[Cite as *State v. Edwards*, 2016-Ohio-4771.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 15AP-879
v.	:	(C.P.C. No. 13CR-4383)
Phillip M. Edwards,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2016

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee. **Argued:** *Sheryl L. Prichard*.

On brief: *Scott & Nolder Co., LPA*, and *Joseph E. Scott*, for appellant. **Argued:** *Joseph E. Scott*.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Phillip M. Edwards, appeals from a judgment of the Franklin County Court of Common Pleas convicting him of aggravated possession of drugs with a one-year firearm specification, having a weapon under disability, carrying a concealed weapon, and improper handling of a firearm in a motor vehicle. For the reasons that follow, we reverse the judgment of the trial court and remand the case for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On October 22, 2012, Columbus police officers, Jason Bauchmoyer and Weston Tomlin, observed a vehicle parked in front of a residence at Rich Street and 22nd Street. The residence was known to both officers for drug-related activity. The two

officers followed the vehicle in their cruiser as it left the residence, and they subsequently observed the operator commit several traffic violations including an illegal change of lanes at an intersection. The officers initiated a traffic stop.

{¶ 3} When the officers approached the vehicle, they saw that the operator was alone. When Bauchmoyer asked the operator for his license, the officers observed that the man, later identified as appellant, was visibly shaking and appeared extremely nervous. Tomlin observed that appellant had a large wad of cash in his pants pocket. When Tomlin asked appellant about the money, appellant told him he had been to the casino.

{¶ 4} Appellant handed Bauchmoyer a Tennessee driver's license bearing the name of Oliver Smith, Jr., born on March 1, 1983. Bauchmoyer's arrest report, state's exhibit A, summarizes the ensuing events, in relevant part, as follows:

> Officer Bauchmoyer asked [appellant] to step out of the vehicle. [Appellant] stepped out of the vehicle and Officer Bauchmoyer asked [appellant] if he would consent to a pat down for weapons. [Appellant] consented to a pat down and Officer Bauchmoyer patted down [appellant] and felt another large sum of money in his left pocket. [Appellant] was then asked to sit on the curb as Officers verified his information.
>
> Officer Bauchmoyer conducted a LEADS check on the Tennessee Drivers license belonging to Oliver Smith Jr. The license came back valid. Officer Tomlin asked [appellant] how long he has lived in Ohio and [appellant] stated two years. Officer Tomlin then asked [appellant] when the last time he was in Tennessee and he stated two months ago. Officers believed the driver's license that [appellant] provided Officers was fictitious due to the license belonging to an individual born in 1983. [Appellant] appeared to be much older. * * *
>
> Officers informed [appellant] that he was being placed under arrest for driving without a valid Ohio license and falsification. Upon a search incident to arrest of [appellant's] person Officer Tomlin found a cellophane bag in his right front coin pocket containing fifty thirty milligram oxycodone hydrochloride pills. * * * Officer Bauchmoyer conducted an inventory search of the vehicle and found a large sum of one dollar bills in the center console along with an extended magazine containing 40 caliber R&P ammo. Officer

> Bauchmoyer then checked the glove box and found a loaded Glock 23 with a round in the chamber. Officer Bauchmoyer also found six new spoons and a bag containing five new syringes which is consistent with drug addicts cooking pills and injecting them.

{¶ 5} Following appellant's arrest, it was determined that he was not Oliver Smith, Jr. It was also discovered that appellant had a prior drug-related conviction. On August 16, 2013, a Franklin County Grand Jury indicted appellant of the following charges: aggravated possession of drugs with a one-year firearm specification, in violation of R.C. 2925.11, a felony in the first degree; having a weapon under disability, in violation of R.C. 2923.13, a felony in the third degree; carrying a concealed weapon, in violation of R.C. 2923.12, a felony in the fourth degree; and improper handling of a firearm in a motor vehicle, in violation of R.C. 2923.16, a felony in the fourth degree.

