APPENDIX A

Supreme Court of Ohio

The STATE of Ohio, Appellee,
v.
HAWKINS, Appellant.

No. 2018-1177
Submitted April 24, 2019
Decided October 16, 2019

CERTIFIED by the Court of Appeals for Fayette County, No. CA2017-07-013, 2018-Ohio-1983.

Jess C. Weade, Fayette County Prosecuting Attorney, and John M. Scott Jr., Assistant Prosecuting Attorney, for appellee.

Shannon M. Treynor, London, for appellant.

Kennedy, J.

{¶ 1} This case was accepted as a certified conflict between judgments of the Twelfth District and Fifth District Courts of Appeals. The Twelfth District certified the issue in conflict as follows:

> "Does the discrepancy between the paint color of a vehicle and the paint color listed in vehicle registration records accessed by a police officer provide the officer with reasonable articulable suspicion to perform a lawful investigative traffic stop where the officer believes the vehicle or its displayed license plates may be stolen[?]"

153 Ohio St.3d 1474, 2018-Ohio-3637, 106 N.E.3d 1259, quoting the court of appeals' journal entry.

{¶ 2} We answer the question in the affirmative and hold, based on these facts, that when an officer encounters a vehicle the whole of which is painted a different color from the color listed in the vehicle-registration records and the officer believes, based on his experience, that the vehicle or its displayed license plates may be stolen, the officer has a reasonable, articulable suspicion of criminal activity and is authorized to perform an investigative traffic stop.

{¶ 3} Accordingly, we affirm the judgment of the Twelfth District Court of Appeals.

FACTS AND PROCEDURAL HISTORY

Traffic Stop

{¶ 4} Around 3:00 a.m. on May 20, 2016, Washington Court House Police Officer Jeffery Heinz was completing a traffic stop when a vehicle drove past his patrol car and Heinz heard his license-plate reader beep. A license-plate reader ("reader") is a computer-controlled camera system installed in some law-enforcement vehicles. The cameras, which are mounted to the trunk of the vehicle, capture images of the license plates of cars nearby. The system beeps to alert the officer that a plate has been captured, and an image of the plate is displayed on the computer's screen.

{¶ 5} Upon hearing the beep, Heinz looked at the computer screen and saw an image of a license plate with a Franklin County sticker. He ran the license-plate number and was informed by the dispatcher that the license plate was registered to a white 2001 GMC SUV. Heinz looked in his rearview mirror and saw that the vehicle, a GMC SUV, was black. He finished the traffic stop and began searching for the vehicle.

{¶ 6} Heinz located the vehicle and initiated a traffic stop. The driver, appellant, Justin Hawkins, pulled over. Heinz explained to Hawkins that the color discrepancy was the reason for the stop and asked to see Hawkins's identification. Hawkins told Heinz that he did not have identification with him. Heinz was able to verify that the vehicle's identification number matched the number registered with the Bureau of Motor Vehicles ("BMV") while he was attempting to learn Hawkins's personal information.

{¶ 7} Hawkins provided Heinz with a Social Security number; however, the dispatcher informed Heinz that the number was not associated with the name Hawkins. Heinz then verified with Hawkins his name and date of birth and asked him again for his Social Security number. Hawkins provided a second Social Security number. At this time, Hawkins informed Heinz that he was running low on gas. Heinz told Hawkins the location of a gas station.

{¶ 8} Hawkins pulled away, and Heinz followed in his patrol car. While following Hawkins, Heinz was notified by the dispatcher that the second Social Security number also was not Hawkins's. Heinz, still following Hawkins, then provided the dispatcher with Hawkins's name and date of birth. The dispatcher advised Heinz that Hawkins did not have a valid driver's license and that there was an outstanding warrant out of Delaware County for Hawkins's arrest.

{¶ 9} Heinz activated his lights to initiate a second traffic stop. Hawkins pulled his vehicle over, and Heinz approached. Heinz informed Hawkins of the outstanding warrant, and Hawkins sped away at a high rate of speed.

{¶ 10} Hawkins was apprehended after crashing the vehicle and fleeing on foot. Upon his arrest, the vehicle was inventoried and two credit cards that had been reported stolen were found in the glove compartment.

Trial-Court Proceedings

{¶ 11} On June 3, 2016, Hawkins was indicted on two counts of receiving stolen property in violation of R.C. 2913.51(A) and (C), felonies of the fifth degree, and one count of failing to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a felony of the third degree. He moved to suppress the evidence obtained relating to the traffic stop on the basis that Heinz had lacked reasonable suspicion to make an investigatory stop.

