

IN THE SUPREME COURT OF OHIO

09-0418

ERIC LEWIS

Appellant,

On Appeal from the  
Montgomery County Court  
of Appeals, Second Appellate  
District

vs.

STATE OF OHIO

Appellee.

Court of Appeals Case No.:  
CA 22726

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT ERIC LEWIS

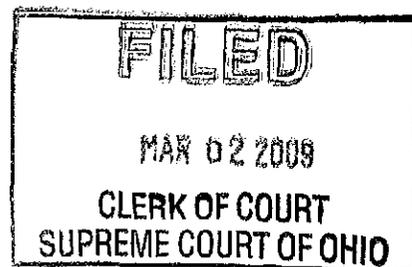
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<p><u>Proposition of Law Number 1:</u> Encounters with law enforcement present a mixed issue of subjective and objective analysis. Following a determination of what the person actually perceived as their ability to subjectively refuse police contact, a Court should analyze what objectively a reasonable person would have felt standing in the shoes of the defendant.</p>	
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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION.

This case raises a crucial Constitutional question regarding the validity of police encounters traditionally deemed as “consensual.” The issues at the heart of this case would have a direct influence on the modern police practices in Ohio as well as the constitutionally guaranteed rights of the people to be secure in their personal property.

In this case, the Court of Appeals held that Mr. Lewis’ encounter with the police officers was consensual until the moment he was handcuffed and placed in the cruiser. To that effect, the Court reasoned that at any time prior to his being physically restrained, Mr. Lewis was free to leave and could refuse to answer any further questions. The Court further reasoned that a reasonable person in Mr. Lewis’ position would have known and would have believed that they were free to end the encounter at any time.

The Court of Appeals has effectively threatened the rights of any person who is approached by officers in a public place. Through its ruling, the Court has further expanded the rights of officers and has yet again failed to recognize the real world application of the “reasonable person” standard to the average citizen. In modern society, there are standards and norms of behavior that are not adequately reflected in the current approach to law. There are inferences regarding authority where the “reasonable person” standard deviates from the common practices and opinions of reasonable people.

The issues decided in this case apply to the very core of the modern justice system. The police in our society engage citizens in “consensual” conversations everyday and illicit information and potentially incriminating evidence from them without the individual being aware of their rights to protect themselves. The laws governing encounters by the police with private citizens are antiquated, yet they provide the core for police relations with the community in modern America.

Mr. Lewis is a perfect example of the modern way of thinking by an ordinary citizen. His interpretation of his rights is indicative of society as a whole. As such, the Court should accept jurisdiction of this case because it presents a valid argument on an issue that has become increasingly troublesome and has prevented countless individuals from protecting themselves in the face of informal interrogation.

#### STATEMENT OF THE CASE AND FACTS

This case arises after the plea and appeal of Eric Lewis’ criminal conviction in Montgomery County, Ohio. Mr. Lewis was charged with, and ultimately pled no contest to, dogfighting and possession of criminal tools. The basis for the charges stem from events which transpired on Mr. Lewis’ property in Dayton, Ohio on October 25, 2006.

While outside his residence, Mr. Lewis and two acquaintances were approached by Dayton Police Officers in a marked cruiser. The officers, while on patrol of the alley behind Mr. Lewis’ residence, drove past the three men and observed what they believed to be illegal activity. According to their testimony, the officers observed the individuals standing near an open minivan, in which the officers observed several pit bulls in crates

and more outside the minivan. After making these initial observations, the officers initiated contact with the three individuals. They were informed that Mr. Lungs, one of the men present, was in the business of transporting animals for a living and was on such a trip from Texas.

Mr. Brasher, the third man present, indicated that he was there to purchase one of the dogs from Mr. Lungs. After indicating his intentions, presenting identification, and informing the officers that he was on a lunch break from work, Mr. Brasher was told he was allowed to leave, albeit without the dog he had tried to purchase.

The officers, while questioning the remaining two men, began looking into the open minivan. Upon their search, the officers noticed some of the dogs had visible scarring and one of the dogs was allegedly wearing a collar with a ring on it. Officer Coberly, one of the officers present, testified that he had been involved in previous dogfighting investigations and that scarring, hypodermic needles, and collars with brass rings were indicative of dogfighting operations. After observing these conditions, Officer Zimmerman testified that he asked for, and was granted, permission to search the van. Mr. Lungs, the owner of the van, testified that he did not give the Officer permission to search the vehicle.

