[Cite as *State v. Braxton*, 2020-Ohio-424.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Appellee,	:	CASE NO. CA2019-03-019
	:	O P I N I O N
- vs -	:	2/10/2020
JUAN JASON BRAXTON,	:	
Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 18CR34560

David P. Fornshell, Warren County Prosecuting Attorney, Kirsten A. Brandt, 520 Justice Drive, Lebanon, Ohio 45036, for appellee

The Helbling Law Firm, LLC, John J. Helbling, 6539 Harrison Avenue, Box 124, Cincinnati, Ohio 45247, for appellant

HENDRICKSON, P.J.

{¶ 1} Appellant, Juan Jason Braxton, appeals a decision of the Warren County Court of Common Pleas denying his motion to suppress. For the reasons discussed below, we affirm the trial court's decision.

{¶ 2} At approximately 8:30 p.m. on July 27, 2018, Ohio State Highway Patrol Trooper Brian Parsons observed a vehicle driven by appellant approach his parked patrol car

on northbound I-71, near milepost 28 in Warren County, Ohio. Appellant and his passenger appeared nervous to Trooper Parsons, as both men were avoiding eye contact. Appellant switched lanes away from Trooper Parsons' patrol car, and Trooper Parsons pulled out behind appellant's vehicle and followed appellant as he changed lanes multiple times. Trooper Parsons observed appellant follow other vehicles too closely on three occasions and commit a marked lanes violation by driving on the hash-marked gore of the roadway near an exit ramp. As a result of these traffic violations, Trooper Parsons initiated a traffic stop of appellant's vehicle.

{¶ 3} Upon approaching appellant's vehicle and speaking with its occupants, Trooper Parsons recognized, through his training and experience, the odor of burnt marijuana. Trooper Parsons removed appellant and his passenger from the vehicle, placed them in the back of his patrol car, and searched the passenger compartment of appellant's vehicle. In the center console, Trooper Parsons located a prescription Oxycodone pill that had been broken in half and packaged in a cellophane wrapper, a prescription bottle for Oxycodone in appellant's name, marijuana, marijuana residue, marijuana shake, and the burnt ends of marijuana cigarettes. The cellophane-wrapped pill and the pill bottle were located separately from one another in the console. The discovery of the cellophane-wrapped pill was significant to Trooper Parsons as, in his training and experience, "that's something that is common for either acquiring something illegally or preparing it for resale illegally."

{¶ 4} Based on the discovery of the items in the center console, Trooper Parsons expanded his search into the trunk of appellant's vehicle. There Trooper Parsons found a black suitcase that held several bags of raw marijuana, papers with a brown liquid that Parsons' believed was hash oil, jars of hash, a scale with residue on it, and empty bags of various sizes that smelled like marijuana and contained green stains.

{¶ 5} Trooper Parsons read appellant and his passenger their *Miranda* rights before

asking the men who owned the suitcase found in the trunk. Neither appellant nor his passenger claimed ownership and Trooper Parsons returned to appellant's vehicle to finish his search. Upon the trooper's return to the patrol car, appellant admitted that the car was his and he knew the suitcase was not his passenger's, but he did not claim ownership of the suitcase. Appellant was subsequently arrested.

{¶ 6} On September 4, 2018, appellant was indicted for trafficking in marijuana in violation of R.C. 2925.03(A)(2), a felony of the fourth degree, possession of marijuana in violation of R.C. 2925.11(A), a felony of the fifth degree, possession of criminal tools in violation of R.C. 2923.24(A), a felony of the fifth degree, aggravated possession of drugs in violation of R.C. 2925.11(A), a felony of the fifth degree, possession of hashish in violation of R.C. 2925.11(A), a minor misdemeanor, and possession of marijuana drug paraphernalia in violation of R.C. 2925.1414(C), a minor misdemeanor. Appellant pled not guilty to the offenses and moved to suppress evidence, arguing that the traffic stop and subsequent search of his vehicle was illegal and invalid.

{¶ 7} A hearing on appellant's motion was held on December 12, 2018. Trooper Parsons was the only witness to testify. In addition to discussing the events that led up to and occurred during the traffic stop, Trooper Parsons testified about his review of video recordings taken from his patrol car during the stop. Trooper Parsons testified that appellant and his passenger were recorded having a conversation in the back of the patrol car wherein appellant's passenger asked appellant "how much he ha[d]" and appellant responded that he "doesn't really know. * * * [H]e's got some money and * * * two bags * * * [of] about two pounds or about a pound." The recordings captured appellant and his passenger exchanging money and appellant's passenger removing the battery out of a cell phone. The recordings were admitted into evidence at the suppression hearing.