{¶ 6} Appellant filed a motion to suppress "any and all the evidence obtained as a result of the illegal and unconstitutional search and seizure of Defendant's property." (Mar. 24, 2014 Mot. at 1.) The argument raised by appellant's motion is that appellant's nervousness during the traffic stop was an insufficient justification to search his vehicle under the "protective sweep" exception to the probable cause requirement in the Fourth Amendment. More particularly, appellant argued that: "The search of [the] vehicle was unreasonable because the officers lacked reasonable suspicion to believe that [appellant] could gain immediate control of weapons in the vehicle." (Mar. 24, 2015 Mot. at 8.) Plaintiff-appellee, State of Ohio, opposed the motion arguing that the search of the vehicle could be justified under the following exceptions: a protective sweep of the vehicle due to concerns of officer safety, an inventory search incident to appellant's arrest, and the inevitable discovery doctrine.

{¶ 7} At the suppression hearing, the trial court admitted a digital video disc ("DVD") from the video recorder mounted in the police cruiser. The video portion of the DVD shows the back of appellant's vehicle parked along the curb as the traffic stop unfolds. Conversations occurring outside the cruiser are inaudible on the DVD; most of what is being said inside the cruiser is audible. The prosecutor played the DVD during his direct examination of Bauchmoyer and elicited the following testimony:

Q. All right. Officer, let me stop there and ask you a few questions. On the tape it's 15 hours, 35 minutes, and about 20 seconds into that. You and your partner talk about issuing a summons for a no ops offense based on the residency?

A. Yes.

Q. At that point in time, were you able to fill out a ticket to issue to the defendant?

A. No. I was still unable to. I was still trying to verify his identity.

Q. So if that had been a proper ID and, in fact, the person, you would have, based on what you're saying, potentially given him a summons?

A. Yes.

Q. However, you hadn't been able to verify who it was?

A. That is correct.

* * *

Q. Why are you approaching the driver's side of the vehicle?

A. Now we determined we're going to issue him a summons and conduct an inventory search of the vehicle.

Q. You were going to inventory the car even though you were going to give him a summons?

A. That is correct.

Q. Why is that?

A. Because it was deemed he didn't have a valid driver's license and the vehicle was going to be impounded.

Q. Okay.

(Video playing.)

* * *

THE COURT: Had you informed him that you were going to impound the car now?

THE WITNESS: Yes.

* * *

Q. (By Mr. Stanley) All right. You just left the driver's side of the car on this videotape and approached the defendant with your partner. What's going on there?

A. At that point in time, we discovered a fully loaded extended magazine in the center console of the vehicle: and I got out of the vehicle to inform my partner that I found that and secure him just in case we possibly missed a gun on the pat-down.

* * *

Q. All right. Officer, once you found that extended loaded magazine in the car, did that traffic stop change in your mind?

A. Yes, it did.

Q. What did it change to?

A. At that point in time, as soon as I found the magazine, I knew there would be a gun somewhere in the vehicle.

* * *

Q. So the defendant is in cuffs at this point in time.

MR. STANLEY: And for the court reporter's purposes, this point in time is 15 minutes and 32 seconds on the tape.[1]

Q. The defendant is in cuffs; is that right?

A. Yes.

Q. Why?

A. Because of what was being found in the car, the magazine, he was being detained.

[1] Our review of the DVD records the approximate time as 15 hours, 37 minutes, and 32 seconds.

> Q. What are you doing with the car at this point?
>
> A. At this point I'm still conducting an inventory search of the vehicle.
>
> (Video playing.)
>
> THE COURT: Do you want to stop it? What's the baggie on top of the trunk? It looks like something plastic on top of the trunk.
>
> THE WITNESS: My partner must have retrieved that off of the defendant and sat that on the trunk, Your Honor.
>
> THE COURT: You don't know what it is?
>
> THE WITNESS: No. I was still in the car at that point. I believe it was pills after the fact but –
>
> * * *
>
> Q. (By Mr. Stanley) All right. Officer, right now on the tape, you can overhear in the background someone speaking to the defendant.
>
> A. Yes.
>
> Q. Is that you or your partner?
>
> A. That was my partner.
>
> * * *
>
> Q. And at that point in time, was the defendant under arrest?
>
> A. Yes.
>
> Q. What for?
>
> A. At that time he was under arrest for the pills that my partner pulled out of his right front pocket, I believe it was.

