

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOSHUA E. HAGER

Defendant-Appellant

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JUDGES:

Hon. John W. Wise, P.J.

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 18-CA-102

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2018-CR-00084

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

June 18, 2019

APPEARANCES:

For Plaintiff-Appellee

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Wise, Earle, J.

{¶ 1} Defendant-Appellant, Joshua E. Hager, appeals the August 17, 2018 decision and entry of the Court of Common Pleas of Licking County, Ohio denying his motion to suppress. Plaintiff-Appellee is state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On February 1, 2018, Licking County Sheriff's Deputy Dan Pennington stopped a vehicle for a missing front license plate. Appellant was the driver of the vehicle. Deputy Pennington advised appellant and his passenger the reason for the stop ("no visible front plate on the vehicle"), and asked for their identification. Appellant explained to the deputy that the front license plate was not displayed because of recent damage to the vehicle, and showed the deputy the plate which was on the vehicle's dashboard. A check of appellant's driver's license revealed his license had been suspended. The passenger was the owner of the vehicle and was aware of appellant's license suspension, yet she permitted him to drive her vehicle. Because of the two violations, driving under suspension and wrongful entrustment of a motor vehicle, Deputy Pennington decided to impound the vehicle. Thereafter, he was granted consent to search appellant, the passenger, and the vehicle, whereupon contraband was discovered in the trunk.

{¶ 3} On February 15, 2018, the Licking County Grand Jury indicted appellant on one count of trafficking in drugs in violation of R.C. 2925.03. On May 15, 2018, appellant filed a motion to suppress, claiming an illegal "custodial" interrogation. A hearing was held on June 19, 2018. By decision and entry filed August 17, 2018, the trial court denied the motion, finding the deputy had probable cause to stop the vehicle and extend the detention.

{¶ 4} On October 9, 2018, appellant pled no contest to the charge. By judgment entry filed same date, the trial court found appellant guilty and sentenced him to eleven years in prison.

{¶ 5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶ 6} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT OVERRULED APPELLANT'S MOTION TO SUPPRESS HIS UNLAWFUL CONTINUED DETENTION, AND THE EVIDENCE GATHERED FOLLOWING HIS UNLAWFUL CONTINUED DETENTION BY THE POLICE, IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE FOURTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTIONS 10, 14, AND 16, ARTICLE I OF THE OHIO CONSTITUTION."

I

{¶ 7} In his sole assignment of error, appellant claims the trial court erred in denying his motion to suppress. We disagree.

{¶ 8} As recently stated by the Supreme Court of Ohio in *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 12:

"Appellate review of 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. In ruling on 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." *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). On appeal, we "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). Accepting those facts as true, we must then "independently determine as a matter of law, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*

{¶ 9} In *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the United States Supreme Court determined that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." However, for the propriety of a brief investigatory stop pursuant to *Terry*, the police officer involved "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. Such an investigatory stop "must be viewed in the light of the totality of the surrounding circumstances" presented to the police officer. *State v. Freeman*, 64 Ohio St.2d 291, 414 N.E.2d 1044 (1980), paragraph one of the syllabus.

{¶ 10} The Fourth Amendment to the United States Constitution protects individuals against unreasonable governmental searches and seizures. A traffic stop by law enforcement implicates the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

{¶ 11} As our colleagues from the Fourth District stated in *State v. Aguirre*, 4th Dist. Galia No. 03CA5, 2003-Ohio-4909, ¶ 35-36:

The scope and duration of a routine traffic stop "must be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer* (1983), 460 U.S. 491, 500, 103 S.Ct. 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229.
* * *

When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a computer check on the motorist's driver's license, registration and vehicle plates. See *State v. Carlson* (1995), 102 Ohio App.3d 585, 598, 657 N.E.2d 591. "In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation." *Id.* (citing *State v. Cook* (1992), 65 Ohio St.3d 516, 521-522, 605 N.E.2d 70 (fifteen-minute detention reasonable); *United States v. Sharpe* (1985), 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (twenty-minute detention reasonable)).

{¶ 12} There is no dispute that the deputy sub judge had probable cause to stop appellant for operating a vehicle without a front license plate in violation of R.C. 4503.21.