{¶ 8} After considering the evidence submitted at the suppression hearing, the trial

court denied appellant's motion. The court found that the initial traffic stop was valid as there was probable cause to believe that appellant had committed traffic violations, namely a marked lanes violation and following too closely behind another vehicle. The court further found that the smell of burnt marijuana gave Trooper Parsons probable cause to search the passenger compartment of the vehicle pursuant to the automobile exception to the warrant requirement. Finally, the court concluded that upon discovering contraband in the passenger compartment, Trooper Parsons had probable cause to extend his search into the trunk of the vehicle.

{¶ 9} After his motion to suppress was denied, appellant pled no contest to the four felony charges in exchange for the state's dismissal of the two misdemeanor charges. The trial court accepted appellant's plea, found him guilty, and sentenced him to three years of community control. Appellant was ordered to complete an outpatient treatment program, pay a $2,500 fine, and reimburse the Ohio State Highway Patrol $280.

{¶ 10} Appellant appealed the denial of his motion to suppress, raising the following assignment of error:

{¶ 11} THE TRIAL COURT ERRED TO THE DEFENDANT-APPELLANT'S PREJUDICE WHEN IT DENIED THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS.

{¶ 12} In his sole assignment of error, appellant argues the trial court erred by denying his motion to suppress. Specifically, appellant contends Trooper Parsons lacked probable cause to conduct a warrantless search of his vehicle's trunk.[1]

{¶ 13} Appellate review of a trial court's denial of a motion to suppress presents a

1. Appellant does not contest the trial court's finding that there was probable cause for the traffic stop due to the observed traffic violations or probable cause for the search of the vehicle's passenger compartment pursuant to the automobile exception to the warrant requirement. Rather, appellant's arguments on appeal are limited to the constitutionality of the search of his vehicle's trunk and the suitcase located therein.

mixed question of law and fact. *State v. Cochran*, 12th Dist. Preble No. CA2006-10-023, 2007-Ohio-3353, ¶ 12. When considering a motion to suppress, the trial court, as the trier of fact, is in the best position to resolve factual questions and evaluate witness credibility. *Id.* Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, 12th Dist. Butler No. CA2005-03-074, 2005-Ohio-6038, ¶ 10. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶ 12.

{¶ 14} "The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable searches and seizures * * *." *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, ¶ 11. "For a search or seizure to be reasonable under the Fourth Amendment, it must be based upon probable cause and executed pursuant to a warrant." *State v. Moore*, 90 Ohio St.3d 47, 49 (2000), citing *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507 (1967). "Searches and seizures conducted without a warrant are per se unreasonable unless the search and seizure falls within one of the few specifically established and well delineated exceptions." *State v. Lynn*, 12th Dist. Butler Nos. CA2017-08-129 and CA2017-08-132, 2018-Ohio-3335, ¶ 16.

{¶ 15} The "automobile exception" is one such exception to the warrant requirement. *Id.*, citing *State v. Young*, 12th Dist. Warren No. CA2011-06-066, 2012-Ohio-3131, ¶ 34. "Under the automobile exception, law enforcement officers may search a motor vehicle without a warrant if the officers have probable cause to believe the vehicle contains contraband." *Id. See also State v. Robinson*, 12th Dist. Madison No. CA2019-04-009, 2019-Ohio-5370, ¶ 21. "Probable cause in these instances is 'a belief reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that

which by law is subject to seizure and destruction.'" *Id.*, quoting *State v. Popp*, 12th Dist. Butler No. CA2010-05-128, 2011-Ohio-791, ¶ 27. The determination of probable cause is fact-dependent and turns on what the officers knew at the time they conducted the search. *Goodwin*, 2006-Ohio-3563 at ¶ 14.

{¶ 16} "The smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to conduct a search." *Moore* at syllabus. "Once a law enforcement officer has probable cause to believe that a vehicle contains contraband, he or she may search a validly stopped motor vehicle based upon the well-established automobile exception the warrant requirement." *Id.* at 51. However, as the Ohio Supreme Court recognized in *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, ¶ 51, "[a] trunk and passenger compartment of an automobile are subject to different standards of probable cause to conduct searches." "The odor of burnt marijuana in the passenger compartment of a vehicle does not, standing alone, establish probable cause for a warrantless search of the trunk of the vehicle." *Id.* at ¶ 52. "Instead, the officer needs to justify his or her search beyond the passenger compartment with other facts and circumstances supporting probable cause to search the trunk." *Robinson* at ¶ 22, citing *Farris* at ¶ 52. "'This proposition is established by the common sense observation that an odor of burning marijuana would not create an inference that burning marijuana was located in a *trunk*.'" (Emphasis sic.) *Lynn*, 2018-Ohio-3335 at ¶ 18, quoting *State v. Gonzales*, 6th Dist. Wood No. WD-07-060, 2009-Ohio-168, ¶ 22.