(Tr. at 28-34.)

{¶ 8} On March 10, 2015, the trial court issued a "Decision and Entry" denying the motion to suppress. The decision and entry does not contain separate findings of fact

and conclusions of law. The trial court's entry reads in relevant part as follows: "The officer had a reasonable belief that the defendant was operating without [an] operator license. The drugs were found pursuant to an inventory search in conjunction with Defendant's arrest. The Court does not see a violation of defendant's rights." On March 20, 2015, the trial court issued a second "Decision and Entry." In this entry, the trial court stated: "The Officer had reasonable belief to pull Defendant over because of a traffic violation. Further, when the officer saw the license and the duration of time living in state, clearly a licensing violation had occurred. The drugs were found pursuant to an arrest and inventory search."

{¶ 9} Following the trial court decision, appellant changed his plea to a plea of no contest. On August 24, 2015, the trial court convicted appellant of the charges in the indictment and sentenced appellant to an aggregate prison term of 21 months. Appellant timely appealed to this court from the trial court decision.

II. ASSIGNMENT OF ERROR

{¶ 10} Appellant assigns the following trial court error:

> THE TRIAL COURT ERRED BY DENYING APPELLANT PHILLIP EDWARDS' MOTION TO SUPPRESS BECAUSE OFFICERS VIOLATED EDWARDS' FOURTH AMENDMENT RIGHTS WHEN THEY CONDUCTED AN ILLEGAL WARRANTLESS SEARCH OF HIS VEHICLE.

III. STANDARD OF REVIEW

{¶ 11} Appellate review of a trial court's decision regarding a motion to suppress evidence involves mixed questions of law and fact. *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, ¶ 12, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. 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. *Id*., citing *Burnside* at ¶ 8, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Accordingly, an appellate court will uphold the trial court's findings of fact provided they are supported by competent, credible evidence. *Id*., citing *Burnside* at ¶ 8, citing *State v. Fanning*, 1 Ohio St.3d 19, 20 (1982). Accepting those facts as true, the appellate court 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*., quoting *Burnside* at ¶ 8.

IV. LEGAL ANALYSIS

{¶ 12} "Under the Fourth Amendment, warrantless searches are per se unreasonable without prior approval by a judge or magistrate, subject to only a few specific exceptions." *Leak* at ¶ 15, citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009), citing *Katz v. United States*, 389 U.S. 347, 357 (1967). "Two such exceptions are a search incident to a lawful arrest and an inventory search conducted pursuant to law enforcement's community-caretaking function." *Id*.

{¶ 13} The exception for a search incident to a lawful arrest has two rationales: officer safety and " 'safeguarding evidence that the arrestee might conceal or destroy.' " *Id*. at ¶ 16, quoting *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, ¶ 182, citing *Gant* at 338-39. Under this exception, "[i]t is not unreasonable * * * for a law-enforcement officer to search a vehicle without a warrant when a recent occupant of the vehicle has been arrested and (1) the arrestee is unsecured and within reaching distance of the vehicle or (2) it is reasonable to believe the vehicle contains evidence of the offense that led to the arrest." *Id*., citing *Gant* at 343.

{¶ 14} Appellant contends that police could not have obtained the evidence during a search incident to a lawful arrest because police did not have probable cause to believe that appellant committed a licensing offense prior to initiating a search of his vehicle. We disagree.