{¶ 12} At the suppression hearing, Heinz was the only witness to testify. He explained the basis for initiating the traffic stop. He stated that in his experience the discrepancy between the color in the BMV registration and the actual color of the vehicle could indicate that the vehicle and the license plates had been stolen. "[W]ith my experience, if someone would steal a vehicle, they would just go through a parking lot anywhere and find a vehicle that would match the vehicle in which they were driving. Throw [the license plate from that vehicle] on there and then drive around." He indicated that he had never encountered this personally, but he knew that it had occurred in the Washington Court House area.

{¶ 13} The trial court overruled Hawkins's motion to suppress. After a jury trial, Hawkins was convicted of failure to comply and acquitted of receiving stolen property. The trial court imposed a sentence of 36 months in prison.

Appellate-Court Proceedings

{¶ 14} Hawkins appealed to the Twelfth District Court of Appeals and advanced one assignment of error. He argued that the color discrepancy did not amount to a reasonable and articulable suspicion of criminal activity on which to base the traffic stop.

{¶ 15} The appellate court disagreed. It affirmed the trial court, concluding that the color discrepancy was sufficient to raise Heinz's suspicion that the vehicle was either stolen or that the license plate had been taken from another vehicle. 2018-Ohio-1983, 101 N.E.3d 520, ¶ 21. However, the Twelfth District granted Hawkins's motion to certify that its judgment was in conflict with the Fifth District's judgment in *State v. Unger*, 5th Dist. Stark No. 2016 CA 00148, 2017-Ohio-5553, 2017 WL 2799530. We recognized that a conflict exists. 153 Ohio St.3d 1474, 2018-Ohio-3637, 106 N.E.3d 1259.

ANALYSIS

Standard of Review

{¶ 16} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. An appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *See State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). But the appellate court must decide the legal questions independently, without deference to the trial court's decision. *Burnside* at ¶ 8.

The Fourth Amendment and Investigatory Stops

{¶ 17} The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

{¶ 18} We have held that in felony cases, Article I, Section 14 of the Ohio Constitution provides the same protection as the Fourth Amendment to the United States Constitution. *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 12.

{¶ 19} "The Fourth Amendment permits brief investigative stops * * * when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Navarette v. California*, 572 U.S. 393, 396, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014), quoting *United States v. Cortez*, 449 U.S. 411, 417-418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). This rule traces its beginning to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and therefore, the type of stop involved is referred to as a "*Terry* stop." In *Terry,* the United States Supreme Court "implicitly acknowledged the authority of the police to make a forcible stop of a person when the officer has reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity." (Emphasis deleted.) *United States v. Place*, 462 U.S. 696, 702, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983).

{¶ 20} Precisely defining "reasonable suspicion" is not possible, and as such, the reasonable-suspicion standard is "'not readily, or even usefully, reduced to a neat set of legal rules.'" *Ornelas v. United States*, 517 U.S. 690, 695-696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996), quoting *Illinois v. Gates*, 462 U.S. 213, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). The reasonableness of a *Terry* stop "depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). The level of suspicion required to meet the reasonable-suspicion standard "is obviously less demanding than that for probable cause," and "is considerably less than proof of wrongdoing by a preponderance of the evidence" but is "something more than an 'inchoate and unparticularized suspicion or "hunch."'" *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989), quoting *Terry* at 27, 88 S.Ct. 1868.

{¶ 21} To determine whether an officer had reasonable suspicion to conduct a *Terry* stop, the "totality of circumstances" must be considered and "viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews,* 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271 (1991). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), quoting *Cortez* at 411, 101 S.Ct. 690.

{¶ 22} "A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct." *Id.* at 277, 122 S.Ct. 744. In permitting detentions based on reasonable suspicion, "*Terry* accepts the risk that officers may stop innocent people." *Illinois v. Wardlow*, 528 U.S. 119, 126, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

Heinz Had Reasonable, Articulable Suspicion to Stop Hawkins

{¶ 23} In this case, Heinz's suspicions were aroused when he saw a vehicle the entirety of which was a different color from the color indicated in the BMV records for the vehicle associated with the license plate that was captured by Heinz's reader. The facts that the color discrepancy itself is not a crime and that there may be an innocent explanation for the discrepancy do not mean that the discrepancy may be disregarded in determining whether Heinz had reasonable suspicion. *See Arvizu* at 274, 122 S.Ct. 744 (reviewing the totality of the circumstances requires consideration of an observation that "was by itself readily susceptible to an innocent explanation"). To assign noncriminal behavior no weight would "seriously undercut the 'totality of the circumstances' principle which governs the existence *vel non* of 'reasonable suspicion.'" *Id.* at 274-275, 122 S.Ct. 744. Behavior and circumstances that are noncriminal by nature may "be unremarkable in one instance * * * while quite unusual in another." *Id.* at 276, 122 S.Ct. 744. An officer is "entitled to make an assessment of the situation in light of his specialized training and familiarity with the customs of the area's inhabitants." *Id.*