{¶ 17} Relying on the supreme court's holding in *Farris*, appellant argues the trial court erred by denying his motion to suppress because Trooper Parsons lacked probable cause to conduct a warrantless search of the vehicle's trunk as the trooper initiated the search based on the smell of *burnt* marijuana. Appellant further argues that Trooper Parsons "admitted to not having any probable cause to search the locked trunk other than his mistaken belief that

he could do so solely based upon finding the roaches and marijuana residue in the console."

In support of his argument, appellant relies on the following discussion the trooper had with the court:

> THE COURT: What is it then that causes you to search the trunk of the vehicle?
>
> [TROOPER PARSONS]: The Schedule 2 substance that I found, Your Honor, as well as the marijuana residue and the roaches.
>
> THE COURT: What is it from that that leads you to conclude that there's going to be an additional contraband in the trunk?
>
> [TROOPER PARSONS]: Based on my training sir, anytime that we find any contraband in the passenger's department [sic], that gives us proper thought to search the entire vehicle.
>
> THE COURT: Okay, my question for you though is what, based upon your discovery of that [found in the center console], led you to believe that you would find something in the trunk?
>
> [TROOPER PARSONS]: *Specifically, at the time that I located it, there wasn't anything that made me think there's going to be something in the trunk.* But, I've been trained that anytime I find anything, to search the entire vehicle.
>
> THE COURT: All right. So, you assumed that the law allowed you to search the trunk, so you just searched it anyway?
>
> [TROOPER PARSONS]: Yes, sir.

(Emphasis added.)

{¶ 18} We find no merit to appellant's arguments. Unlike in *Farris*, Trooper Parsons did not rely on the odor of bunt marijuana emanating from the vehicle's passenger compartment, standing alone, to justify the search of the vehicle's trunk. Rather, Trooper Parsons relied on the discovery of contraband in the passenger compartment, specifically within the center console of the vehicle, to establish probable cause to search the trunk. In the center console, Trooper Parsons found a prescription pill bottle, a cellophane-wrapped Oxycodone pill, marijuana, marijuana residue, marijuana shake, and burnt marijuana

cigarettes. The discovery of the cellophane-wrapped pill was significant as, in Trooper Parsons' training and experience, "that's something that is common for either acquiring something illegally or preparing it for resale illegally." Trooper Parsons specifically advised the court that it was the discovery of this cellophane-wrapped Oxycodone pill, a schedule 2 substance, as well as the marijuana, marijuana residue and marijuana shake that led him to search the trunk. Once Trooper Parsons found the contraband in the center console, he had probable cause to extend his search into the trunk of appellant's vehicle. *See, e.g., State v. Greenwood*, 2d Dist. Montgomery No. 19820, 2004-Ohio-2737, ¶ 11 (holding that an officer's observation of marijuana on a vehicle's passenger seat and floorboard provided probable cause to search the entire vehicle, including the trunk and its contents); *State v. Price*, 6th Dist. Sandusky No. S-11-037, 2013-Ohio-130, ¶ 19 (finding that other evidence, in addition to the odor of burnt marijuana, established probable cause to allow the officer to search the entire vehicle, including the trunk).

{¶ 19} The fact that Trooper Parsons indicated there "wasn't anything that made [him] think there's going to be something in the trunk" after finding the additional contraband in the center console is not material, as probable cause is viewed under an objective standard. *State v. Fletcher*, 12th Dist. Brown No. CA2016-08-016, 2017-Ohio-1006, ¶ 34. *See also Godwin*, 2006-Ohio-3563 at ¶ 14 ("Probable cause is determined by examining the historical facts, i.e. the events leading up to a stop or search viewed from the standpoint of an objectively reasonable police officer"). "Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that [an] offense has been committed." *State v. Arrasmith*, 12th Dist. Madison No. CA2013-09-031, 2014-Ohio-4173, ¶ 18. Where an officer subjectively believes he lacks probable cause, a search is nonetheless justified if the objective facts establish probable cause. *See State v. Oglesby*, 12th Dist. Clinton No. CA2004-12-027, 2005-Ohio-6556, ¶ 20. Accordingly, even if Trooper Parsons

had not subjectively believed that additional contraband would be found in the trunk, based on the discovery of contraband in the center console, the search of the trunk was objectively reasonable under the circumstances and therefore lawful pursuant to the automobile exception to the warrant requirement.

{¶ 20} We further find that Trooper Parsons had probable cause to open the suitcase found in the trunk of the vehicle as an officer conducting a warrantless search with probable cause may "search every part of the vehicle and its contents, including all movable containers and packages, that may logically conceal the object of the search." *State v. Welch*, 18 Ohio St.3d 88 (1995), syllabus. The trial court did not err in denying appellant's motion to suppress. Appellant's sole assignment of error is overruled.

{¶ 21} Judgment affirmed.

S. POWELL and RINGLAND, JJ., concur.