

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

State of Ohio/City of Toledo

Court of Appeals No. L-08-1209

Appellee

Trial Court No. CRB-06-17841

v.

Jack Colbert

DECISION AND JUDGMENT

Appellant

Decided: June 12, 2009

* * * * *

David Toska, City of Toledo Chief Prosecutor, and Joseph J. Howe,
Assistant Prosecutor, for appellee.

Larry V. DiLabbio, for appellant.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from the judgment of the Toledo Municipal Court which, on June 5, 2007, denied the motion to suppress filed by appellant, Jack Colbert. On June 4, 2008, the trial court vacated a plea of no contest made on March 5, 2008, and, following appellant's second plea of no contest, found appellant guilty of violating Toledo Municipal Code 549.09, requiring a handgun

identification card. Appellant was sentenced to 179 days in the Corrections Center of Northwest Ohio.

{¶ 2} As a result of an incident occurring on August 31, 2006, appellant was charged with two counts of violating Toledo Municipal Code 549.09, handgun identification card required, one count of violating Toledo Municipal Code 513.14(A), illegal use or possession of drug paraphernalia, one count of violating Toledo Municipal Code 549.05, failure to secure dangerous ordnance, and three counts of violating Toledo Municipal Code 537.06, menacing, a fourth degree misdemeanor. Appellant filed a motion to suppress the evidence obtained during a warrantless entry to his home. The following evidence was adduced during the hearing on the motion to suppress, held March 14, 2007.

{¶ 3} Officer Richard Moreno, Toledo Police Department, testified that on August 31, 2006, he made a traffic stop in the 900 block of Woodstock Avenue. Moreno ran a records check and discovered that the driver had outstanding warrants for his arrest. Moreno returned to the vehicle to place the driver under arrest. Upon exiting the vehicle, the driver knocked the handcuffs out of Moreno's hand and attempted to run away. Moreno grabbed the driver's clothing and ran with him down the street. The driver turned and punched Moreno in the face. Moreno used his Taser on the driver, taking him to the ground. As Moreno was attempting to take the driver into custody, he heard a "loud voice" yelling something akin to, "You didn't have to do that to the brother" and "Leave him alone or I'll f**k you up." When Moreno heard yelling, he turned to observe

appellant coming across the street toward him. Moreno instructed appellant to get away. The driver was still struggling while Moreno attempted to handcuff him.

{¶ 4} Moreno testified that appellant backed off from the arrest, but started yelling for other people to come over, stating, "Look, he's getting beat. Look at this." Moreno indicated that he feared for his safety because of the gathering crowd. Moreno stated, "I was still trying to secure this suspect, at the same time [appellant was] calling for more help, is the way I perceived it. I felt threatened, I felt menaced by all these other people; by himself from his initial statements and by his actions at that point." Moreno explained that he had recently been surrounded by a very volatile group of people in that area, subsequent to a traffic stop, and that he had almost gotten shot.

{¶ 5} Officers Mosiniak and Harrison also arrived at the scene. The driver was still not complying with Moreno's order to place his hands behind his back. According to Moreno, Harrison grabbed the driver's right hand and Moreno had his left. Harrison did an open-hand stun to the driver's forehead, pursuant to police training. The crowd began yelling some more because they were upset with Harrison's actions. Eventually, the officers got both arms behind the driver's back and secured him.

{¶ 6} Moreno then turned on the crowd and ordered everybody to disperse. Moreno testified that most of the people did start to "trail away a little bit," but appellant did not. Appellant did not threaten Moreno verbally, but he would not leave. Moreno testified that he told appellant that he was "a physical threat" to him and that appellant needed to leave. At that point, Moreno was reloading his Taser because he considered

appellant to be a threat, as he was "a very large individual." Moreno also got on the radio and requested another crew. Officers Woodard and Cowell were dispatched to the scene.