However, appellant argues the stop was unreasonably extended. He argues once the deputy was made aware that the vehicle did in fact have a front license plate and it was on the dashboard, any further inquiry was prohibited. In support, appellant cites the case of *State v. Chatton*, 11 Ohio St.3d 59, 463 N.E.2d 1237 (1984).

{¶ 13} In *Chatton*, a law enforcement officer stopped the defendant for operating a vehicle without a front or back license plate. Upon approaching the vehicle, the officer observed a cardboard temporary license tag lying on the rear deck of the vehicle beneath the rear window. The officer proceeded to the driver's side of the vehicle and asked the defendant for his driver's license, whereupon it was discovered that the license had been suspended. The court determined the issue to be: "whether the police officer has continuing justification to detain appellee and demand production of his driver's license once the police officer viewed the temporary tags lying on the rear deck of appellee's vehicle." *Chatton* at 60-61. In answering this question in the negative, the court concluded the following at 63:

In our view, because the police officer no longer maintained a reasonable suspicion that appellee's vehicle was not properly licensed or registered, to further detain appellee and demand that he produce his driver's license is akin to the random detentions struck down by the Supreme Court in *Delaware v. Prouse, supra*. Although the police officer, as a matter of courtesy, could have explained to appellee the reason he was initially detained, the police officer could not unite the search to this

detention, and appellee should have been free to continue on his way without having to produce his driver's license. (Citation omitted.)

Consequently, where a police officer stops a motor vehicle which displays neither front nor rear license plates, but upon approaching the stopped vehicle observes a temporary tag which is visible through the rear windshield, the driver of the vehicle may not be detained further to determine the validity of his driver's license absent some specific and articulable facts that the detention was reasonable. As a result, any evidence seized upon a subsequent search of the passenger compartment of the vehicle is inadmissible under the Fourth Amendment to the United States Constitution.

{¶ 14} We note at 60, the *Chatton* court based its decision on the following state of the law at the time:

R.C. 4503.21 requires that license plates with the appropriate validation sticker be displayed on the front and rear of all motor vehicles (with certain exceptions) and "shall be securely fastened so as not to swing." R.C. 4503.182(A) provides that the purchaser of a motor vehicle may be issued a "temporary license placard" which may be used "to legally operate the motor vehicle while proper title and license plate registration is being obtained." However, R.C. 4503.182 does not provide that these temporary license placards, commonly known as "temporary tags," must be

displayed in any particular fashion. While it may be accepted practice to display temporary tags on the rear of the vehicle or in the rear windshield, there appears to be no mandatory requirement that they be visibly displayed at all. Indeed, the General Assembly may deem it advisable to provide for the display of temporary tags at some future date. Nevertheless, the statutory framework in place at the time of appellee's arrest, and in effect at this writing, does not call for the display of temporary tags. It follows that, as long as the operator of a motor vehicle without the standard front and rear metal license plates can produce a valid temporary tag, it cannot be said that the vehicle is being operated illegally or improperly.

{¶ 15} In contrast, the law in effect now and at the time of appellant's stop (R.C. 4503.21, display of license plate) reads as follows:

(A)(1) No person who is the owner or operator of a motor vehicle shall fail to display *in plain view* on the front and rear of the motor vehicle a license plate that bears the distinctive number and registration mark assigned to the motor vehicle by the director of public safety, including any county identification sticker and any validation sticker issued under sections 4503.19 and 4503.191 of the Revised Code. (Emphasis added.)

{¶ 16} As explained by our colleagues from the Second District in *State v. Allen*, 2d Dist. Montgomery No. 23738, 2010-Ohio-3336, ¶ 13:

At the time when *Chatton* was decided, the statute that governed the display of license plates did not address temporary tags and the statute that did address temporary tags did not require that they be displayed in any particular fashion or that they be visibly displayed at all. *Chatton*, 11 Ohio St.3d at 60, 11 OBR 250, 463 N.E.2d 1237. Subsequent to *Chatton*, the statute that governs the display of license plates was amended to require operators of vehicles for which a temporary license tag has been issued to "display the temporary license placard in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle." R.C. 4503.21.

See *State v. Phillips*, 2d Dist. Montgomery No. 19878, 2003-Ohio-5742, ¶ 19 (R.C. 4503.21 requires a front license plate to be "mounted to the vehicle's exterior, on its front side, and in plain view").