While searching the vehicle, Officer Zimmerman found two ammunition clips. At that point, the individuals were handcuffed, placed in cruisers, and read their Miranda rights. This arrest occurred at approximately 6:15 p.m., an hour after the officers first approached the men in the alley.

The officers continued to search the van along with a pickup truck located on Mr. Lewis' property as well. During the search, they found evidence tending to implicate

both men in a dogfighting operation. According to the officer's testimony, Mr. Lewis ultimately consented to a search of the truck he owned, but he did not consent to a search of his home. It was the testimony of the officers that Mr. Lewis, when interrogated about the contents of his home, did indicate that he possessed a slat-mill used to train dogs. Upon learning this information, the officers prepared an affidavit for a search warrant and received a warrant to search Mr. Lewis' home for contraband. The subsequent search produced further incriminating evidence.

Mr. Lewis was indicted on 14 counts of dogfighting and 3 counts of possessing criminal tools. He filed a timely Motion to Dismiss on which the Court held a hearing on February 2, 2007. His motion was ultimately denied. Following the denial of his Motion to Suppress, Mr. Lewis entered a plea of No Contest to the charges and was sentenced on March 25, 2008.

Mr. Lewis' appeal was filed on October 8, 2008 and the Court denied his appeal on January 16, 2009.

#### ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

**Proposition of Law No. 1: Encounters with law enforcement present a mixed issue of subjective and objective analysis. Following a determination of what the person actually perceived as their ability to subjectively refuse police contact, a Court should analyze what objectively a reasonable person would have felt standing in the shoes of the defendant.**

The Fourth Amendment to the United States Constitution provides that the citizens shall be secure in their persons and papers and free from unreasonable searches

and seizures. This provision has been interpreted continuously since it was written. Today, the court holds a myriad of opinions regarding the proper practice of the police and rights of private citizens.

When evaluating a Fourth Amendment issue, it is important to note several important maxims. First, not every encounter between the police and a citizen is deemed a seizure that would be entitled to Fourth Amendment protections. Most notably, there is no Fourth Amendment violation when a police officer merely approaches an individual on the street or in a public place. Under the current case law interpretations, an officer engaging a citizen in questioning is not a violation of the Fourth Amendment. *Florida v. Royer* (1982), 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229. In fact, this encounter is deemed to be consensual even if the officer asks incriminating questions, requests identification from the citizen for his inspection, or asks to search the individual's belongings. *Florida v. Rodriguez* (1984), 469 U.S. 1, 105 S.Ct. 308, 83 L.Ed.2d 165. It is also important to note that, during the questioning of the subject, the officer may not convey to the subject that his or her compliance is required. *Id.* Essentially, the court has held that the officer can not indicate that answering or complying with requests is mandatory. However, the officer is free to use the generally accepted inference that when an officer asks a citizen a question or to do some act, there is no general right of refusal. The officer is free to use the perception, in actual practice, that his requests are enforceable under the color of law or authority. Unbeknownst to most people, a person who is approached in this fashion and thus "consenting" to the encounter with law enforcement, does not need to answer any questioning. *Florida v. Bostick* (1991), 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389. In fact, a person who refuses to the contact

can move on their way without any threat of detention by the officer simply for refusing to answer questions. *Id.* However, this fact is not widely known and most reasonable people would believe the opposite to be true.

Even during alleged “consensual encounters,” the subject of police questioning retains certain Fourth Amendment rights. These rights attach when the officer, by either physical force or by show of authority, restrains a person’s liberty such that a “reasonable person” would not feel free to decline the officer’s requests or to terminate the encounter. *State v. Taylor* (1995), 106 Ohio App.3d 741. With *Taylor* laying out the standard, it becomes relevant to establish and evaluate certain elements.

First, these rights attach where the police use either physical force or a show of authority. Physical force can easily be interpreted to mean exactly what it implies. A show of authority is slightly more convoluted. The Court in Mr. Lewis’ case noted that the officers did not use their lights or sirens on their cruiser in order to compel cooperation. However, Mr. Lewis’ contends that the use of lights or sirens or by brandishing a weapon is not required to exhibit a show of authority.