{¶ 7} Moreno testified that he "was going to wait and take [appellant] into custody" until the other crew arrived because he knew that appellant would not comply with arrest while Moreno was alone and while Mosiniak and Harrison were busy with the driver. Moreno testified that appellant heard the radio transmission, because he was only ten feet away, and then turned and started running away. Moreno told appellant to halt, but appellant ran in his house and locked the door. Moreno kicked the door four or five times before it would open. Appellant was standing in his dining room. Moreno ordered appellant on the ground. Officers Woodard and Cowell had followed Moreno into the house. Moreno had his Taser out and Woodard was armed with a handgun. Appellant came at the officers and Moreno fired the Taser into appellant's chest. Appellant fell to the floor. Because appellant indicated that he had a bad back, the officers called for medical assistance for appellant.

{¶ 8} On cross-examination, Moreno testified that his report stated, "While attempting to secure suspect one, suspect two suddenly appeared behind this officer and began yelling threats, 'Leave this brother alone or I'll f**k you up.' I turned to confront suspect two and ordered him to stop where he was. The suspect fled into his home * * *." Moreno stated that there was greater detail to the events than indicated in his report. Moreno also testified that he would have taken appellant immediately into

custody, but was unable to do so because he was alone and was still attempting to secure the driver.

{¶ 9} Upon further inquiry, Moreno reiterated that he told appellant that he considered him a threat and, although appellant stepped back on the grass when initially told to stop where he was, appellant refused to leave the scene and go into his house after the driver was secured. Moreno also testified that appellant stayed at the scene until Moreno radioed, "I'm going to make another arrest." Moreno, however, testified that he never told appellant he was going to arrest him for menacing "because [Moreno] knew how [appellant] would react."

{¶ 10} Moreno had no recollection that appellant said he was going to call 13 News or *The Toledo Journal*. Moreno also never saw appellant take out a cell phone and was never told that appellant was on medication and disability. Moreno filed warrants the evening of the incident, but did not arrest appellant or serve him with warrants while appellant was at the hospital because of his claimed injuries.

{¶ 11} On redirect, Moreno testified that he was waiting for additional backup before arresting appellant because appellant, who was six feet, four inches tall and weighed 260 pounds, would be able to overtake Moreno without the presence of other officers. Moreno also testified that had appellant informed him that he intended to call the news, Moreno would have simply provided him his name, as he had done on a number of occasions during his 26 years as a police officer. On recross, when questioned

again whether he was in fear when he verbally challenged appellant and told him to leave, Moreno testified:

{¶ 12} " * * * I was trying to use whatever abilities I had at the time. You know, I couldn't put up at that time, I needed more people to back myself up. I've got a guy on the ground, I have a guy screaming at me, I have a guy bringing other people there and I'm in a situation by myself; and no, I'm not going to start shooting everybody in the place, so I can only do so much at that point. I can verbally challenge him, I can say, 'Stay down,' and look at him at the same time. I've got eyes all over the place, I'm in a bad situation. I'm in about the worse situation a police officer can be in at that point."

{¶ 13} Officer Steven Michael Harrison, Toledo Police Department, testified that, as is routine when an officer is alone, he and his partner, Dave Mosiniak, went to the location of Moreno's traffic stop to ensure that everything was alright. Harrison testified that, when he arrived, a small crowd was gathered on the same side of the street as Moreno's cruiser and was focused across the street toward some houses. Harrison saw Moreno trying to hold down a struggling suspect. Harrison noticed that Moreno's glasses were not on his face, and that he had a large scrape on his chin and face. Harrison and Mosiniak assisted Moreno with trying to cuff the driver, but his arms were tucked under his body. Harrison issued one or two open-hand stuns in an effort to gain compliance; however, that did not work. Eventually, Harrison and Mosiniak were able to wrench the driver's hands out from underneath him and cuff him.

{¶ 14} While Harrison was cuffing the driver, Moreno approached the crowd and was yelling at them to leave the area. Harrison testified that the crowd was yelling at them and was "obviously a threat to us." Harrison heard shouts from the crowd, such as, "Stop. Stop beating him. Stop beating that man. Don't beat that man or I'll beat you." Harrison heard Moreno instruct the crowd numerous times to disperse and leave the area. Harrison also heard Moreno "explain that they were a threat to us and they needed to leave the area so we could do our job." According to Harrison, everyone left the area except for appellant.

