

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090357
Plaintiff-Appellee,	:	TRIAL NO. B-0807178
vs.	:	<i>JUDGMENT ENTRY.</i>
ROBERT WILLIAMS,	:	
Defendant-Appellant.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Robert Williams and a friend were walking on West McMillan Street, near the University of Cincinnati's campus, on September 3, 2008, at approximately 2:48 a.m. Williams and his friend were stopped by Police Officer Toni Savard in relation to an armed robbery that had occurred in the vicinity, perpetrated by two individuals, which took place approximately 40 minutes earlier. After stopping Williams, Savard noticed a bulge in the back pocket of Williams's pants. Savard handcuffed Williams, frisked him, and discovered a fully loaded, operational, semiautomatic handgun. The robbery victim was then summoned, but she could not positively identify Williams as one of the perpetrators. Williams was subsequently arrested and charged with one count of having weapons while under a disability and one count of carrying a concealed weapon.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Prior to trial, Williams filed a motion to suppress the gun from evidence. This motion was overruled, and Williams eventually pleaded no contest to both charges. The court found Williams guilty on both counts and sentenced Williams to three years of community control for each count, to be served concurrently. Williams has timely appealed to this court.

On appeal, Williams challenges the trial court's ruling on his motion to suppress, arguing the gun that was found on him should have been excluded from evidence. In his lone assignment of error, Williams claims that, based on the holding of *Terry v. Ohio*,² Savard's initial stop of Williams and his friend was unconstitutional. Specifically, Williams argues that the police did not rely on specific, articulable facts when stopping him, and that, other than being male and black, and wearing jeans, he did not match the general description of the robbery suspect given to police. Thus, police lacked the reasonable suspicion necessary to initially stop him.³ Williams further argues that, but for the unconstitutional stop, the gun he was carrying never would have been discovered. Therefore, based on the "fruit of the poisonous tree doctrine," the discovered gun should have been excluded from evidence.⁴

We review de novo the application of the *Terry* standards to the facts of a case.⁵

The Fourth Amendment to the United States Constitution, made applicable to the individual states by the Fourteenth Amendment, grants citizens the freedom from unreasonable searches and seizures. Additionally, this same right is granted to Ohio citizens through Section 14, Article I of the Ohio Constitution. The purpose of

² (1968) 392 U.S. 1, 88 S.Ct. 1868.

³ Id.

⁴ See *Wong Sun v. United States* (1963), 371 U.S. 471, 83 S.Ct. 407.

⁵ *Ornelas v. United States* (1996), 517 U.S. 690, 699, 116 S.Ct. 1657.

the Fourth Amendment's limits on unreasonable searches and seizures is to prevent the "arbitrary and oppressive" interference of law enforcement officials with the privacy of individual citizens.⁶ Generally, to search or seize a person or object, police must obtain prior judicial approval through the warrant process.⁷ However, recognizing that obtaining a warrant may not be practicable in all cases, the United States Supreme Court has held that the police may, in appropriate cases, approach citizens for the purposes of investigating criminal behavior even if the police lack a warrant or probable cause to make an arrest.⁸ When examining the reasonableness of a particular warrantless stop, a reviewing court must look at the totality of the circumstances and objectively determine whether "the facts available to the officer at the moment of the seizure or the search [would have] 'warrant[ed] a man of reasonable caution in the belief' that the action taken was appropriate?"⁹ In addition, "due weight must be given, not to [an officer's] inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he [wa]s entitled to draw from the facts in light of his experience."¹⁰ When reviewing a police officer's actions, a reviewing court must also consider the officer's "experience and training and review the evidence as it would be understood by those in law enforcement."¹¹

Williams argues that the police dispatch had indicated that the robbery had taken place at approximately 2:10 a.m. and had described the suspects as two black males, 23 years old, between five feet eight and five feet ten in height, wearing black shirts and jeans, and fleeing south. One of the suspects had a gun. Williams maintains that because he was actually 19 years old, five feet six, with a distinctive

⁶ *United States v. Martinez-Fuerte* (1976), 428 U.S. 543, 554, 96 S.Ct. 3074.

⁷ *Terry*, supra, at 20.

⁸ *Id.* at 22.

⁹ *Id.* at 21-22. See, also, *State v. Andrews* (1991), 57 Ohio St.3d 86, 87, 565 N.E.2d 1271.

¹⁰ *Terry* at 27.

¹¹ *State v. Andrews* (1991), 57 Ohio St.3d 86, 88, 565 N.E.2d 1271, citing *United States v. Cortez* (1981), 449 U.S. 411, 418, 101 S.Ct. 690.

“cornrow” haircut and mustache, and was wearing a white t-shirt, and because he was stopped northeast of the robbery, 38 minutes after it had occurred, the investigatory stop was based upon mere generalities, not the specific inferences necessary for it to be constitutional under *Terry*.

After thoroughly reviewing the record, we conclude that Officer Savard had reasonable suspicion to stop Williams. Savard observed Williams a half block away from the scene of the robbery, within a short time after it had occurred. Williams was sufficiently similar in age, height, and appearance to one of the robbery suspects. Further, Williams was accompanied by another person. The university was not yet in session, the bars in the vicinity were closed for the evening, and the area was generally deserted. Considering the totality of these facts, we cannot say that Officer Savard lacked the reasonable suspicion necessary to stop Williams for questioning. Savard’s stop of Williams was constitutional and was not “arbitrary” or “oppressive.”

As the initial stop of Williams is the only issue raised in his appeal, we do not consider the validity of the police search of his person.

Accordingly, we overrule Williams’s lone assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 3, 2010

per order of the Court _____
Presiding Judge