[Cite as *State v. Church*, 2017-Ohio-4103.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- JAMES EDWARD CHURCH Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. John W. Wise, J. Case No. 2016CA00167 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Case No. 2016CR0488
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 30, 2017

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO, Prosecuting Attorney, Stark County, Ohio By: KRISTINE W. BEARD Assistant Prosecuting Attorney Appellate Section 110 Central Plaza, South – Suite 510 Canton, Ohio 44702-1413	ADAM WILGUS 401 Tuscarawas St. W., Suite 200 Canton, Ohio 44702

Hoffman, J.

{¶1} Defendant-appellant James Church appeals his convictions entered by the Stark County Court of Common Pleas. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On March 8, 2016, Ohio State Highway Patrol Sergeant Joel Smith observed a driver erratically changing lanes on Interstate 77, southbound. Specifically, Trooper Smith observed the vehicle slow down and change lanes, then abruptly change lanes without signaling. Trooper Smith noted the vehicle had a license plate for a rental car from Michigan. Trooper Smith effectuated a stop. Upon approaching the vehicle, Trooper Smith smelled a light odor of marijuana, and observed loose marijuana on the passenger seat, floor board, and in the back seat.

{¶3} Appellant produced a valid driver's license, but claimed he could not find a rental agreement, after searching only the center console. Appellant maintained the vehicle's glove box was locked and he did not have keys to unlock the compartment. When Trooper Smith returned to his cruiser to call the rental company, check for warrants and request a K9 search,[1] he noticed Appellant disappear from view, laying across the front seat toward the vicinity of the glove compartment. Upon returning to the vehicle, Appellant handed the rental agreement to Trooper Smith. The vehicle was registered to a rental car company, with Appellant's brother named on the rental agreement. Appellant was not an authorized operator of the rental vehicle.

[1] Trooper Smith learned Appellant had a prior conviction for trafficking.

{¶4} Approximately forty minutes after the initial traffic stop, Officer Todd Gillilan arrived on the scene with a K9 officer to conduct a sniff search of the vehicle. The K9 indicated a response at the vehicle's driver's side, trunk, and passenger side. The officers proceeded to conduct a search of the entire vehicle. A gallon-sized plastic bag of suspected cocaine, as well as, a smaller wrapped package of suspected cocaine was found in the vehicle's glove box. The substances were later identified as cocaine hydrochloride, a schedule II substance.

{¶5} The Stark County Grand Jury indicted Appellant on one count of trafficking in cocaine, in violation of R.C. 2925.03(A)(2)(C)(4), with a major drug offender specification, R.C. 2941.1410; and one count of possession of cocaine, in violation of R.C. 2925.11(A)(C)(4)(f), with a major drug offender specification, R.C. 2941.140.

{¶6} On June 21, 2016, Appellant moved the trial court to suppress the evidence obtained during the search. The trial court held a hearing on the motion on August 15, 2016.

{¶7} On August 16, 2016, the trial court denied Appellant's motion to suppress. On the same date, Appellant was convicted by a jury of the charges. The matter proceeded to sentencing on September 6, 2016.[2]

I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS EVIDENCE COLLECTED DURING A SEARCH

[2] Appellant does not assign as error the trial court's imposition of sentence. Therefore, a rendition of the sentence imposed is unnecessary for resolution of the appeal.

THAT VIOLATED HIS FOURTH AMENDMENT RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE.

II. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTIONS, AND THE VERDICTS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

I.

{¶8} In the first assignment of error, Appellant argues the trial court erred in denying his motion to suppress evidence collected during the search.

{¶9} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams*, 86 Ohio App.3d 37, 619 N.E.2d 726 (4th Dist. 1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 641 N.E.2d 1172 (8th Dist. 1994); *State v. Laizure*, 5th Dist.

Tuscarawas No. 2015 AP 10 0056, 2016–Ohio–3252. As a general matter, determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal. *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

{¶10} During a suppression hearing, the trial court acts as trier of fact and sits in the best position to weigh the evidence and evaluate the credibility of the witnesses. *State v. Mills,* 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). Accordingly, an appellate court must uphold the trial court's findings of fact provided they are supported by competent, credible evidence. Id.