{¶ 15} On cross-examination, Harrison testified that it was typical for crowds to gather during arrests. Harrison testified that not all crowds were threatening, but noted that some were. In a previous situation, similar to the scene in this case, Harrison stated that a member of the crowd was charged with menacing.

{¶ 16} Following Harrison's testimony, the trial court interjected that the testimony presented for purposes of the motion to suppress was overly detailed and excessive for establishing whether Moreno had probable cause to enter appellant's house. The trial court admonished defense counsel for conducting discovery for use at a future trial. The trial court also indicated that it was not persuaded by defense counsel's attempt to establish that the officers should not have been threatened by the gathered crowd.

{¶ 17} The prosecutor argued that Moreno's perception of the scene was the only relevant testimony to be used in determining whether he had probable cause to arrest appellant for menacing. As such, the prosecutor argued that the defense witnesses should

not be entitled to testify at the motion to suppress hearing because their testimony would only be relevant at trial in determining whether menacing actually occurred.

Nevertheless, the trial court allowed the defense to present its witnesses.

{¶ 18} Santawan Lashawn Cross was called on behalf of the defense. Cross testified that he was outside when the traffic stop occurred. Cross recalled joking with his cousin that, "It's one dude, it's one police, he's running." Cross testified that Moreno used his Taser on the driver and then landed on top of him and that they were scuffling. According to Cross, no one said anything until the other officers arrived. Cross stated, "when the first officer let off of him, that's when the two, the second police officers came and said – kind of like roughed him up some more, and that's when [appellant] said, 'Y'all don't have to do that to him, you already Tased him, he down.'" Cross testified that appellant never threatened the officers and never left the grass on the other side of the street from where the driver was apprehended. Cross also testified that appellant never called over other people to look at the scene.

{¶ 19} According to Cross, Moreno approached appellant and told him to go back in his house, but told no one else to leave the scene. Cross testified that appellant stated in response, "I am on my property, I'm a handicap man, I'm not messing with y'all, leave me alone, please." Cross testified that appellant then started walking back toward his house, saying, "I'm about to call Channel 13 news." Appellant allegedly entered his house and came back outside to the porch with a cell phone. Cross testified that Moreno then told appellant that he was reloading his Taser gun and that appellant should come off

the porch and talk to him, to which appellant responded, "I was handicap, I don't – I have a bad back, I'm not messing with you guys, I'm not in any of y'all business, I'm on my property, could you leave me alone." Appellant then went into his house and Moreno kicked in his door.

{¶ 20} On cross-examination, Cross testified that initially just he and appellant were outside, but eventually seven to eight people had gathered. Cross also testified that some of the group got to appellant's house before the rest of the police arrived. Cross restated that no one other than appellant was told to disperse. However, he also stated that Moreno told appellant to, "Stop, come here and talk to me," but that appellant did not.

{¶ 21} Andre Martez Miller testified on behalf of the defense that when he saw the lights on the police cruiser, he came outside. Miller testified that he saw Moreno "hitting" the driver while he was on the ground with a Taser still in his back. Miller further testified that, when the other officers arrived, Moreno got off the driver and the other officers "proceeded to hit him as well." Miller was unable to estimate the number of people on the street, "I can't count all of them because it was people everywhere in the street. It was people down farther down on the street and there was a lot of people down towards where the – where everything was going on at." According to Miller, appellant was in his driveway and never crossed the street. Miller only heard someone yell, "You didn't have to do him like that." Thereafter, "Moreno said for [appellant] to get into his house, and as [appellant] proceeded to walk up to his – on his porch, Officer Moreno was

reloading his Taser gun, and then [appellant] shut his door and Officer Moreno just kicked it down, and his backup arrived." When questioned by the trial court, Miller estimated that ten people were on the street. They were not all in the immediate area of the traffic stop, but, according to Miller, they were headed in that direction.

{¶ 22} Cetreion Marshall also testified on behalf of the defense that he was standing next to appellant at the time the traffic stop was initiated. Marshall approximated that 12 people were standing in the immediate area of the traffic stop. Marshall testified that appellant never left his property and did not threaten Moreno, but only yelled, "Y'all don't have to beat that man like that, he's already unconscious." Marshall testified that Moreno told appellant to go into his house, to which appellant replied, "I'm on my property," but then went inside to call Channel 13 news. Marshall further testified that appellant never encouraged others to gather or threaten the officers and complied with everything that was asked of him.