{¶ 15} Pursuant to R.C. 4507.02(A)(1), no person shall operate a motor vehicle on any property used by the public for purposes of vehicular travel when the operator does not have a valid driver's license issued by the registrar of motor vehicles. Under R.C. 4507.04, nonresidents of Ohio who are "permitted to drive upon the highways of their own states, may operate any motor vehicle upon any highway in this state without examination or license under sections 4507.01 to 4507.39, inclusive, of the Revised Code, upon condition that such nonresidents may be required at any time or place to prove lawful possession, or their right to operate, such motor vehicle, and to establish proper identity." The term "nonresidents," as used in this section, refers to persons who are not residents of Ohio, including persons who enter and stay in this state for a period of time

providing such persons intend to return to their home states and have no intention of remaining here permanently. 1961 Ohio Atty.Gen.Ops. No. 2271. *See also Upper Sandusky v. Harris*, 3d Dist. No. 16-82-6 (Aug. 1, 1983), quoting 77 Corpus Juris Secundum, Residence, Section 295 ("The two fundamental elements essential to create a residence are bodily presence in a place and the intention of remaining in that place.").

{¶ 16} " 'Probable cause to arrest a person for a misdemeanor exists when there are circumstances which would cause a reasonable person to believe that a crime had been committed in his presence.' " *Koss v. The Kroger Co.*, 10th Dist. No. 03AP-1199, 2004-Ohio-3595, ¶ 13, quoting *State v. Harn*, 10th Dist. No. 87AP-269 (Aug. 20, 1987). Appellant concedes that he told Tomlin that he had been living in Ohio for two years and that he had last traveled to Tennessee two months ago. Although R.C. 4507.02 does not contain a specified grace period for new Ohio residents licensed in other states, Bauchmoyer testified that "[w]e usually tend to give six months as leeway and consider that a reasonable amount of time." (Tr. at 59.) In our view, the circumstances in this case would cause a reasonable person to believe that appellant was a resident of Ohio operating a vehicle without an Ohio driver's license.

{¶ 17} Appellant next contends that the trial court erred when it determined that the evidence was admissible under the exception to the warrant requirement applicable to evidence obtained in a search incident to arrest. Our review of the record reveals conflicting evidence as to the timing of the arrest in relation to the initial search of the vehicle.

{¶ 18} In *Columbus v. Clark*, 10th Dist. No. 14AP-719, 2015-Ohio-2046, this court noted that "arrest" involves four elements: " '(1) [a]n intent to arrest, (2) under a real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person * * * (4) which is so understood by the person arrested.' " *Id*. at ¶ 34, quoting *State v. Darrah*, 64 Ohio St.2d 22, 26 (1980), citing *State v. Terry*, 5 Ohio App.2d 122, 128 (8th Dist.1966). " '[A]n officer need not state, "You are under arrest." ' " *Id*., quoting *State v. Carroll*, 162 Ohio App.3d 672, 2005-Ohio-4048, ¶ 14. Rather, arrest " 'signifies the apprehension of an individual or the restraint of a person's freedom in contemplation of the formal charging with a crime.' " *Id*., quoting *Darrah* at 26.

{¶ 19} "[T]he point at which an arrest occurs depends on the circumstances of the particular case." *Columbus v. Galang*, 10th Dist. No. 02AP-1441, 2003-Ohio-4506, ¶ 16, citing *State v. Finch*, 24 Ohio App.3d 38, 39 (12th Dist.1985). The officer's subjective intent is not controlling. *Id.* at ¶ 17. The trial court must look at the additional facts presented at the evidentiary hearing in support of the officer's subjective intent. *Id.* " 'Factors to be considered in distinguishing an investigative stop from a de facto arrest include the seriousness of the crime, the location of the encounter, the length of the detention, the reasonableness of the officer's display of force, and the conduct of the suspect as the encounter unfolds.' " *Id.*, quoting *State v. Martinez*, 129 Idaho 426, 431 (1996).