{¶ 24} In this case, Heinz testified that in his experience, the color discrepancy could signify that the vehicle either was stolen or had an illegal license plate. He knew that in the past, car thieves in the area had stolen a vehicle and then switched the license plates with a vehicle of the same make and model. Based on his professional experience, Heinz suspected that Hawkins was engaged in criminal activity. Therefore, we hold that under the totality of the circumstances, Heinz met the reasonable-and-articulable-suspicion standard necessary to perform a lawful investigative traffic stop.

CONCLUSION

{¶ 25} Based on these facts, when an officer encounters a vehicle the whole of which is painted a different color from the color listed in the vehicle-registration records and the officer believes, based on his experience, that the vehicle or its displayed license plates may be stolen, the officer has a reasonable, articulable suspicion of criminal activity and is authorized to perform an investigative traffic stop.

{¶ 26} We affirm the judgment of the Twelfth District Court of Appeals

Judgment affirmed.

O'Connor, C.J., and French, Fischer, and DeWine, JJ., concur.

Stewart, J., concurs in judgment only.

Donnelly, J., dissents, with an opinion.

Donnelly, J., dissenting.

{¶ 27} This certified-conflict case began here with a poorly worded question, and it has ended with an erroneous answer. I would answer the conflict question in the negative and reverse the judgment of the Twelfth District Court of Appeals.

{¶ 28} It is not reasonable for a police officer to infer that a vehicle's driver has stolen the vehicle, stolen license plates from a second vehicle, and switched the license plates whenever the officer notices a discrepancy between the color of a vehicle and the color listed in its registration records. In direct response to the conflict question, I would hold that such a discrepancy, by itself, does not provide the reasonable suspicion necessary to justify an investigatory seizure pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

{¶ 29} Additionally, although the certified question focuses on the specific context of vehicle-registration records, I have grave concerns about the state using the holding in this case in broader contexts. I would hold that a totality-of-the-circumstances analysis is inapplicable in cases in which only one fact is relied upon to justify an investigatory seizure. I would also hold that a police officer's knowledge of secondhand anecdotal information from an unidentified source does not constitute personal experience or specialized training.

{¶ 30} This case is a far cry from *Terry* and *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), both of which involved multiple facts that cumulatively led an officer to infer criminal activity, requiring a totality-of-the-circumstances analysis. Here, instead of having a single inference based upon a wealth of assorted facts, we have a wealth of inferences based upon a single fact. And the single fact in this case is that a 15-year-old black

GMC SUV was registered as a 15-year-old white GMC SUV.

{¶ 31} Rather than asking whether such a color discrepancy alone provides a police officer with reasonable suspicion that the vehicle or its license plates may be stolen, the certified question asks whether such a color discrepancy *and* the officer's belief that the vehicle or license plates may be stolen provides a police officer with reasonable suspicion that the vehicle or its license plates may be stolen. My belief is that the certifying appellate court confounded an officer's inferences from the circumstances with the circumstances themselves in order to portray the case as one requiring a consideration of the totality of multiple circumstances.

{¶ 32} In a review of a police officer's assertion of reasonable suspicion, "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to *draw from the facts*." (Emphasis added.) *Terry*, 392 U.S. at 27, 88 S.Ct. 1868, 20 L.Ed.2d 889. An officer's experience and background are certainly important considerations when determining whether the inferences he drew from the facts were reasonable. *Id.*; *Arvizu* at 273, 122 S.Ct. 744. But an officer's inferences drawn from the facts, as well as the background and experience informing those inferences, are not part of the facts themselves. Thus, in this case, Officer Jeffery Heinz's background and his personal belief that the vehicle driven by Hawkins might have been stolen cannot be used to pad the sole fact supporting his investigatory seizure of Hawkins in order to justify a totality-of-the-circumstances analysis.

{¶ 33} In addition to accepting the false premise that this case involves the consideration of multiple facts, the majority defends the reasonableness of Officer Heinz's inferences by referencing the notion that police officers "'draw on their own experience and specialized training'" when making inferences about those facts. Majority at ¶ 21, quoting *Arvizu*, 534 U.S. at 273, 122 S.Ct. 744, 151 L.Ed.2d 740. But Officer Heinz did not testify as to any personal experience or specialized training to justify the connection he drew between vehicle/registration color discrepancies and the switching of license plates on stolen vehicles.