{¶11} Appellant does not challenge the legality of the initial stop; rather, Appellant maintains he was unreasonably detained during the interval between the initial stop and the arrival of the narcotics officer. We disagree.

{¶12} Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts that an occupant is or has been engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.E.2d 889 (1968). If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulate suspicion considering all the circumstances, then the stop is constitutionally valid*. State v. Adams*, 5th Dist. Licking No. 15 CA 6, 2015–Ohio–3786, quoting *State v. Mays*, 119 Ohio St.3d 406, 2008–Ohio–4539, 894 N.E.2d 1204.

{¶13} In *State v. Robinette* 80 Ohio St.3d 234, 685 N.E.2d 762, 1997-Ohio-343, the Ohio Supreme Court addressed the argument raised herein,

> We note here that, pursuant to *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89, the officers' subjective motivation

for continuing the detention is irrelevant. *Whren,* decided after our decision in *Robinette I,* held that as long as the circumstances objectively justify the continued stop, the Fourth Amendment is not offended. We therefore modify paragraph one of the syllabus in *Robinette I* to read as follows:

"When a police officer's objective *justification* to continue detention of a person stopped for a traffic violation for the purpose of searching the person's vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure." (Emphasis in original)

{¶14} In analyzing the facts presented, we accept the template set forth by the Supreme Court of Ohio in *State v. Batchili,* 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, paragraph two of the syllabus: "The 'reasonable and articulable' standard applied to a prolonged traffic stop encompasses the totality of the circumstances, and a court may not evaluate in isolation each articulated reason for the stop."

{¶15} Here, Trooper Smith initiated the traffic stop due to a lane violation. However, upon approach, Trooper Smith smelled a light odor of marijuana and observed loose marijuana on the passenger seat, on the floorboard and in the backseat of the vehicle. The car had Michigan plates, registered to a rental car company, and was rented

to Appellant's brother.[3] Trooper Smith observed Appellant lean toward the glove box after only searching the center console for the rental agreement. Earlier, Appellant had claimed he did not have keys for the glove compartment. Appellant produced the rental agreement indicating he was not an authorized driver of the vehicle. Appellant had a prior conviction for trafficking. A K9 search was conducted forty minutes after the initial stop. The K9 then alerted to the vehicle.

{¶16} Based upon the totality of the circumstances, we find the officers herein relied on articulable facts giving rise to suspicion of illegal activity justifying an extension of the initial detention. We find the trial court did not err in overruling the motion to suppress the evidence.

{¶17} The first assignment of error is overruled.

II.

{¶18} In the second assignment of error, Appellant maintains his convictions are against the manifest weight and sufficiency of the evidence as the State failed to prove the purity of the cocaine mixture in support of the major drug offender specifications. Appellant cites *States v. Gonzales* ___ Ohio St.3d ___, 2016-Ohio-8319. (Gonzales I), in support.

{¶19} In *Gonzales I*, the Ohio Supreme Court held, in prosecuting cocaine-possession offenses under R.C. 2925.11(C)(4)(b) through (f) involving mixed substances, the state must prove the weight of the actual cocaine, excluding the weight of any filler materials, meets the statutory threshold.

[3] We note, though not raised by the State herein, Appellant arguably lacks standing to challenge the search as he did not have a possessory interest in the vehicle. See, *Rakas v. Illinois* (1978), 439 U.S. 128, and *United States v. Salvucci* (1980), 448 U.S. 83.

{¶20} On reconsideration in *State v. Gonzales*, ___ Ohio St.3d ___, ____ N.E.3d ____, 2017 Ohio -777, the Supreme Court vacated *Gonzales I*, holding the entire "compound, mixture, preparation, or substance," including any fillers that are part of the usable drug, must be considered for the purpose of determining the appropriate penalty for cocaine possession under R.C. 2925.11(C)(4).

{¶21} Based upon the authority of the Ohio Supreme Court's opinion in *Gonzalez II,* the assigned error is overruled.

{¶22} Appellant's convictions entered by the Stark County Court of Common Pleas are affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, John, J. concur