{¶ 20} Here, the timing of appellant's arrest is of critical importance in resolving appellant's motion to suppress. Bauchmoyer's testimony at the suppression hearing regarding his subjective intent arguably contradicts the trial court's finding that "[t]he drugs were found pursuant to an arrest and inventory search." (Mar. 20, 2015 Decision and Entry.) Bauchmoyer's testimony at the hearing suggests that appellant was not under arrest for the charge of driving without a license, or any other charge, when the vehicle search commenced. According to Bauchmoyer, he and Tomlin had agreed that they would issue appellant a summons for driving without a license and impound his vehicle. Bauchmoyer's testimony on direct, if believed, establishes that Tomlin placed appellant in handcuffs and conducted a search of appellant's person after Bauchmoyer initiated the vehicle search. Tomlin found the plastic bag containing pills, later identified as oxycodone, in the search of appellant's person. According to Bauchmoyer's testimony, Tomlin then place appellant under arrest for drug possession. Officers later found the weapon and the drug paraphernalia in the search of appellant's vehicle.

{¶ 21} We note that Bauchmoyer testified that he could have arrested appellant for driving without a license rather than issuing him a summons for that offense and that Tomlin did arrest appellant for that offense at some point during the traffic stop. Bauchmoyer's testimony on cross-examination is equivocal regarding the arrest for driving without a license. Bauchmoyer's arrest report, admitted into evidence as state's

exhibit A, states that both the search of appellant's vehicle and of his person occurred after appellant's arrest for driving without a valid Ohio license and falsification.[2]

{¶ 22} Crim.R. 12(F) provides: "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record." Under Crim.R. 12(F), a trial court has the responsibility to make "essential findings" on the record to provide an appellate court with a sufficient basis to review assignments of error relating to factual issues in pre-trial motions. *See, e.g., State v. Limoli*, 10th Dist. No. 11AP-924, 2012-Ohio-4502, ¶ 42; *State v. Forrest*, 10th Dist. No. 10AP-481, 2010-Ohio-5878. "Essential findings," as used in Crim.R. 12(F), has been defined by this court as "fundamental or necessary reasons relied upon by the trial court in reaching its final determination on the issue." *Columbus v. Lewis*, 77 Ohio App.3d 356, 361 (10th Dist.1991), citing *State v. Waddy*, 10th Dist. No. 87AP-1159 (Nov. 2, 1989). This court has also stated that essential findings " 'are more than mere conclusions of law' but 'need not be as specific as special findings of fact.' " *Limoli* at ¶ 42, quoting *Forrest* at ¶ 12.

{¶ 23} Here, the trial court failed to cite any evidence or make any factual findings in support of its conclusion that the police obtained the drugs "pursuant to an arrest and inventory search."[3] (Mar. 20, 2015 Decision and Entry.) The trial court decision and entry simply reaches a legal conclusion without discussing the basis for an "arrest" or making any determinations regarding weight and credibility. This court has stated that "[t]he trial court must set forth the basis for its decision with sufficient detail to allow proper appellate review." *Friesen v. Friesen*, 10th Dist. No. 07AP-110, 2008-Ohio-952, ¶ 39. *See also Limoli* at ¶ 49 (in ruling on a motion to suppress, the trial court must make essential findings regarding the exception to the warrant requirement at issue, "so as to allow meaningful appellate review of the court's ultimate disposition of appellant's motion to suppress"). "Neither the parties nor a reviewing court should have to review the trial court record to determine the court's intentions. Rather, the entry must reflect the trial court's action in clear and succinct terms." *Infinite Sec. Solutions, L.L.C. v. Karam Properties II*, 143 Ohio St.3d 346, 2015-Ohio-1101, ¶ 29.

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[2] Officer Bauchmoyer testified that appellant admitted that he was not Oliver Smith, Jr. after he was taken from the scene.

[3] The decision and entry makes no mention of the weapon recovered from the glove compartment in appellant's vehicle.