{¶ 34} If anything, Officer Heinz's testimony regarding his personal experience on the police force suggested that license-plate-switching was *not* likely to have happened. Officer Heinz testified that he had been a police officer in Washington Court House for over 14 years. Over the course of his career, he had investigated more vehicle thefts than he could count. He had investigated both vehicle thefts and license-plate thefts. But he had not once in his entire 14-year career encountered a situation in which a person had stolen a vehicle and replaced its license plates with plates that he had stolen from a similar vehicle of a different color. He assured the court, though, that "it is done." He did not cite any specialized training that had led to his understanding that "it is done." He simply indicated that such a crime had occurred one or more times in his city. The majority quotes a portion of Officer Heinz's testimony in which he implies that his knowledge of these crimes comes from his own experience. Majority opinion at ¶ 12. But that testimony was clarified when the officer was asked whether he had *personal* experience involving stolen vehicles with switched plates and he said that he did not.

{¶ 35} Because Officer Heinz's belief was based on secondhand anecdotal information from an unknown source rather than personal experience or specialized training, his personal belief does not add much weight to the analysis, let alone dispositive weight. More importantly, Officer Heinz's testimony about his secondhand information seemed to be an attempt to demonstrate the likelihood that a car thief might switch license plates in order to evade detection. But his testimony in no way demonstrated the likelihood that anyone driving a car with a vehicle/registration color discrepancy might be a car thief who had switched license plates.

{¶ 36} Ohio's laws and regulations governing vehicle registration, R.C. Chapter 4503 and Ohio Adm.Code 4501:1-7, do not address vehicle color at all, let alone require a driver to immediately file a new registration application to update or correct a vehicle's registered color. There is nothing unlawful in Ohio about driving a vehicle whose color does not match the color listed on the vehicle's registration. The baseline here, then, is that driving such a vehicle is consistent with innocent conduct. If behavior is consistent with innocent conduct, it must be combined with additional conduct if it is to be used to establish reasonable suspicion of illegal conduct. *Terry*, 392 U.S. at 22, 88 S.Ct. 1868, 20 L.Ed.2d 889; *United States v. Sokolow*, 490 U.S. 1, 9-10, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); *United States v. Cortez*, 449 U.S. 411, 419-420, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir.2006) ("Seemingly innocuous behavior does not justify an investigatory stop unless it is combined with other circumstances that tend cumulatively to indicate criminal activity").

{¶ 37} It is true that the proper inquiry for making a determination of reasonable suspicion is not whether each individual act is innocent or guilty. *Sokolow* at 10, 109 S.Ct. 1581, citing *Illinois v. Gates*, 462 U.S. 213, 243, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), fn. 13. But it is also true that the reasonable-suspicion inquiry requires that some acceptable "degree of suspicion" must attach to a noncriminal act. *Id.* So what degree of suspicion attaches here? Is driving a vehicle with a color that does not match the color listed on the vehicle's registration the kind of behavior to which reasonable suspicion of illegal activity readily attaches, as is true of running away after seeing police, *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000), or smelling distinctively of marijuana, *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir.2006)? Or is this the kind of behavior that, although unusual, does not yield a high enough degree of suspicion on its own to justify an investigatory seizure, such as possessing luggage that smells of an unidentified chemical, *United States v. Little*, 18 F.3d 1499, 1506 (10th Cir.1994), wearing a wig and sunglasses, *People v. Tate*, 367 Ill.App.3d 109, 116-117, 304 Ill.Dec. 883, 853 N.E.2d 1249 (2006), or having more than one air freshener in a vehicle, *United States v. Rodriguez-Escalera*, 884 F.3d 661, 670 (7th Cir.2018)?

{¶ 38} I believe that driving a vehicle that is a color other than the color listed on its registration falls solidly in the second category. The majority of jurisdictions addressing this issue tend to agree: so long as a color discrepancy does not constitute a violation of state law, then the discrepancy, standing alone, does not adequately support reasonable suspicion absent some other indicia of criminal activity. *United States v. Uribe*, 709 F.3d 646 (7th Cir.2013); *Schneider v. State*, 2015 Ark. 152, 459 S.W.3d 296; *State v. Teamer*, 151 So.3d 421 (Fla.2014); *Commonwealth v. Mason*, Va.App. No. 1956-09-2, 2010 WL 768721 (Mar. 9, 2010) (unpublished decision); *State v. O'Neill*, N.H.Super. Nos. 06-S-3456 and 06-S-3457, 2007 WL 2227131 (Apr. 17, 2007). *Compare Smith v. State*, 713 N.E.2d 338, 342 (Ind.App.1999) (court upheld traffic stop; held that mismatch in color constituted a traffic violation under Indiana law).