Instead, the mere presence of a uniformed police officer in a clearly marked cruiser who, along with a partner, approaches a group of individuals in an area they considered to be private property and begins questioning them indicates authority. Police officers hold themselves out to be an authority to the public at large at all times. The police interact in society as the “authorities,” able to punish or regulate any situation. Police have the power to arrest, issue citations, detain individuals, or even arbitrate disputes. In many instances, the police exercise authority even in situations where it is unnecessary or undeserved.

In Mr. Lewis' case, the police officers absolutely acted to restrain his liberties by a show of authority. Mr. Lewis was visiting with acquaintances when uniformed officers approached them demanding to see identification and asking them about conduct that, by all appearances was legal. Furthermore, these men were standing in a place where they had a reasonable expectation of privacy when officers approached and began telling them who could leave and who could not. When the officer's asked for identification from all three men and then began to inquire about the dogs, compliance with their requests could be interpreted as mandatory solely because the individuals were being asked by police. They had assumed the role of authorities in the situation and held themselves out to the parties present as such. Furthermore, when one of the men, Mr. Brasher, had to ask permission to leave the scene because he was on his lunch break from work, Mr. Lungs and Mr. Lewis most certainly had to believe that the officers present were exhibiting a show of authority.

Furthermore, when evaluating a Fourth Amendment claim, it is imperative to determine whether or not a "reasonable person" in the same or similar position would believe that they were not free to leave. This is one area in which the current legal approach is grossly out of touch with society as a whole. Because of the largely authoritative role of the police force and because of the roles they assume in our society, compliance with their requests and questions is deemed required by a "reasonable person." Essentially, the "reasonable person" standard has changed in today's culture. While prior courts have held that a person is free to leave or abandon a consensual encounter with law enforcement, the court never discusses the fact that most people do not feel that they are entitled to do so. It is not the court's fault that many Americans do

not know their right to terminate engagement with law enforcement when it is merely consensual and not compelled. However, since the standard for believing oneself to be under detention is that of a "reasonable person," it becomes imperative to note that, in our society, a "reasonable person" will always feel as though they are not free to leave the presence of an officer when being questioned or being asked to perform a task. It is wholly unreasonable to assume otherwise considering the nature of the contact that the ordinary citizen has with law enforcement. One is not free to leave during a traffic stop so one would naturally assume that they are not free to leave when an officer engages them in public questioning.

Additionally, in Mr. Lewis' case, we must also remember that he was at his home when the encounter began. When one is out in public, they may feel that, if they are in fact entitled to leave the presence of the officer and refuse to answer any questions, they would always have the safe harbor of their own home. This was not so for Mr. Lewis. Mr. Lewis had no place to retreat to. He was at his residence when officers approached him demanding identification and answers. There was no place for him to retreat to as the officers drilled him and his guests about the nature of their conduct while searching the vehicles in front of them. Mr. Lewis surely felt that his cooperation was not voluntary and that he would have to answer these questions under penalty of arrest. Even if he had thought of leaving, he most certainly must have felt that his liberty to do so was curtailed. In fact, his guest, Mr. Brasher, had to ask permission to leave and was only allowed to do so because he had a good reason. However, even despite being allowed to leave, Mr. Brasher was not allowed to leave with his property. His liberties had been cut short under the authority of these officers, it certainly was not unreasonable for Mr.

Lewis to believe the same of his own. Mr. Lewis held the belief, as a reasonable person would have, that he was subject to the authority of the officers based upon the manner in which they held themselves out and by their display of authority. He also believed, as would a reasonable person in the same situation, that he was not free to leave and therefore, was subject to detention. The interaction between the officers and the citizens was not a consensual encounter and the law, as currently applied by the Courts, reaches a conclusion that is contradictory to modern social standards and against the interests of justice.

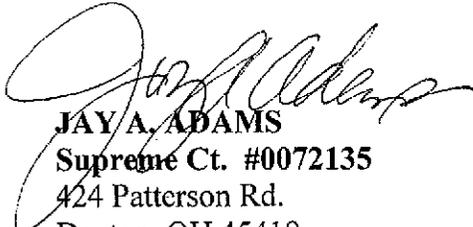
We must remember that, when evaluating the level of detention and restraint of the individual, we must look to the totality of the circumstances. *United States v. Mendenhall* (1980), 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497. In Mr. Lewis' case, he would have us note that he is capable of evaluating circumstances as a "reasonable person" would. Here, he most assuredly felt that the officers restrained his liberties, both to leave and to remain silent, by a show of authority and that he was subject to an investigative detention, not a consensual encounter. The law misrepresents what a "reasonable person" is likely to believe are the attending circumstances when confronted with an unwelcome interaction with law enforcement. As such, it must be amended or abolished to prevent any further prejudice to similarly situated defendants.