{¶ 24} The trial court's bare bones "Decision and Entry" does not include essential findings necessary for this court to conduct its review of the trial court's conclusion that police obtained the drugs in a search incident to a lawful arrest. 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. *Leak* at ¶ 12, citing *Burnside* at ¶ 8, citing *Mills* at 366. Given the unresolved factual issues and the inconsistencies in the evidence presented at the suppression hearing, it was incumbent on the trial court in ruling on the motion to suppress to resolve issues of witness credibility and make essential factual findings. *See, e.g., Limoli* at ¶ 49 (remanding a criminal case to the trial court with instructions that it "make additional findings relative to the voluntariness of appellant's consent to be searched, so as to allow meaningful appellate review of the court's ultimate disposition of appellant's motion to suppress"); *Forrest* at ¶ 23 (criminal case remanded for findings of fact and conclusions of law that explain why the evidence either supports or refutes the state's claim that officers possessed a requisite reasonable, articulable suspicion under *Terry* to detain defendant); *State v. Spain*, 10th Dist. No. 09AP-331, 2009-Ohio-6664, ¶ 28 (criminal case remanded for the trial court to set forth the factual basis to support its ruling on duress); *State v. Ogletree*, 8th Dist. No. 86285, 2006-Ohio-448, ¶ 15-17 (criminal case remanded to the trial court to make findings necessary to resolve the "fact-intensive" issue of consent). The trial court's failure to make the essential findings prevents this court from conducting a meaningful review of the trial court's ruling on the motion to suppress and constitutes reversible error. *Limoli*; *Forrest*; *Spain*; *Ogletree.*

{¶ 25} To the extent that the trial court concluded that police found the drugs in an inventory search conducted pursuant to impoundment, the trial court's decision and entry is similarly flawed. The Supreme Court of Ohio has recently stated that "inventory searches of lawfully impounded vehicles are reasonable under the Fourth Amendment when performed in accordance with standard police procedure and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle." *Leak* at ¶ 22, citing *Blue Ash v. Kavanagh*, 113 Ohio St.3d 67, 2007-Ohio-1103, ¶ 11; *State v. Robinson*, 58 Ohio St.2d 478, 480 (1979), citing *South Dakota v. Opperman*, 428 U.S. 364 (1976). The three main objectives of inventory

searches are: (1) protecting an individual's property while it is in the custody of the police, (2) protecting the police from claims of lost or stolen property, and (3) protecting the police from danger. *Id*. at ¶ 21, citing *Opperman* at 369. "Examples of vehicles taken into custody as part of law enforcement's community-caretaking role include those that have been in accidents, that violate parking ordinances, that are stolen or abandoned, and those that cannot be lawfully driven." *Id*. at ¶ 20, citing *Opperman* at 368-69.[4] Law enforcement's community-caretaking function in performing inventory searches is " 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.' " *Id*. at ¶ 20, citing *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

{¶ 26} The trial court's "Decision and Entry" does not include the essential findings necessary for this court to make a determination whether police legally obtained the drugs, or any of the other evidence at issue, in an inventory search conducted pursuant to standard police procedure and cited no evidence that would support such a conclusion. Nor does the trial court cite any evidence demonstrating that the procedure involved was not merely a pretext for an evidentiary search of the impounded vehicle. In the absence of these essential findings, this court cannot independently determine whether the facts satisfy the applicable legal standard. *Limoli*; *Forrest*; *Spain*; *Ogeltree*.

{¶ 27} Because we cannot tell from the trial court decision how it arrived at its conclusion that the police obtained the drugs in a search incident to arrest, we must remand this matter to the trial court to make essential findings of fact. *Limoli*; *Forrest*; *Spain*; *Ogletree*. For the foregoing reasons, we hold that the trial court erred when it failed to make essential findings in ruling on the motion to suppress. Accordingly, we sustain appellant's sole assignment of error and remand the case for the trial court to consider all the arguments raised by the parties and to make essential findings in support of its ruling. *See Spain* at ¶ 28 (reversing a trial court's determination that the evidence was obtained in a search incident to lawful arrest but remanding the case for the trial court to consider the alternative argument of consent, which was raised by the state but not considered by the trial court).

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[4] Under R.C. 4513.61(A), law enforcement personnel may order into storage any vehicle that has come into their possession as a result of the performance of their law enforcement duties.

V. CONCLUSION

{¶ 28} Having sustained appellant's sole assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand the case for further proceedings on appellant's motion to suppress.

Judgment reversed;
cause remanded.

DORRIAN, P.J., and LUPER SCHUSTER, J., concur.

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