[Cite as *State v. Scofield*, 2019-Ohio-375.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Earle E. Wise, Jr., P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
DAVID S. SCOFIELD	:	Case No. 18-CA-06
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from Fairfield County Court of Common Pleas Case No. 2016 CR 475
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	February 1, 2019

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
KYLE WITT 239 West Main Street #101 Lancaster, OH 43130	JAMES L. DYE P.O. Box 161 Pickerington, OH 43147

Wise, Earle, P.J.

{¶ 1} Defendant-Appellant David S. Scofield appeals the May 9, 2017 judgment of the Court of Common Pleas of Fairfield County overruling his motion to suppress. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} On November 4, 2016, shortly before 1:00 a.m., Pickerington Police Office Mercedes Gavins was on patrol near Hill Road North when she observed the driver of a maroon Saturn, later identified as appellant, weaving within his lane. As she followed, the vehicle drifted left of center, crossing the double yellow lane marking. Gavins notified dispatch that she was going to initiate a traffic stop, and provided a description and plate number for the vehicle.

{¶ 3} Gavins activated the overhead lights on her cruiser signaling appellant to pull over. Instead of immediately doing so, appellant slammed on his brakes, nearly causing Gavins to collide with the back end of the Saturn. Appellant continued a bit further before pulling over on Diley Road. Diley Road is two lanes in each direction with a concreate median, raised curbs, and no shoulder. Before Gavins got out of her cruiser, dispatch advised the Saturn was registered to 85 year-old Dorothy Scofield.

{¶ 4} As Gavins approached the vehicle she could see appellant was the only occupant. Appellant was moving about the cabin area, at one point ducking below the front seat. Appellant had the window rolled hallway down as she approached. Gavins advised appellant the reason for the stop was his marked lanes violation and the abrupt stop. Appellant explained he was weaving due to his operation of the car's radio. Gavins asked appellant for his license and proof of insurance. Appellant told Gavins his license

as in his pocket, but made no move to retrieve it. Gavins needed to ask appellant for his license three times before he finally gave it to her. Appellant then did that same thing with his proof of insurance, needing to be asked three times to hand it over. In spite of appellant's odd behavior, Gavins did not detect any signs of intoxication. She therefore took his license and proof of insurance back to her cruiser, intending to issue a citation for the lanes of travel violation and send appellant on his way.

{¶ 5} Once in her cruiser, Gavins relayed appellant's information to dispatch. Dispatch advised appellant had two arrest warrants in Akron, and an extensive criminal history including impersonating an officer, obstruction, and resisting arrest. Gavins was further cautioned that appellant may be armed. Akron confirmed both warrants with dispatch. Gavins requested backup and Officer Smith arrived to assist.

{¶ 6} Gavins and Smith approached appellant's car together and asked him to step out of the vehicle so they could place him under arrest on the warrants. Appellant responded that the warrants were "bogus," denied he had any warrant for his arrest and further advised the officers that he was a law enforcement officer with 20 years experience, and refused to get out of the car. The officers again asked appellant to get out of the car. He again refused and locked his doors. When Gavins reached in to unlock the door, appellant slapped her hand away and rolled up the window, nearly catching Gavin's fingers. The officers pulled out batons and advised appellant that he could either get out of the car, or they would break the car window and remove him from the car. As Smith counted down from 3, appellant opened the door and got out. He was cuffed and placed in Gavins' cruiser without incident. Additional officers and appellant’s girlfriend, who had been driving her car ahead of appellant, arrived on the scene shortly thereafter.

{¶ 7} Because Gavin's dash camera was not functioning, the time between Gavin pulling appellant over and appellant's arrest is unclear. According to Gavin's testimony at the suppression hearing, however, it was mere minutes. At 1:27 a.m., dispatch indicated Akron would not extradite appellant, but three minutes later indicated Akron had changed their stance and would extradite.