### CONCLUSION

For the reasons stated above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant respectfully

requests that this court accept jurisdiction in this case so that the important issues presented can be adequately reviewed on their merits.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing was sent to Michelle Phipps, Montgomery County Assistant Prosecutor at 301 West Third Street, Fifth Floor, Dayton, Ohio 45422 on March 2, 2009.



**JAY A. ADAMS**  
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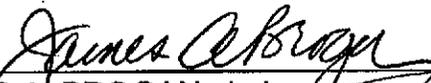
IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

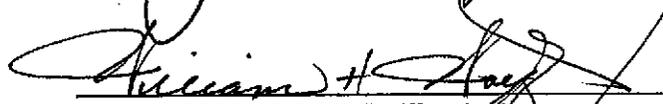
STATE OF OHIO :  
Plaintiff-Appellee : C.A. CASE NO. 22726  
v. : T.C. NO. 2006 CR 4519/1/2  
ERIC A. LEWIS : FINAL ENTRY  
Defendant-Appellant :  
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Pursuant to the opinion of this court rendered on the 16<sup>th</sup> day of January, 2009, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

  
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JAMES A. BROGAN, Judge

  
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WILLIAM H. WOLFF, JR., Judge

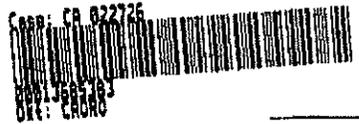
  
\_\_\_\_\_  
MIKE FAIN, Judge

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IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

C.A. CASE NO. 22726

v. :

T.C. NO. 2006 CR 4519/1

ERIC A. LEWIS :

(Criminal appeal from  
Common Pleas Court)

Defendant-Appellant

OPINION

Rendered on the 16<sup>th</sup> day of January, 2009.

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WOLFF, J.

Eric A. Lewis pled no contest to fourteen counts of dogfighting, all fourth degree felonies, and three counts of possession of criminal tools, all fifth degree felonies, in the Montgomery County Court of Common Pleas. The court had previously overruled Lewis'

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motion to suppress evidence. The trial court sentenced him to one year in prison on each count, to be served concurrently, and it ordered him to pay restitution of \$50,000 to the Montgomery County Animal Resources Center and court costs. Lewis appeals from the denial of his motion to suppress. For the following reasons, the trial court's judgment will be affirmed.

I.

The state's evidence at the suppression hearing established the following facts.

At approximately 5:45 p.m. on October 25, 2006, Dayton police officers John Zimmerman and Ronald Velez were driving in a marked cruiser toward 9 Boltin Street, the location of a large drug raid that had occurred the night before. As the officers drove along the alley behind the residences on Boltin Street, they observed an open gray minivan and a green pickup truck parked on the grass on the alleyside of the fence to the rear of 43 Boltin Street, Lewis' residence. As they proceeded by, the officers saw several crates containing pitbulls through the minivan's open back door, crates outside the open passenger side of the minivan, two pitbulls chained to a fence, and an additional dog in the yard. Three men were standing near the van on the alleyside of the fence.

The officers backed up the cruiser, and they approached the three individuals, who were later identified as Eric Lewis, Ennis Lungs, and Sharod Brasher. The officers identified themselves, asked permission to speak with the individuals, and asked what was going on with the dogs. Lungs responded that he was from Texas and that he transports animals for a living. Brasher told the officers that he was there to pick up a puppy he had purchased from Lungs and that he was on his lunch break and needed go to work. The officers requested identification from the men, and the three gave the officers their

identification. After Zimmerman got Brasher's information, the officers permitted him to leave, but he was not allowed to take a dog.

While Velez continued to talk with Lewis and Lungs, Zimmerman walked around the van and shined his flashlight at the crates through the open door. Based on a prior conversation with Animal Control about evidence of dogfighting, Zimmerman looked for hypodermics, scarring on the animals, and a large brass ring on the dogs' collars. He observed approximately 25 pitbulls, including approximately six puppies; one of the dogs had the large brass ring and a lot of scarring. Velez later also observed several dogs with obvious scarring or injuries.