{¶ 23} On cross-examination, Marshall testified that appellant was actually standing on Marshall's property at the time the traffic stop was initiated. According to Marshall, appellant was standing on the curb in front of Marshall's house when he yelled to the officers. Marshall also testified that, when Moreno approached appellant and told him to go into his house, appellant was standing in his own yard. Marshall testified that Moreno did not tell anyone else to leave the area, just appellant. Marshall did not see Moreno call for back up on his radio, but did see him reload his Taser. Marshall heard Moreno tell appellant that he wanted to talk to him, but, instead, appellant went into his

house, allegedly to call Channel 13 news. After appellant went in his house, Marshall saw Moreno kick in appellant's door.

{¶ 24} Jamie Davida Lee testified that she was inside of her house during the incident; however, she testified that she saw appellant standing at the curb and heard appellant say, "He's a good guy, let him go, why are you doing this?" Lee testified that she then saw the officers emerge with a guy who was "covered with blood." According to Lee, the heavier officer was saying, "I did my job, you broke my glasses." Thereafter, Lee saw appellant going home. Lee next saw appellant being taken out of his house on a stretcher. On cross-examination, Lee stated that she could not actually hear anyone from inside her house, but was able to read their lips. Lee also stated that when she saw the guy covered in blood, she "really wanted to run out there and give [the officer] some gloves," but her son stopped her.

{¶ 25} In denying appellant's motion to suppress, the trial court stated the following:

{¶ 26} "Testimony that was uncontroverted was that the officer was struck, punched, had to chase the driver down, and then a bunch of people came out. And I note there had been some indication that the officer shouldn't feel intimidated, that's just an every day part of his job; and I notice that there [are] some members of this community who are trying to lower the bar.

{¶ 27} "And these two men who testified bother me because I get the indication from them they think it's okay to run from the police; kind of funny because there is only

one cop; and we can run and that's all right. And that we're lowering the standard. That it's okay to run from the police if you think you can get away, and it's okay to holler at the police and for a crowd to gather; and they're just supposed to take it as part of the job? Uh-uh. No. We're going to raise the bar. We're not going to keep lowering the bar to the lowest common denominator.

{¶ 28} "Most normal, average people would say you don't run from the police if you're stopped for a traffic violation. It's not normal; it's not okay. Most normal people would say it's not all right for a crowd to gather and start shouting at the police. No, we're not going to go that way. We're not going to lower the bar.

{¶ 29} "I feel the officer had – I would be pretty intimidated in that kind of situation. Even though it's common, doesn't mean that – just because it's repetitive, doesn't mean that one gets used to it and is not uneasy with that situation. And there is no conflict in the testimony that the officer told Mr. Colbert to, 'Stop, come back, I want to talk to you,' and he kept going.

{¶ 30} "Again, it's okay to walk away, run from the police. Uh-uh. No, it's not. We're not going there. We're not going down; we're going to go up."

{¶ 31} On appeal, appellant raises the following assignments of error:

{¶ 32} "First Assignment of Error:

{¶ 33} "The trial court erred in finding that the appellant was fleeing from the commission of a criminal offense and arrest, that exigent circumstances existed and that there was hot pursuit thereby supporting a warrantless entry into appellant's home.

{¶ 34} "Second Assignment of Error:

{¶ 35} "The trial court lost its way in evaluating the evidence was biased in its decision before hearing all of the evidence and the court's decision was against the manifest weight of the evidence."

{¶ 36} With respect to his first assignment of error, appellant asserts that the testimony presented by his witnesses established that he did not threaten Moreno, that he was on his property at all times, that Moreno never indicated he was going to arrest appellant or charge him with any crime, and that Moreno told appellant to leave and go in his house. As such, appellant argues that he had not committed any crime, was not aware that he was thought to have committed a crime, and that he, therefore, was not fleeing arrest when he entered his home, but was complying with the officer's request to leave the scene. Appellant asserts that it was not until appellant indicated that he was going to call news reporters that Moreno pursued appellant into his home without a warrant. Appellant also argues that Moreno's intentions were suspect because, instead of arresting appellant when he was in custody and/or at the hospital, Moreno instead issued warrants for appellant's arrest which were executed when appellant went to internal affairs to make a report.