{¶ 8} Due to appellant's arrest, the fact that the Saturn was impeding traffic, and because the record owner of the Saturn lived 40 minutes away, Gavins called for a tow truck to impound the vehicle. In the meantime, officers conducted an inventory search of the car. During the search officers discovered a loaded Glock 23 handgun under the front seat and a polymer knife in a compartment below the steering wheel. Officers further discovered a police scanner below the dash tuned to the officer's frequency. Additional polymer knives, a SBR AR-15 automatic rifle with two magazines, additional assorted magazines and ammunition were discovered in the trunk of the car.

{¶ 9} Appellant was transported to the Pickerington Police Station where he was provided with *Miranda* warnings. Appellant advised he possessed the concealed carry and manufacturer licenses required to possess the weapons. Further investigation revealed, however, that both licenses were void.

{¶ 10} Appellant was issued a citation for the marked lanes violation. Gavins forwarded a report requesting further charges based on appellant's possession of the weapons to the City of Lancaster Prosecutor's Office. The Fairfield County Grand Jury subsequently returned an indictment charging appellant with one count of improper handling of a firearm in a motor vehicle, a felony of the fourth degree, and one count of unlawful possession of a dangerous ordinance, a felony of the fifth degree.

{¶ 11} Appellant pled not guilty to the charges. On December 15, 2016, appellant filed a motion to suppress arguing there was insufficient probable cause to stop his vehicle and further, that any statements he made prior to receiving *Miranda* warnings should be suppressed. Appellant supplemented the motion on April 10, 2017, additionally arguing that the Pickerington Police Department violated its own impound policies and procedures and that therefore any evidence recovered as a result of the inventory search must be suppressed.

{¶ 12} A hearing was held on the matter on April 10, 2017. On May 9, 2017, the trial court overruled appellant's motion with the exception of any pre-*Miranda* statements.

{¶ 13} On January 29, 2018, appellant entered a no contest plea to improper handling of a firearm in a motor vehicle. The trial court found appellant guilty and sentenced him to five years community control. The state dismissed the second count of the indictment. Appellant's sentence was stayed pending this appeal.

{¶ 14} The matter is now before this court for consideration. Appellant raises one assignment of error as follows:

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{¶ 15} BECAUSE THE MERE ARREST OF A MOTOR VEHICLE'S OPERATOR SHOULD NOT AUTOMATICALLY TRIGGER POLICE IMPOUNDMENT OF THAT CAR, A WARRANTLESS INVENTORY SEARCH CONDUCTED IN SUCH A SCENARIO VIOLATES THE FOURTH AMENDMENT AND SECTION 14, ARTICLE I OF THE OHIO CONSTITUTION.

{¶ 16} In his sole assignment of error, appellant argues the impoundment of the Saturn was not lawful, and therefore the search of the vehicle was also unlawful. We disagree.

{¶ 17} 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*.

{¶ 18} As the United States Supreme Court held in *Ornelas v. U.S*., 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 94 (1996), "…as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

Lawful Impoundment

{¶ 19} Regarding a decision by law enforcement to impound a car, "[t]he ultimate standard set forth in the Fourth Amendment is reasonableness." *Cady v. Dombrowski*, 413 U.S. 433, 439, 93 S.Ct. 2523, 37 L.Ed.2d 706(1973). It is reasonable of police to exercise their discretion and impound a vehicle, rather than leave it, "so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." *Colorado v. Bertine*, 479 U.S. 367, 375, 107 S.Ct. 738, 93 L.Ed.2d 739(1987). "This discretion is necessarily limited to circumstances in which the officer is authorized to impound the vehicle." *State v. Huddleston*, 173 Ohio App.3d 17, 2007-Ohio-4455, ¶ 14, citing *Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007-Ohio-1103, and *State v. Taylor* 114 Ohio App.3d 416 (1996). "[A]uthority to impound should never be assumed," however. *Taylor* at 422. We have identified several situations in which police have authority to impound a vehicle, among them, "when impoundment is [ ] authorized by statute or municipal ordinance." *Id*.; Accord, *State v. Saunders*, 5th Dist. Fairfield No. 14-CA-57, 2015-Ohio-3535, ¶ 12.

