[Cite as *State v. Henderson*, 2009-Ohio-4122.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	**:**	
Plaintiff-Appellee	**:**	**C.A. CASE NO. 22831**
vs.	**:**	**T.C. CASE NO. 07CR4629**
WILLIAM HENDERSON	**:**	**(Criminal Appeal from Common Pleas Court)**
Defendant-Appellant	**:**	

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O P I N I O N

Rendered on the 14th day of August, 2009.

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GRADY, J.:

{¶ 1} Defendant, William Henderson, appeals from his convictions for possession of cocaine, R.C. 2915.11(A), and possession of criminal tools, R.C. 2923.24(A), both fifth degree felonies, and the five years of community control imposed by the court for those offenses.

{¶ 2} After his indictment charging the two offenses of which he was convicted, Defendant filed a Crim.R. 12(C)(3) motion to suppress evidence and motion to dismiss (Dkt. 9). The trial court denied the motions following a hearing. (Dkt.13). Defendant then entered pleas of no contest and was sentenced and convicted following his no contest pleas. He appeals from his conviction and sentence.

ASSIGNMENT OF ERROR

{¶ 3} "THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S MOTION TO DISMISS AND/OR SUPPRESS EVIDENCE, AS THE AGENTS OF THE DAYTON POLICE DEPARTMENT VIOLATED HIS RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS."

{¶ 4} The evidence Defendant's motions sought to suppress was seized in the course of a consensual search of his person. The search was performed following a stop of Defendant's vehicle for his failure to display illuminated lights after dark. R.C. 4513.03(A). That violation occurred in the City of Dayton and was observed by two Dayton police detectives, Barrett and Mullins. The two officers were at the time in plain clothes and an unmarked vehicle, investigating reports of drug activity.

{¶ 5} Defendant illuminated his vehicle's headlights after traveling for about one block. The two officers, on a hunch

that Defendant was involved in drug activity, followed his vehicle for approximately five miles. They observed no further traffic violations during that time. Finally, the two officers requested the assistance of an officer in a marked vehicle in stopping Defendant for the headlight violation. The stop was then made by Dayton police officer Zwiesler, who performed the search that yielded the drugs and criminal tools on which the subsequent charges against Defendant were founded. The stop, detention, and subsequent arrest took place outside the City of Dayton, in the adjoining City of Moraine.

{¶ 6} Defendant argues that the trial court erred because the stop was made in violation of R.C. 2935.03(D). That section provides that a law enforcement officer is authorized to "pursue, arrest, and detain" persons for violations of law outside the territorial jurisdiction in which the officer is appointed if: (1) the "pursuit takes place without unreasonable delay after the offense is committed," (2) the pursuit is initiated within the officer's territorial jurisdiction, and (3) the particular offense is one for which that section authorizes a non-territorial arrest.

{¶ 7} The violation of R.C. 4513.02(A) that Detectives Barrett and Mullins observed presented probable cause of a violation of law that authorized their stop of Defendant's

vehicle. *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431. Officer Zweisler was entitled to rely on the request he received from them to stop Defendant's vehicle on the violation the other two officers observed. *State v. Jones*, 154 Ohio App.3d 231, 2003-Ohio-4669.

{¶ 8} The due process violation on which Defendant relies is grounded on his contention that the stop of his vehicle in the City of Moraine, outside the territorial jurisdiction in which Detectives Barrett and Mullins and Officer Zweisler were appointed, the City of Dayton, violated R.C. 2935.03(D). Defendant does not argue that the headlight violation for which he was stopped, R.C. 4513.02(A), is not one for which an extra-territorial arrest is authorized by that section. Neither does he contend that the pursuit, such as it was, was not initiated within the officers' territorial jurisdiction, the City of Dayton. Instead, Defendant argues that the "pursuit" of his vehicle, being attenuated in time and circumstance from the traffic violation for which he was stopped, was not a pursuit for purposes of R.C. 2935.03(D), and therefore the stop of his vehicle was unlawful.

{¶ 9} The term "pursue" derives from Middle English, and originally meant to "follow with enmity." Oxford Dictionary of Word Histories (2002). A more contemporary definition is

"[t]he act of chasing to overtake or apprehend." Black's Law Dictionary (7th Ed.). The First District Court of Appeals has held that, for purposes of R.C. 2935.03(D), a pursuit means a "fresh pursuit;" that is, one in which the officers proceed diligently in their search for a fleeing suspect and there was no hiatus or interruption in their efforts. *State v. Winters* (February 7, 1990), Hamilton App. No. C-880773. Measured against those standards, the leisurely five mile "tail" of Defendant's vehicle that Detectives Barrett and Mullins performed before they requested Officer Zweisler to perform the stop for the traffic violation they had observed lacks the urgency of purpose which a pursuit typically involves.

{¶ 10} Nevertheless, we cannot find that the alleged violation of R.C. 2935.03(D) warranted suppression of the evidence obtained after and as a result of the stop of Defendant's vehicle, for two reasons.

{¶ 11} First, the exclusionary rule does not apply to evidence obtained incident to police conduct in violation of state law but not violative of constitutional rights. *State v. Wiedeman*, 94 Ohio St.3d 501, 2002-Ohio-1484. The particular limitations that R.C. 2935.03(D) imposes on the authority of an officer to pursue, detain, and arrest a person outside the territorial jurisdiction in which the officer is appointed are

administrative restrictions. A violation of those restrictions does not implicate that person's liberty interests, so as to result in a violation of his due process rights protected by the Fourteenth Amendment. Neither does a violation of R.C. 2935.03(D), in and of itself, constitute a Fourth Amendment violation for which suppression of evidence is authorized. *State v. Jones*, 121 Ohio St.3d 102, 2009-Ohio-316.

{¶ 12} Second, and more fundamentally for purposes of our review, the motion to dismiss and/or suppress that Defendant filed (Dkt. 9) failed to argue a violation of R.C. 2935.03(D) as grounds for the relief his motion requested. Therefore, Defendant has waived the issue of failure to comply with R.C. 2935.03(D) for purposes of his appeal. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216.

{¶ 13} The assignment of error is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

Copies mailed to:

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Hon. William B. McCracken