{¶ 39} In this case, it was within the realm of possibility that Hawkins stole a black 2001 GMC SUV, drove around until he found another 2001 GMC SUV (which happened to be white), stole the license plates from the white 2001 GMC SUV, and put those plates on the black 2001 GMC SUV. It was also quite possible that the vehicle was originally white but was painted black at some point in the previous 15 years. And it was also quite possible that the vehicle had always been black and a mistake was made at some point in the Bureau of Motor Vehicles' ("BMV's") record keeping or in the transfer of the vehicle-registration information to the police.[1] Although it is unusual for a vehicle's color not to match the color listed on its registration, there is nothing in Hawkins's suppression hearing establishing that the

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[1] The latter circumstance seems to have been the case for the vehicle that Hawkins was driving: all of the BMV records prior to June 2016 that are in the record before this court do not indicate any color for the 2001 GMC SUV, and the only document indicating the color as white is a document that was printed from police records and was submitted by the state.

drivers of such vehicles are not, by and large, innocent travelers. Thus, subjecting all such drivers to random investigatory seizures offends the Fourth Amendment's basic protections. *See Reid v. Georgia*, 448 U.S. 438, 441, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980).

{¶ 40} Officer Heinz's testimony did not establish that a vehicle/registration color discrepancy, alone, gives rise to a reasonable suspicion that the vehicle's driver is engaged in criminal activity. Instead, Officer Heinz's testimony established that he had a hunch that this might be one of those instances in which the innocent conduct might not actually be innocent. Because nothing more than an inchoate suspicion of criminal activity was present in this case, I would reverse the judgment of the Twelfth District Court of Appeals.

APPENDIX B

Court of Appeals of Ohio, Twelfth District, Fayette County

STATE of Ohio, Plaintiff–Appellee,
v.
Justin HAWKINS, Defendant–Appellant.

NO. CA2017–07–013
5/21/2018

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS, Case No. CRI20160145.

Jess C. Weade, Fayette County Prosecuting Attorney, John M. Scott, Jr., 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

Steven H. Eckstein, 1208 Bramble Avenue, Washington C.H., Ohio 43160, for defendant-appellant

OPINION

HENDRICKSON, P.J.

{¶ 1} Defendant-appellant, Justin Hawkins, appeals from his conviction for the failure to comply with an order or signal of a police officer, arguing the Fayette County Court of Common Pleas erred when it denied his motion to suppress. For the reasons stated below, we affirm the trial court's denial of appellant's motion to suppress and uphold his conviction.

{¶ 2} At approximately 3:00 a.m. on May 20, 2016, Patrolman Jeffery Heinz, a 14–year veteran police officer with the city of Washington Court House, was finishing up a traffic stop on Draper Street when a black GMC SUV driven by appellant passed his patrol car. Heinz's onboard license plate reader captured the license plate of the vehicle, and Heinz ran the license plate number through dispatch to obtain the vehicle's registration information. Heinz was advised that the license plate was registered to a 2001 *white* GMC SUV. Heinz quickly concluded his original traffic stop before locating the black GMC SUV and pulling it over. Heinz initiated the traffic stop of the SUV because he was concerned that the vehicle might have been stolen or had a "fictitious registration."

{¶ 3} After stopping the SUV, Heinz explained to appellant that the color discrepancy was the reason for the stop and asked appellant for his license, registration, and proof of insurance. Appellant did not have any identification on him. While obtaining appellant's personal information, Heinz was able to verify the last six numbers of the GMC's VIN by providing the numbers to dispatch, who verified that the numbers matched the records of the Bureau of Motor Vehicles ("BMV").

{¶ 4} Heinz returned to his patrol car to write appellant a warning and to run the social security number appellant provided. The social security number belonged to a different individual. Heinz again approached appellant's vehicle and verified appellant's name, date of birth, and his social security number. Although Heinz instructed appellant to "sit tight" while Heinz ran the second social security number, appellant began to slowly drive away. Heinz followed in his patrol car.

{¶ 5} While Heinz followed appellant's vehicle, he ran the second social security number provided by appellant. This number also belonged to someone other than appellant. Heinz then ran appellant's name and date of birth through dispatch. He was advised that appellant did not have a valid driver's license and had a warrant for his arrest out of Delaware County. Heinz activated his patrol car's lights and sirens, and appellant pulled over the SUV he was operating. However, after Heinz informed appellant there was a warrant out for his arrest, appellant "gunned the engine and took off at a rapid rate." Heinz called for assistance and set off in pursuit of appellant, with his vehicle's lights and sirens activated.

