2d 762 (1997). If a defendant can demonstrate that his Fourth Amendment rights were violated by an unreasonable warrantless search, any evidence obtained in the search cannot be submitted as evidence by the prosecution. *Weeks v. United States*, 232 U.S. 383, 398, 34 S.Ct. 341, 58 L.Ed. 652 (1914); *Mapp*, 367 U.S. at 657; *Slough v. Lucas Cty. Sheriff*, 174 Ohio App.3d 488, 2008-Ohio-243, 882 N.E.2d 952, ¶ 27 (6th Dist.).

{¶ 17} A warrantless search must be “measured in objective terms by examining the totality of the circumstances.” *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). Therefore, there are no bright-line rules and each case must turn on its facts. *Florida v. Royer*, 460 U.S. 491, 506, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). While there is a presumption that a warrantless search is unreasonable, there are a few judicially-recognized, specific exceptions. *State v. Kessler*, 53 Ohio St.2d 204, 207, 373 N.E.2d 1252 (1978).

{¶ 18} In the case before us, the prosecution argues, and the trial court agreed, that the exigent circumstances exception to the warrant requirement applies. This exception permits a police officer to enter a home to render emergency assistance where he has an “objectively reasonable basis for believing” that a person needs his assistance. *Michigan v. Fisher*, 558 U.S. 45, 130 S.Ct. 546, 548, 175 L.Ed.2d 410 (2009). “An exigent circumstance is one that prompts police officers to believe either that a person in the

home is in need of immediate aid to prevent a threat to life or limb, or that immediate entry is necessary to stop the imminent loss, removal or destruction of evidence or contraband.” *State v. Hatcher*, 1st Dist. No. C-980938, 1999 WL 682630, \*3 (Sept. 3, 1999), citing *Mincey v. Arizona*, 437 U.S. 385, 392-393, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

{¶ 19} Here, the record supports the trial court’s finding that the exigent circumstance exception applies. Specifically, Jurva had an objectively reasonable basis to believe “that a person in the home [was] in need of immediate aid to prevent a threat to life or limb.” *Id.* Jurva had already been informed that there were children in the house. He testified that he responded to the call with lights and sirens “because of the possibility of loss of life or severe damage to life.” The risk of serious physical injury to the children in the home was evidenced by the fact that Hopkins was in the home at the time Jurva arrived, and Megan had already informed dispatch that Hopkins had fired a weapon multiple times at her and her husband, and had threatened her daughter’s life.

{¶ 20} In support of his first assignment of error, Hopkins notes that the arrests were being made at the time the search was conducted. He argues that “there was no risk at that point of any possible evidence being destroyed.” However, in making his argument, Hopkins overlooks the fact that the purpose for Jurva’s search was not to prevent the destruction of evidence. Rather, Jurva testified that the search was conducted in order to ensure the safety of the children and the other officers. The safety of others is a permissible basis to conduct a warrantless search under the exigent circumstances

exception. *Hatcher* at \*3. Since the exigent circumstances exception applied in this case, we conclude that the trial court did not err in denying Hopkins’ motion to suppress. Accordingly, Hopkins’ first assignment of error is found not well-taken.

### **B. Sufficiency and Manifest Weight of the Evidence**

{¶ 21} In his second assignment of error, Hopkins argues that his conviction was not supported by sufficiently credible evidence and was against the manifest weight of the evidence. Specifically, Hopkins contends that there was a complete dispute of facts as to what occurred on the night of his arrest. Consequently, Hopkins argues that the “jury clearly lost its way in finding [him] guilty of all three counts in the indictment.”

{¶ 22} “In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). “The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus (superseded by statute and constitutional amendment on other grounds).

{¶ 23} Hopkins was convicted by a jury on three counts of felonious assault under R.C. 2903.11(A)(2).<sup>1</sup> Felonious assault, in this context, means to cause or attempt to

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<sup>1</sup> R.C. 2903.11 provides, in relevant part:

- (A) No person shall knowingly do either of the following:

cause serious physical harm to another by means of a deadly weapon. Hopkins' actions, including shooting a firearm at Megan and Jr., unquestionably threatened serious physical harm to another. Viewed in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of the crime of felonious assault proven beyond a reasonable doubt. Thus, Hopkins' sufficiency argument is without merit.

{¶ 24} Next, Hopkins argues that his conviction was against the manifest weight of the evidence. When reviewing a manifest weight claim,

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220.

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\* \* \*

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

\* \* \*

(D)(1)(a) Whoever violates this section is guilty of felonious assault.

{¶ 25} Here, our review of the record fails to reveal any “manifest miscarriage of justice” that would prompt us to reverse the conviction and order a new trial. *Id.* Hopkins contends that the jury lost its way when it was faced with resolving conflicts between Vasquez’s testimony and Megan’s testimony. We disagree. Megan’s testimony clearly established that Hopkins fired a handgun at her and Jr. On the other hand, Vasquez testified that it was Jr. who threw a gun at Hopkins, and that shots were not fired. Vasquez’s testimony is contradicted by testimony given by Officer Richard Conti, who stated that he went to the scene of the crime and located several bullet holes. In addition, Officer Kevin Korsog testified that he found an additional bullet hole in a garbage can that rested against the front porch. Further, Officer David Cogan tested the bullet that was collected by Conti, and the bullet was determined to have been fired by the gun Jurva retrieved from McCrary’s house. In light of the abundant evidence presented to the jury, we determine that Hopkins’ manifest weight challenge is without merit.

{¶ 26} Having found the sufficiency argument and manifest weight argument to be without merit, we find Hopkins’ second assignment of error not well-taken.

### **III. Conclusion**

{¶ 27} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Costs are hereby assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

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.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
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