According to Zimmerman, he then asked for and received oral permission from Lungs, the van's owner, to look into the van. (Lungs testified that he did not give Zimmerman permission.) Zimmerman stuck his head into the van and saw a hypodermic syringe. He also observed two loaded weapon clips for a firearm and loose ammunition in the pockets of the open rear door. At this point, at approximately 6:15 p.m., Velez frisked Lewis for weapons, handcuffed him, and placed him in the rear of the cruiser. Velez also advised Lewis of his *Miranda* rights, and Lewis acknowledged that he understood them upon being placed in the cruiser. At the same time, Zimmerman patted down Lungs, placed him in the cruiser, and advised him of his *Miranda* rights. The officers testified that the men were not free to leave once they were placed in the cruiser.

The officers contacted their supervisors and Animal Control. While Lewis was detained in the cruiser, Zimmerman asked him if there was anything inside the truck he should be aware of. Lewis responded that there was not. When Zimmerman asked for permission to check, Lewis responded, "Go ahead." Zimmerman walked to the passenger

side of the vehicle and retrieved a duffle bag containing additional hypodermic syringes and medication. The duffle bag apparently belonged to Lungs. Lewis denied the officer's request to search his house.

Within approximately one hour, Lewis' handcuffs were removed. During the evening, Lewis was placed into a separate cruiser, which was driven to the front of 43 Boltin Street. When the officers' shift changed, Lewis was transferred to a different cruiser. At about 8:45 pm., Lewis was driven to the police department on Helena Street to use the bathroom.

Between approximately 8:30 p.m. and 9:00 p.m., Detective Keith Coberly, who had recently been involved in the investigation of several dogfighting operations, arrived at the scene. Coberly spoke with the other officers at the scene and Mark Kumpf of the Animal Resource Center. Coberly then looked at the dogs inside and outside of the van and outside in the yard. Afterward, Coberly went to the cruiser in front of 43 Boltin Street to interview Lewis. Coberly asked Lewis if he had been advised of his *Miranda* rights, and Lewis responded that he understood his rights. During the conversation, Lewis admitted that he had a slat mill (equipment used to condition dogs for dogfighting) and dogs inside his house. Lewis denied owning any of the dogs outside the house. Based on the information Coberly received, he prepared a search warrant affidavit and obtained a search warrant for 43 Boltin Street.

At approximately 8:45 p.m., Lungs signed a consent to search form authorizing the search of his van. Lewis' house was searched in the early morning of October 26, 2006, after a search warrant was obtained. Thirteen dogs and numerous dogfighting-related items, including a slat mill, scales, medication and medical equipment, were seized from

the residence.

Lewis and Lungs were arrested at approximately 2:00 a.m. on October 26, 2006. Lewis was subsequently indicted for fourteen counts of dogfighting, in violation of R.C. 959.16(A)(3), and three counts of possession of criminal tools. (Lungs was also charged with numerous counts of dogfighting and possession of criminal tools.)

On November 21, 2006, Lewis moved to suppress all evidence seized from 43 Boltin Street, arguing that the affidavit in support of the search warrant failed to establish probable cause for the search, the warrant lacked specificity, and the officers seized items outside the scope of the warrant. Lewis also sought to suppress any statements made and any physical evidence obtained as a result of his statements. Lewis argued that his statements were made involuntarily and without intelligently waiving his *Miranda* rights.

Hearings on the suppression motions were held on February 2, March 1, and March 22, 2007. In his supplemental memorandum after the hearings, Lewis raised additional arguments by adopting the arguments made by Lungs in his separate motion to suppress, which challenged the officers' initial intrusion, the initial searches, and the protracted detention of Lungs and Lewis.

The trial court denied Lewis and Lungs' motions to suppress. The trial court first concluded that "[a]ll the contacts in this case were consensual until the Defendants were placed in the cruiser." The court noted that neither Lewis nor Lungs had an expectation of privacy in the area where the conversation took place, even if it occurred on private property. At the time Lewis and Lungs were detained in the cruiser, the officers had a reasonable and articulable suspicion of criminal activity that justified their detention while an investigation continued.