{¶ 6} After nearly hitting a police cruiser, appellant veered off the road and drove through yards before striking a bush or a small tree. Appellant then abandoned his vehicle and fled on foot. He was apprehended by Heinz and arrested. Appellant's vehicle was inventoried, and two credit cards were found in the glovebox of the SUV. The credit cards were not in appellant's name and had previously been reported stolen.

{¶ 7} On June 3, 2016, appellant was indicted on two counts of receiving stolen property in violation of R.C. 2913.51(A) and (C), felonies of the fifth degree, and one count of failing to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a felony of the third degree as appellant's operation of the motor vehicle caused a substantial risk of serious physical harm to persons or property. Appellant moved to suppress all evidence relating to his traffic stop on the basis that Heinz "lacked reasonable and articulable suspicion to make an investigatory stop." Appellant contended the "mismatch" between the SUV's color and the color listed on the vehicle's registration did not provide reasonable suspicion to justify the stop.

{¶ 8} The only witness to testify at the hearing on appellant's motion was Heinz, who testified as follows regarding the traffic stop:

> [Prosecutor]: What if any concern to you have that a plate [sic], cause it sounds like it matched the type of vehicle, but it didn't match the color of the vehicle. What reason would you have for any concern?
>
> Heinz: Yeah typically with my, with my experience when subjects will steal a vehicle and that is why BMV started implementing the colors is, in years past somebody would steal a vehicle.
>
> * * *
>
> In years past, with my experience, if someone would steal a vehicle, they would just go through a parking lot anywhere and find a vehicle that would match the vehicle in which they were driving. Throw that [plate] on there and then drive around.
>
> [Prosecutor]: And have you had that experience personally with vehicles that have been stolen in and around Washington Court House?
>
> Heinz: Me personally, no. However, in our city, yes. We have license plates [that] have been taken off and done that, yes.
>
> * * *
>
> [Defense Counsel]: [You] talked a little bit about your experience investigating. How many car thefts have you investigated in your career?
>
> Heinz: Car thefts?
>
> * * *

I can't put a number, but it's been quite a few.

[Defense Counsel]: As the, have you ever investigated them, or where you the officer on the scene or how did it, how did that work?

Heinz: I have both had investigations of vehicle thefts [sic]. I have also had recovery of stolen vehicles and I have also had recovery of stolen license plates as well.

[Defense Counsel]: You said you've never experienced a situation like this. Where a, where as you said, where a plate may have been switched from a vehicle?

Heinz: Me personally?

[Defense Counsel]: Yes.

Heinz: No.

[Defense Counsel]: Okay.

Heinz: But yes, it is done.

* * *

[Defense Counsel]: [J]ust for clarification purposes, the only reason that [appellant] was stopped was due to the color of the vehicle not matching registration?

Heinz: The, the vehicle did not match the vehicle [sic]. Which at the time I believed was [a] fictitious registration.

[Defense Counsel]: What I asked was the sole reason you stopped Mr. Hawkins was because the color of the vehicle did not match the color that you were told by a dispatcher that the vehicle should have been on the registration?

Heinz: That would be correct.

{¶ 9} When questioned about whether driving a vehicle that is a different color than the color listed on the vehicle's registration is, "in and of itself," a crime, Heinz initially testified he did not know. However, he then clarified that "[w]e have been told by our prosecutors yes, it is. It is. However, we do not charge for the color discrepancy." Heinz testified that a person could, however, be charged with "fictitious registration because the colors [do] not match."

{¶ 10} After considering Heinz's testimony, the trial court denied appellant's motion to suppress, stating that there was "nothing unreasonable or constitutionally infirm with the conduct of Officer Heinz in this case." The court found "reasonable and articulable suspicion sufficient to initiate the initial detention * * * to determine the validity of the * * * registration issue that was raised when * * * he ran the registration through the dispatcher and was notified that it was to a white vehicle."

{¶ 11} Following the denial of his motion to suppress, appellant was tried to a jury. Heinz was the sole witness to testify at trial. Following his testimony, appellant moved for acquittal pursuant to Crim.R. 29, and his motion was denied. The matter was submitted to the jury, who acquitted appellant of both counts of receiving stolen property but found him guilty of failing to comply with the order or signal of a police officer. The jury further found appellant's operation of the motor vehicle caused a substantial risk of serious physical harm. Appellant was sentenced to 36 months in prison.