{¶ 37} The state responds that the warrantless entry and search in this case was constitutionally valid because there was probable cause to arrest appellant for menacing and exceptions to the warrant requirement were present. Specifically, the state argues that exigent circumstances existed requiring the police to enter appellant's home in that

there was reason to worry that appellant may have been going to get a weapon from his home, and/or that the officer was in hot pursuit of appellant while attempting to arrest him as he fled into his home.

{¶ 38} As stated by the Ohio Supreme Court, "Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. [Citations omitted.]" *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶ 39} The Fourth Amendment to the United States Constitution and Section 14, Article I, Ohio Constitution protect citizens from unreasonable search and seizure by the government and state, "The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized." "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *City of Middletown v. Flinchum*, 95 Ohio St.3d 43, 44, 2002-

Ohio-1625, citing *United States v. United States Dist. Court for the E. Dist. of Michigan* (1972) 407 U.S. 297, 313.

{¶ 40} "Where there is no search warrant, the burden falls on the state to show that a search comes within one of the judicially recognized exceptions: (a) a search incident to a lawful arrest; (b) consent signifying waiver of constitutional rights; (c) the stop-and-frisk doctrine; (d) hot pursuit; (e) probable cause to search, and the presence of exigent circumstances; or (f) the plain-view doctrine." *State v. Akron Airport Post No. 8975, Veterans of Foreign Wars of the U.S.* (1985), 19 Ohio St.3d 49, 51. Upon our review of the trial court's denial of appellant's motion to suppress, we must conduct a de novo review to determine whether the facts in this case demonstrate that Moreno's entry into appellant's home, without a warrant, comes within one of the judicially recognized exceptions to the warrant requirement.

{¶ 41} Although argued by the state, nothing in the testimony indicates that Moreno entered appellant's home without a search warrant because Moreno believed it was necessary to protect the officers and others from possible injury. Rather, the testimony indicated that Moreno intended to arrest appellant for menacing.

{¶ 42} In order to make a constitutionally valid arrest without a warrant, the arresting officer, at the moment of the arrest, needed probable cause to make the arrest. *State v. Otte*, 74 Ohio St.3d 555, 559, 1996-Ohio-108, citing, *State v. Timson* (1974), 38 Ohio St.2d 122, paragraph one of the syllabus. Probable cause exists when the arresting officer has sufficient information, based upon the facts and circumstances either within

his personal knowledge or derived from a reasonably trustworthy source, to warrant a prudent person to believe that an offense had been committed by the accused. *Id.* See, also, *Illinois v. Gates* (1983), 462 U.S. 213, rehearing denied, 463 U.S. 1237. A determination of probable cause is based upon the totality of the circumstances analysis. *Gates*.

{¶ 43} Toledo Municipal Code 537.06, Menacing, states that "[n]o person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of such other person or member of his immediate family." In this case, while Moreno attempted to secure a suspect, Moreno heard appellant criticize Moreno's treatment of the suspect and then say, "Leave him alone or I'll f**k you up." In addition to appellant's comments, the witnesses testified that there was a small crowd on the street, between seven and 12 people, gathering to see the scene of the traffic stop. Based upon appellant's comments to Moreno, Harrison's testimony regarding the shouts and comments from the crowd, and Lee's testimony that she was incensed when she saw the bloody condition of the driver after he was secured by Harrison and Mosiniak, one can infer that the situation was tense and seemingly hostile.

{¶ 44} Additionally, Moreno described appellant as being six feet, four inches tall and weighing 260 pounds, and testified that he considered appellant a physical threat. Although Moreno told appellant that he considered appellant a threat and instructed appellant to disperse with the remainder of the crowd, appellant refused to leave the area. Defense witnesses testified that appellant followed Moreno's instructions to leave, but the

trial court apparently determined this testimony was not credible and, instead, believed Moreno's and Harrison's testimony to the contrary. Because the trial court is in the best position to judge the credibility of the witnesses, we are not inclined to disagree with the trial court on this matter.