The trial court further found that the officers' observations of the dogs was the result of open observation, not a search. Neither the officers' use of a flashlight to illuminate the interior of the minivan nor leaning into the vehicle converted the open observations into a search. The court also concluded that Lungs' consent to search his van was voluntary and that Lewis and Lungs each voluntarily waived his Fifth and Sixth Amendment rights. As for the search warrant, the trial court concluded that the information contained in the affidavit was constitutionally obtained and that there were sufficient facts and circumstances for the issuing judge to find probable cause.

In his sole assignment of error, Lewis claims that the trial court erred in overruling his motion to suppress.

In reviewing the trial court's ruling on a motion to suppress evidence, this court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. See *State v. Morgan*, Montgomery App. No. 18985, 2002-Ohio-268. However, "the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard." *Id.*

On appeal, Lewis claims that the officers initiated an investigative detention when they entered his property to inquire about the dogs. Lewis further asserts that the officers then unlawfully searched Lungs' van and his truck, which ultimately led to evidence in support of the search warrant.

As an initial matter, the State argues that Lewis waived his challenges to the initial intrusion, the police looking into the van, and the consent to search the truck because he failed to raise these issues prior to the suppression hearing. We agree with the State that

Lewis should have raised these issues in his motion. However, because we agree with the trial court that the evidence was lawfully obtained, we will nevertheless address Lewis' arguments.

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio* (1968), 392 U.S. 1, 188 S.Ct. 1868, 20 L.Ed.2d 889. Not all interactions between citizens and the police, however, constitute a seizure. Rather, the interactions between citizens and law enforcement officers can fall within three distinct categories: a consensual encounter, an investigative detention, and an arrest. *State v. Taylor* (1995), 106 Ohio App.3d 741, 747-749, 667 N.E.2d 60.

Consensual encounters occur when the police merely approach a person in a public place and engage the person in conversation, and the person remains free not to answer and to walk away. *United States v. Mendenhall* (1980), 446 U.S. 544, 553, 100 S.Ct. 1870, 1876, 64 L.Ed.2d 497, 504-505. The encounter remains consensual even if the officer asks questions, requests to examine an individual's identification, and asks to search the person's belongings, provided that the officer does not convey that compliance is required. *Florida v. Rodriguez* (1984), 469 U.S. 1, 4-6, 105 S.Ct. 308, 83 L.Ed.2d 165, 169-171; *Florida v. Bostick* (1991), 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389. "The Fourth Amendment guarantees are not implicated in such an encounter unless the police officer has by either physical force or show of authority restrained the person's liberty so that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter." (Citations omitted) *Taylor*, 106 Ohio App.3d at 747-48.

An individual is subject to an investigatory detention when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority,

a reasonable person would have believed that he was not free to leave or is compelled to respond to questions. *Mendenhall*, 446 U.S. at 553; *Terry*, 392 U.S. at 16, 19. Under *Terry*, police officers may briefly stop and/or temporarily detain individuals in order to investigate possible criminal activity if the officers have a reasonable, articulable suspicion that criminal activity may be afoot. *State v. Martin*, Montgomery App. No. 20270, 2004-Ohio-2738, at ¶10, citing *Terry*, supra; *State v. Molette*, Montgomery App. No. 19694, 2003-Ohio-5965, at ¶10. "Reasonable suspicion entails some minimal level of objective justification for making a stop – that is, something more than an inchoate and unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *State v. Jones* (1990), 70 Ohio App.3d 554, 556-557, 591 N.E.2d 810, citing *Terry*, 392 U.S. at 27. We determine the existence of reasonable suspicion by evaluating the totality of the circumstances, considering those circumstances "through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Heard*, Montgomery App. No. 19323, 2003-Ohio-1047, at ¶14, quoting *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88, 565 N.E.2d 1271; see *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489 (setting forth factors to consider in determining whether a reasonable suspicion to make a stop exists).

The final category is a seizure that is the equivalent of an arrest. "A seizure is equivalent to an arrest when (1) there is an intent to arrest; (2) the seizure is made under real or pretended authority; (3) it is accompanied by an actual or constructive seizure or detention; and (4) it is so understood by the person arrested." *Taylor*, 106 Ohio App.3d at 749, citing *State v. Barker* (1978), 53 Ohio St.2d 135, 372 N.E.2d 1324, at syllabus. An arrest must be based on probable cause.