Inventory Search

{¶ 20} "Inventory searches involve administrative procedures conducted by law enforcement officials and are intended to serve three purposes: (1) protect an individual's property while it is in police custody, (2) protect police against claims of lost, stolen or vandalized property, and (3) protect police from dangerous instrumentalities." *State v. Mesa*, 870 Ohio St.3d 105, 108, 1999-Ohio-253, 717 N.E.2d 329, citing *South Dakota v. Opperman*, 428 U.S. 364, 369 (1976). "Because inventory searches are administrative caretaking functions unrelated to criminal investigations, the policies underlying the

Fourth Amendment warrant requirement, including the standard of probable cause, are not implicated." *Mesa* at 108, citing *Opperman* at 370. "Rather, the validity of an inventory search of a lawfully impounded vehicle is judged by the Fourth Amendment's standard of reasonableness." *Mesa* at 108.

Applicable Statute and Ordinance

{¶ 21} R.C 4513.61 provides in relevant part:

> (A) The sheriff of a county or chief of police of a municipal corporation, township, or township or joint police district, within the sheriff's or chief's respective territorial jurisdiction, or a state highway patrol trooper, upon notification to the sheriff or chief of police of such action and of the location of the place of storage, may order into storage any motor vehicle, including an abandoned junk motor vehicle as defined in section 4513.63 of the Revised Code, that:
>
> (1) Has come into the possession of the sheriff, chief of police, or state highway patrol trooper as a result of the performance of the sheriff's, chief's, or trooper's duties; or
>
> (2) Has been left on a public street or other property open to the public for purposes of vehicular travel, or upon or within the right-of-way of any road or highway, for forty-eight hours or longer without notification to the sheriff or chief of police of the reasons for leaving the motor vehicle in such place. However, when such a motor vehicle constitutes an obstruction to traffic it may be ordered into storage immediately * * *

{¶ 22} The codified ordinances of the City of Pickerington, Ohio, section 404.07 tracks the language of R.C. 4513.61 and permits towing any vehicle left unattended due to removal of an arrested operator.

{¶ 23} The Pickerington Police Department Recovered Vehicles Impoundment Policy at P-03-08 permits the towing and impoundment of a vehicle which is the subject of an enforcement action, is abandoned and/or is a safety hazard.

Appellant's Arguments

{¶ 24} Here, appellant makes several arguments as to why the Saturn should not have been impounded and therefore subject to impound inventory. These arguments include that officers should have contacted his mother, the owner of the car, to come to the scene, or should have allowed his girlfriend, who arrived on the scene to take the car. He further argues Gavins violated Pickerington Police Department policy when she made the decision to impound the Saturn. Appellant's arguments are without merit.

{¶ 25} Appellant was stopped at 1:00 in the morning on a street with no shoulder. Following his arrest on the Akron warrants, the vehicle he was operating was left blocking a lane a travel, creating a hazard. Appellant's 85 year-old mother, who lived 40 minutes away from the traffic stop, is the registered owner of the Saturn. Appellant therefore had no authority to permit his girlfriend, who arrived on the scene, to take possession of the car. Although appellant argues his mother should have been summoned to take possession of the car before officers impounded the car, nothing in the Revised Code, Pickerington ordinances, nor Pickerington Police Department policy requires officers to contact the owner of a vehicle before impounding the vehicle. T. 14, 31, State’s exhibit 3.

{¶ 26} Gavins' decision to impound the Saturn was appropriate, as was the subsequent inventory search. We therefore overrule appellant's sole assignment of error.

{¶ 27} The judgment of the Fairfield County Court of Common Pleas is affirmed.

By Wise, Earle, P. J.

Wise, John, J. and

Delaney, J. concur.

EEW/rw