{¶ 12} Appellant appealed, raising the following as his sole assignment of error:

{¶ 13} THE TRIAL COURT ERRED IN FINDING LAW ENFORCEMENT HAD A REASONABLE

AND ARTICULABLE SUSPICION [APPELLANT] WAS ENGAGED IN CRIMINAL ACTIVITY OR OPERATING HIS VEHICLE IN VIOLATION OF THE LAW IN DENYING HIS MOTION TO SUPPRESS AND THEREBY ALLOWING IMPROPER EVIDENCE INTO THE TRIAL IN VIOLATION OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 14 OF THE OHIO CONSTITUTION.

{¶ 14} In his sole assignment of error, appellant argues the trial court erred in denying his motion to suppress as Patrolman Heinz lacked reasonable articulable suspicion to initiate the traffic stop. He contends the color discrepancy between the paint color of the SUV and the registration for the vehicle did not provide sufficient suspicion to justify the traffic stop. He also argues that because the stop was unlawful, all "derivative evidence" should be suppressed pursuant to the "fruit of the poisonous tree" doctrine and his Crim.R. 29 motion for acquittal should be granted for lack of sufficient evidence.

{¶ 15} Our review of a trial court's denial of a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, 12th Dist. Preble No. CA2006–10–023, 2007-Ohio-3353, 2007 WL 1880207, ¶ 12. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. *Id.* Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, 12th Dist. Butler No. CA2005–03–074, 2005-Ohio-6038, 2005 WL 3031883, ¶ 10. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶ 12.

{¶ 16} "The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable searches and seizures, including unreasonable automobile stops." *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 11. "Ohio recognizes two types of lawful traffic stops." *State v. Stover*, 12th Dist. Clinton No. CA2017–04–005, 2017-Ohio-9097, 2017 WL 6450754, ¶ 8. The first involves a non-investigatory stop in which an officer has probable cause to stop a vehicle because the officer observed a traffic violation. *Id.*, citing *State v. Moore*, 12th Dist. Fayette No. CA2010–12–037, 2011-Ohio-4908, 2011 WL 4436647, ¶ 31. "The second type of lawful traffic stop is an investigative stop, also known as a *Terry* stop, in which the officer has reasonable suspicion based on specific or articulable facts that criminal behavior is imminent or has occurred." *Id.*, citing *State v. Bullock*, 12th Dist., 2017-Ohio-497, 85 N.E.3d 133, ¶ 7. *See also Moore* at ¶ 33, citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The present case involves the latter of the two stops.

{¶ 17} With respect to a *Terry* stop, the concept of "reasonable and articulable suspicion" has not been precisely defined; it has been described as something more than an undeveloped suspicion or hunch but less than probable cause. *State v. Baughman*, 192 Ohio App.3d 45, 2011-Ohio-162, 947 N.E.2d 1273, ¶ 15, citing *Terry* at 20–21, 88 S.Ct. 1868. The "reasonable suspicion standard" under *Terry* is an objective, not a subjective, one. *Stover* at ¶ 9, citing *State v. McCandlish*, 10th Dist. Franklin No. 11AP–913, 2012-Ohio-3765, 2012 WL 3582583, ¶ 7. For this reason, 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." *Baughman* at ¶ 15, citing *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, paragraph two of the syllabus; and *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph one of the syllabus.

{¶ 18} In the present case, Heinz testified he initiated a traffic stop because appellant was driving a black GMC SUV when the registration indicated the vehicle was white, and this discrepancy led him to believe the vehicle had a fictitious registration or might have been stolen. This court has not previously addressed the issue of whether the discrepancy between the color of a defendant's vehicle and the color listed in registration records accessed by a police officer provides the officer with reasonable suspicion to perform an investigative traffic stop. Courts that have considered the issue are split.

{¶ 19} The Seventh Circuit Court of Appeals, the Arkansas Supreme Court, the Florida Supreme Court, and the Fifth District Court of Appeals have all determined that a discrepancy in an automobile's paint color found via a database check does not amount to reasonable suspicion of criminal activity sufficient to justify a warrantless investigatory stop. *See United States v. Uribe*, 709 F.3d 646 (7th Cir.2013); *Schneider v. State*, 459 S.W.3d 296 (Ark.2015); *State v. Teamer*, 151 So.3d 421 (Fla.2014); *State v. Unger*, 5th Dist. Stark No. 2016