Upon review of the record, we agree with the trial court that, prior to being placed in a cruiser, the encounter between Lewis and the police was a consensual encounter. Zimmerman and Velez did not activate the cruiser's lights or siren when it backed up to Lewis' property. The officers approached Lewis and the others and asked to speak with them about the dogs. Although the officers requested the men's identification, the officers did not indicate that compliance was required and Lewis' liberty was not restrained by physical force or a show of authority.

In this case, the consensual nature of the encounter is not altered by the fact that it occurred on the grassy area between the alley and Lewis' fence. Even assuming that the grassy area was Lewis' private property, the police may enter private property without such conduct constituting a search, provided that the officers restrict their movements to those areas generally made accessible to visitors, such as driveways, walkways, or similar passages. (Citations omitted) *State v. Lungs*, Montgomery App. No. 22704, 2008-Ohio-4928, ¶20; *State v. Peterson*, 173 Ohio App.3d 575, 879 N.E.2d 806, ¶17 ("The only areas of the curtilage where the officers may go are those impliedly open to the public.").

Here, the officers approached Lewis and his companions in the grassy area adjacent to the alley, which was being used for parking by Lewis and one of his visitors. The record thus reflects that the officers approached Lewis in an area that was generally accessible to visitors, and there is no evidence that, absent a warrant, the officers entered the fenced area or any other portion of the property that was not accessible to the public.

Next, Lewis asserts that "the search continued, without probable cause or a search warrant, during which the officers found more incriminating evidence which ultimately led to the search of Mr. Lewis' home." We presume that Lewis is referring to the evidence

obtained from Lungs' van.

"It is fundamental that Fourth Amendment rights are personal in nature and may not be vicariously asserted. *Rakas v. Illinois* (1978), 439 U.S. 128, 133-34, 99 S.Ct. 421, 58 L.Ed.2d 387. A person aggrieved by the introduction of evidence secured by an illegal search of a third person's premises or property has not suffered any infringement upon his Fourth Amendment rights. *Id.* at 134. Consequently, a person challenging the legality of a search bears the burden of proving that he has standing. *State v. Williams* (1995), 73 Ohio St.3d 153, 166, 652 N.E.2d 721. The burden is met by establishing that the person has a legitimate expectation of privacy in the place searched that society is prepared to recognize as reasonable. *Rakas*, 439 U.S. at 143; *Williams*, 73 Ohio St.3d at 166." *State v. Henderson*, Montgomery App. No. 22062, 2008-Ohio-1160, ¶19.

The evidence at the suppression hearing established that Lungs owned the van, and Lewis disclaimed any ownership of the van or of the dogs inside the van and outside his home. Consequently, Lewis had no expectation of privacy in the van, and he lacks standing to challenge the officers' search of the van. (We note that we concluded in Lungs' appeal that no Fourth Amendment violation occurred when the officers looked into Lungs' open van and viewed the dogs and other items, which were openly visible. *Lungs* at ¶24.)

Lewis also asserts that his signed consent to search his vehicle was invalid because it was obtained while he was being unlawfully detained and it was not voluntarily given. The record does not support either of Lewis' contentions. By the time Lewis was detained, Officers Zimmerman and Velez had observed approximately 25 pitbulls in and around Lungs' van at Lewis' residence. Some of the dogs had visible scarring and a collar with a large ring, such as is used to condition dogs for dogfighting. Hypodermic syringes,

weapons clips and bullets had been located in the van. Brasher had been at Lewis' home to purchase a dog from Lungs. Although Lewis denied any ownership of the dogs near the van, based on the totality of the circumstances, the officers had a reasonable, articulable suspicion that Lewis was involved with dogfighting such that they were justified in detaining Lewis while they investigated.

As for the search of his truck, Lewis was being lawfully detained when he consented to the search of his vehicle. Thus, Lewis' consent to search his truck was not invalid per se. In addition, Zimmerman testified that he asked Lewis if he could search his truck and Lewis verbally agreed. Nothing in the record suggests that Lewis' consent was coerced or otherwise given involuntarily.

Because we have determined that the officers lawfully approached Lewis, looked into Lungs' van, detained Lewis, and searched Lewis' truck, the evidence obtained during the investigation was properly included in the affidavit in support of the search warrant for Lewis' home.

The assignment of error is overruled.

III.

Having overruled the assignment of error, the judgment of the trial court will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:  
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