{¶ 45} Based on the facts relied upon by the trial court, we find that a reasonable person would be intimidated under these conditions and, specifically, believe that appellant would cause him physical harm. Accordingly, we find that a prudent person would have believed that appellant had committed the offense of menacing and, therefore, Moreno had probable cause to arrest appellant without a warrant.

{¶ 46} It is well-settled that an assailant cannot avoid arrest simply by outrunning pursuing officers and finding refuge in his home. *Flinchum*, 95 Ohio St.3d at 44, citing *United States v. Santana* (1976), 427 U.S. 38, 43. Moreover, "a suspect may not defeat an arrest which has been set in motion in a public place * * * by the expedient of escaping to a private place." *Id.* As such, "[w]hen officers, having identified themselves, are in hot pursuit of a suspect who flees to a house in order to avoid arrest, the police may enter without a warrant, regardless of whether the offense for which the suspect is being arrested is a misdemeanor." *Flinchum*, syllabus.

{¶ 47} In this case, Moreno testified that appellant went into his home only after Moreno called for backup to arrest appellant. Appellant, on-the-other-hand, argues that Moreno never indicated that he was intending to arrest appellant and that it was only after appellant indicated that he was phoning the news that Moreno began his pursuit of

appellant. The trial court, however, apparently did not find the defense witnesses credible in this regard. Appellant also argues that he was merely complying with the officer's request to leave the area when he returned to his home. We, however, find appellant's argument is not supported by the testimony, which indicates that appellant refused to leave at the time Moreno indicated he should vacate the area. Moreover, it is undisputed that, after appellant began to return to his home, Moreno ordered appellant to stop and return to speak with Moreno, but appellant ignored Moreno and proceeded to enter his home.

{¶ 48} Accordingly, we find that Moreno was lawfully in hot pursuit of appellant when he entered the home, without a warrant, to arrest appellant for menacing. Having independently found that exigent circumstances existed to establish an exception to the warrant requirement, we affirm the decision of the trial court denying appellant's motion to suppress. Appellant's first assignment of error is therefore found not well-taken.

{¶ 49} Appellant argues in his second assignment of error that the trial court's decision was against the manifest weight of the evidence and was based on the trial court's biased determination of the facts. Appellant points to several instances in the transcript in support of his argument, specifically, where the trial court indicated that it could not understand a defense witness and asked him if he was "speaking English," questioned another witness regarding why he attended Bowsher High School if that was not his neighborhood school, and admonished defense counsel regarding the breadth of his questioning of the state's witnesses and instructed him to focus on the issue of

probable cause. Appellant additionally argues that the trial court lost it way because it focused on people running from the police, rather than discussing the issue of probable cause, when ruling on appellant's motion to suppress.

{¶ 50} We, however, find that appellant's examples do not indicate that the trial court was biased against appellant. As the trier of fact, it is necessary that the trial court be able to understand the witnesses and, therefore, is permitted to indicate its inability to understand the witness's articulation. Also, because the trial court must evaluate the credibility of the witnesses, we find that the trial court's questions regarding the location of the witness's high school, given that he testified that he lived on the same street as appellant, was not unreasonable. Moreover, we find that the trial court's exercise of its control and discretion regarding the testimony presented during the suppression hearing did not indicate any bias on the part of the trial court.

{¶ 51} Clearly, the trial court was concerned by the commonplace manner in which the witnesses viewed the driver's decision to run from Moreno and resist arrest, and commented on such at length when delivering its decision. Despite the trial court's condemnation of such an attitude, we find that the trial court ultimately determined that Moreno was justified in feeling intimidated, which would have provided him probable cause to arrest appellant for menacing. Moreover, regardless of the affront taken by the trial court regarding the attitude of the crowd toward the police, based upon our independent review, we also conclude that probable cause existed and that Moreno, therefore, was permitted to arrest appellant and was permitted to follow when appellant

refused to stop his retreat into his home. Appellant's second assignment of error is found not well-taken.

{¶ 52} On consideration whereof, this court affirms the judgment of the Toledo Municipal Court. Appellant is ordered to pay the costs of this appeal pursuant to 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.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

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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