CA 00148, 2017-Ohio-5553, 2017 WL 2799530. In many of these cases, the courts considering the issue have noted that there was no requirement under state law to update a vehicle registration when an owner changes the color of his or her car. *Uribe* at 650 (noting "the color discrepancy itself was lawful, because neither Indiana nor Utah requires a driver to update his vehicle registration when he changes the color of his car"); *Schneider* at 299 (noting Arkansas has no requirement that the owner of a vehicle change the registration to reflect the color of a vehicle in the event it is painted or the color is otherwise altered); *Teamer* at 427–428 (finding a color discrepancy is not " 'inherently suspicious' or 'unusual enough' or 'so out of the ordinary' as to provide an officer with a reasonable suspicion of criminal activity, especially given the fact that it is not against the law in Florida to change the color of your vehicle without notifying the DHSMV"). The courts concluded that the lawful color discrepancy alone was not probative of wrongdoing and therefore did not authorize a traffic stop. *Uribe* at 652; *Schneider* at 299–300; *Teamer* at 428 ("to find reasonable suspicion based on this single noncriminal factor would be to license investigatory stops on nothing more than an officer's hunch").

{¶ 20} Other courts that have considered the issue have come out in the other direction. Appellate courts in Georgia, Indiana, and Idaho have all determined that the discrepancy between an automobile's paint color and the color reported on a vehicle's registration amounts to reasonable suspicion of criminal activity to authorize an investigatory stop when the officer believes the vehicle was stolen or has a fictitious plate. *See Smith v. State*, 713 N.E.2d 338, 342 (Ind.App.1999) (finding that the color discrepancy gave an officer "reasonable suspicion to believe that * * * vehicle had a mismatched plate, and as such, could be stolen or retagged"); *Andrews v. State*, 289 Ga. App. 679, 681, 658 S.E.2d 126 (2008) (finding the color discrepancy gave an officer reasonable and articulable suspicion for the investigatory stop where the officer had reason to believe the license plate had been improperly switched or transferred in violation of Georgia law); *State v. Creel*, 2012 WL 9494147, *2 (2012) (finding that the color discrepancy gave the officer reasonable and articulable suspicion to initiate the stop where the officer testified the vehicle "could have had fictitious license plates in violation of I.C. § 49–456(3) or the vehicle could have been stolen and the plates were from another S–10 pickup"). In these cases, the courts noted that the officer "was entitled to draw from the facts in light of his experience" and training. *Andrews* at 681, 658 S.E.2d 126. *See also Creel*, 2012 WL 9494147, at *2.

{¶ 21} We are persuaded by the approach taken in *Smith, Andrews*, and *Creel* and find that under the facts of the present case, reasonable and articulable suspicion existed to authorize Heinz's stop of appellant's vehicle. The color discrepancy between the vehicle's actual paint color (black) and the BMV's registration (white) gave Heinz reason to believe that the vehicle may have been stolen or the license plate switched from another vehicle. Heinz testified that although he had not personally experienced a situation where a car thief had replaced a vehicle's original license plate with a stolen plate taken from a similar vehicle, from his 14 years of law enforcement experience he knew that this type of criminal behavior occurred. He further testified that such criminal activity had occurred in and around Washington Court House.

{¶ 22} Accordingly, for the reasons set forth above, we find that the trial court did not err in denying appellant's motion to suppress. The discrepancy in the vehicle's color coupled with Heinz's experience and belief that the vehicle or its plates might have been stolen provided reasonable and articulable suspicion to authorize the investigatory stop of appellant's vehicle.

{¶ 23} Therefore, as the traffic stop was lawful, we find no merit to appellant's arguments that the evidence flowing from the stop must be suppressed pursuant to the "fruit of the poisonous tree" doctrine. Heinz trial testimony about the events that occurred leading up to, during, and after the traffic stop was properly admitted. Through Heinz's testimony the state presented sufficient evidence to sustain appellant's conviction for failing to comply with an order or signal of a police officer. Appellant fled from Heinz after being advised there was a warrant for his arrest. He ignored the police cruiser's lights and sirens—visible and audible signals to stop his vehicle—and in fleeing from Heinz, caused a substantial risk of harm to both property and persons. *See, e.g., State v. Monnin*, 12th Dist. Warren CA2016–07–058, 2017-Ohio-1095, 2017 WL 1131932, ¶ 13–30.

{¶ 24} The arguments set forth in appellant's sole assignment of error are therefore without merit and his assignment of error is overruled.

{¶ 25} Judgment affirmed.

APPENDIX C

The Supreme Court of Ohio

State of Ohio v. Justin Hawkins	Case No. 2018-1177 RECONSIDERATION ENTRY Fayette County

Filed December 31, 2019

It is ordered by the court that the motion for reconsideration in this case is denied.

(Fayette County Court of Appeals; No. CA2017-07-013)

/s/ Maureen O'Connor
Chief Justice