

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23215
v.	:	T.C. NO. 08 CR 2513
MELISSA L. KING	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	

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**OPINION**

Rendered on the 16<sup>th</sup> day of October, 2009.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Melissa L. King, filed January 16, 2009. King appeals from the December 23, 2008, decision and order of the Montgomery County Court of Common Pleas which denied her motion to suppress. On January 8, 2009, King entered a plea of no contest to one count of possession of cocaine

(less than five grams), in violation of R.C. 2925.11(A), a felony of the fifth degree. She was sentenced to a period of community control sanctions not to exceed five years.

{¶ 2} The events giving rise to this matter began on June 19, 2008, at approximately 6:00 p.m., when officer Michael James Wolpert of the City of Dayton Police Department, and his partner, Matthew Beavers, ran a random license plate check on a white Volkswagen Jetta they observed while on routine patrol. The check revealed that the plates were registered to a 1996 Ford hatchback. The officers initiated a traffic stop, during which Wolpert approached the driver's side of the vehicle, while Beavers approached the passenger side.

{¶ 3} According to Wolpert, as he neared the Jetta, he "could only assume [King] did not see me because she never looked my way. If she did, she never acknowledged me. Officer Beavers was talking to her, \* \* \* she was turning her head talking to him." Both the passenger and driver's side windows were down. Beavers asked King for her license and insurance, and as King began to go through her purse in her lap, Wolpert, who was "leaning in looking inside her purse," observed "a plastic baggy containing what [he] recognized to be crack cocaine." The crack cocaine "was sitting right on top in plain view \* \* \* ." According to Wolpert, he has "seen crack literally thousands of times" in the course of his career. The crack cocaine in King's purse was about "the size of a half dollar."

{¶ 4} Wolpert asked King to hand him her purse, which she did. He then put King in the back of his cruiser and field tested the substance in the baggie which tested positive for "[s]ome form of cocaine." Wolpert informed King that she was under arrest for felony drug possession, and she replied, "my husband smokes crack cocaine." Wolpert testified

that neither he nor Beavers questioned King about the drugs after her statement.

{¶ 5} On cross-examination, after reviewing his police report, Wolpert indicated that King's entire statement to him was, "'Damn, it's my husband's. Damn, my husband smokes crack. \* \* \* I didn't even know it was in my purse.'" Wolpert indicated that there was nothing suspicious about the Jetta that caused the officers to run the random plate check, and that they perform "hundreds" of such checks each day, "thousands" in a week. Wolpert testified that he issued a citation to King because her plates were on the wrong vehicle.

{¶ 6} King also testified at the suppression hearing. According to King, she did not see Wolpert while she was speaking with Beavers. She stated that her purse was on the floor of the passenger side when Beavers asked for her license, and she retrieved it, putting it on her lap. She then began to look for her license. King stated her purse is "usually always left open because it was always so full of stuff, so, it was wide open." King stated that she heard Wolpert ask her, "what's that baggy in your purse," to which she replied, "what baggy?" According to King, she did not see the baggie. King testified that after she handed her purse to Wolpert, she heard him say, "'Jackpot.'" Wolpert later denied making the remark. King stated that her purse had been in her car all day, and that she had not gotten into it at all, but that her husband had been in her car earlier that day.

{¶ 7} While she was in the back of the officers' cruiser, King testified, "they were asking me questions about the car, how much did I pay for it, when did I get it and I told them how much I paid for it." King also indicated that she told the officers that she had just bought the car.

{¶ 8} In overruling her motion to suppress, the trial court found "by a

preponderance of the evidence, \* \* \* that Officer Wolpert was more credible than the defendant.” It was important to the court that the witnesses’ testimony was consistent in that they both testified that King’s purse was wide open on her lap, and that Wolpert was standing behind her to her left. Wolpert and King both testified that Wolpert was looking into King’s purse. The trial court found King’s testimony “telling” that, as she looked through her purse, Wolpert asked her about the baggie. According to the trial court, “either Officer Wolpert was incredibly lucky in guessing that there would be a bag in the purse once he retrieved the bag and looked into the bag or he actually saw in the purse before he retrieved the bag. \* \* \* So the court finds on this central issue, by a preponderance of the evidence, that Officer Wolpert truthfully testified that he saw the bag in the purse before the bag was retrieved by the officer.”

{¶ 9} The court further determined that it “was convinced by a preponderance of the evidence this was \* \* \* a random check,” and that King was not targeted in any way by the officers. The court noted, after Wolpert told King that she was under arrest, King volunteered, “not in response to questions,” that her husband smokes crack.

{¶ 10} The court concluded that Wolpert had a reasonable, articulable suspicion “that the plates on the defendant’s Volkswagen Jetta did not belong to the Volkswagen and he, therefore, suspected they might have been illegally attached to that vehicle.

{¶ 11} “This then warranted the stop \* \* \* and brief detention, not to arrest the defendant, but to conduct a brief investigation which may or may not have led to some sort of arrest based upon the license plate not matching the VW.

{¶ 12} “And the fact that there was a possible innocent explanation for those plates,

in other words, the plates could have been transferred from an old car owned by the defendant to the new car owned by the defendant within 30 days, that's a possible innocent explanation which could be determined in the course of the brief investigative detention.

{¶ 13} “But that innocent explanation does not eliminate the fact that the officers had reasonable, articulable suspicion that there might have been a criminal explanation for the presence of that plate on the VW.”

{¶ 14} The trial court determined that Wolpert “did not violate the Fourth Amendment in arriving at the place from which he observed the purse. Stop of the vehicle was lawful. He’s standing outside the car and he’s looking in through the car.” The trial court noted that Wolpert recognized the object in King’s purse, based upon his experience, to be crack cocaine, and under “the automobile exception to the search warrant requirement, he would have the right to lawfully and without warrant retrieve that since it was within the automobile.”