{¶ 17} Regardless of whether the license plate at issue is the actual plate or a temporary tag, it must be displayed in plain view pursuant to R.C. 4503.21.

{¶ 18} In this case, a suppression hearing was held on June 19, 2018. Deputy Pennington testified to his stop of the subject vehicle. He stated he was sitting stationary in his cruiser when he observed a vehicle travelling northbound with "no visible front plate." T. at 8-9. He effectuated a traffic stop, approached the vehicle from the passenger side, advised appellant and his passenger the reason for the stop ("no visible front plate

on the vehicle"), and asked for their identification. T. at 10, 27, 36. Appellant informed Deputy Pennington that they had a front plate, but it was not displayed because of damage to the vehicle. T. at 11. The license plate was "actually in the windshield," but Deputy Pennington could not see it until appellant "grabbed it and pulled it up." T. at 34. Deputy Pennington testified "it was still not clearly visible from the outside of the vehicle." T. at 35. Appellant could not provide his driver's license and Deputy Pennington discovered his license had been suspended. *Id.* Deputy Pennington decided he was going to cite appellant for not having a valid driver's license. T. at 31. The passenger stated she was aware that appellant had a suspended driver's license, but she permitted appellant to drive her vehicle because she was "very tired and they had been gone all day." T. at 12, 45. At that time, Deputy Pennington decided he was going to impound the vehicle for appellant's driving under suspension and the passenger's wrongful entrustment of a motor vehicle under R.C. 4511.203. T. at 13, 46. The passenger-owner consented to Deputy Pennington's request to search the vehicle whereupon contraband was found in the trunk. T. at 13-15. At that point, both appellant and the passenger were read their rights. T. at 16, 32, 47-48.

{¶ 19} In its August 17, 2018 decision and entry denying appellant's motion to suppress, the trial court analyzed the *Chatton* case in light of the amended version of R.C. 4503.21 and stated the following:

Several courts have held that the amended version of 4503.21 supersedes the Supreme Court's holding in *Chatton*. *State v. Allen*, 2010-Ohio-3336; *State v. Fredo*, 2012-Ohio-1496.

R.C. Section 4503.21 now requires the driver of the vehicle to display a license plate in plain view on the front of the vehicle. Instead, the plate was located inside the vehicle. This is sufficient for a violation of R.C. Section 4503.21.

Accordingly, the Court finds that the deputy had probable cause to stop the vehicle, and sufficient justification to extend the scope of the stop in order to write a citation for this violation. In order to do so, the officer had justification to question the Defendant regarding the status of his license and to run his information through the BMV. This task soon revealed that the Defendant was under suspension and subject to arrest. The investigation soon revealed that the owner of the vehicle, the passenger, was aware that the Defendant had a suspended license which subjected her to being arrested, or at least charged, with negligent entrustment. As a result, the subsequent statements and consent to search the vehicle were voluntarily, intelligently, and knowingly made.

{¶ 20} We concur with the trial court's analysis. Deputy Pennington clearly stated the license plate was not in plain view as it was not visible from the outside of the vehicle. He could only see the plate after appellant grabbed it off the dashboard and showed it to him. The purpose of R.C. 4503.21 is to require the vehicle's license plates to be visible from the front and the rear. If they are not in plain view, there is a violation of the law, and an officer is "permitted to ask to see the driver's license and check his license status." *State v. Brown*, 2d Dist. Clark No. 2817, 1991 WL 285431, *2 (Jan. 9, 1991). Deputy

Pennington had the discretion to issue a citation to appellant for violating R.C. 4503.21 and therefore his request to see appellant's driver's license was justified. Running appellant's license led to another violation, the discovery that appellant was driving with a suspended license. This information led to the passenger voluntarily admitting that she was aware that appellant's license had been suspended, but had permitted him to drive her vehicle nonetheless, a violation of wrongful entrustment of a motor vehicle. This led to the deputy's right to impound the vehicle, R.C. 4510.41(B)(1). Appellant and the passenger-owner then voluntarily gave consent to search their persons and the vehicle.

{¶ 21} Upon review, we find the trial court did not err in denying appellant's motion to suppress.

{¶ 22} The sole assignment of error is denied.

{¶ 23} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Wise, Earle, J.

Wise, John, P.J. and

Baldwin, J. concur.

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