{¶ 15} Finally, the trial court concluded that King’s statement about the cocaine was a “volunteered statement,” and not in response to any questions. “She was simply being told she was under arrest for the possession of crack cocaine.”

{¶ 16} King asserts one assignment of error as follows:

{¶ 17} “THE TRIAL COURT ERRED IN OVERRULING APPELLANT’S MOTION TO SUPPRESS ON THE GROUNDS THAT THERE MIGHT HAVE BEEN A CRIMINAL EXPLANATION FOR DRIVING WITH LICENSE PLATES NOT REGISTERED TO THE MOTOR VEHICLE.”

{¶ 18} “Appellate courts give great deference to the factual findings of the trier of

facts. (Internal citations omitted). At a suppression hearing, the trial court serves as the trier of fact, and must judge the credibility of witnesses and the weight of the evidence. (Internal citations omitted). The trial court is in the best position to resolve questions of fact and evaluate witness credibility. (Internal citations omitted). In reviewing a trial court's decision on a motion to suppress, an appellate court accepts the trial court's factual findings, relies on the trial court's ability to assess the credibility of witnesses, and independently determines whether the trial court applied the proper legal standard to the facts as found. (Internal citations omitted). An appellate court is bound to accept the trial court's factual findings as long as they are supported by competent, credible evidence. (Internal citations omitted).” *State v. Purser*, Greene App. No. 2006 CA 14, 2007-Ohio-192, ¶ 11.

{¶ 19} “The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution guarantee the right to be free from unreasonable searches and seizures. *State v. Orr* (2001), 91 Ohio St.3d 389, 391 \* \* \* \*. The United States Supreme Court has stated that a traffic stop is constitutionally valid if an officer has a reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime. *Delaware v. Prouse* (1979), 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed. 660; *Berkemer v. McCarthy* (1984) 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317, quoting *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 881, 95 S.Ct. 2574, 45 L.Ed.2d 607. Further, ‘[t]he propriety of an investigative stop by a police officer must be viewed in light of the totality of the surrounding circumstances.’ *State v. Freeman* (1980), 64 Ohio St.2d 291, 18 O.O.3d 472 \* \* \* at paragraph one of the syllabus.

{¶ 20} “Therefore, if an officer’s decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid.

{¶ 21} \* \*

{¶ 22} “The Fourth Amendment imposes a reasonableness standard upon the exercise of discretion by government officials. [*Delaware v. Prouse*, 653-654]. “Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.” *Id.* at 654 \* \* \* . To justify a particular intrusion, the officer must demonstrate “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio* (1968), 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed. 889.’ “The “reasonable and articulable suspicion” analysis is based on the *collection* of factors, not on the individual factors themselves.’ (Emphasis sic.) *Id.* at ¶ 19.

{¶ 23} “As the United States Supreme Court elaborated in *Berkemer v. McCarthy*, a police officer who lacks probable cause but whose observations lead him to reasonably suspect that a particular person’s behavior is criminal may detain the person briefly to investigate the circumstances that provoked the suspicion. 468 U.S. at 439, 104 S.Ct. 3138, 82 L.Ed.2d 317.

{¶ 24} “[T]he stop and inquiry must be “reasonably related in scope to the justification for their initiation.” [*Brignoni-Ponce*, 422 U.S. at 881, 95 S.Ct. 2574, 45 L.Ed.2d 607] (quoting *Terry v. Ohio*, *supra*, 392 U.S. [at 29, 88 S.Ct. 1868, 20 L.Ed.2d 889])). Typically, this means that the officer may ask the detainee a

moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released." *Berkemer*, 468 U.S. at 439-440, 104 S.Ct. 3138, 82 L.Ed.2d 317. The opposite is also true: if the detainee's answers provide the officer with probable cause to arrest him, then it is proper for the detainee to be arrested." *State v. Mays* (2008), 119 Ohio St.3d 406, 2008-Ohio-4539, ¶ 7-8, 12-14.

{¶ 25} "The Plain View Doctrine is a well-established exception to the warrant requirement. Evidence in plain view is subject to seizure when the intrusion affording the plain view is lawful (or the officer is lawfully in place) and the incriminating nature is immediately apparent. (Internal citations omitted). 'Immediately apparent' means the police have probable cause to associate an object with criminal activity. An officer may rely on training and experience in recognizing evidence of a crime." *State v. Buckner*, Montgomery App. No. 21892, 2007-Ohio-43392.

{¶ 26} King relies in part upon R.C. 4549.08 (A) and R.C. 4503.12(A). R.C. 4549.08(A) provides, "No person shall operate or drive a vehicle upon the public roads and highways in this state if it displays a license plate \* \* \* that meets any of the following criteria: \* \* \* (3) Belongs to another motor vehicle, provided that this section does not apply to a motor vehicle that is operated on the public roads and highways in this state when the motor vehicle displays license plates that originally were issued for a motor vehicle that previously was owned by the same person \* \* \*



during the thirty-day period described in division (A)(4) of section 4503.12 of the Revised Code.”

{¶ 27} R.C. 4503.12(A) further provides: “Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle expires and the original owner immediately shall remove the license plates from the motor vehicle, except that: \* \*

\* (4) If the original owner of a motor vehicle that has been transferred makes application for the registration of another motor vehicle at any time during the remainder of the registration period for which the transferred motor vehicle was registered, the owner may file an application for transfer of the registration and, where applicable, the license plates. The transfer of the registration and, where applicable, the license plates from the motor vehicle for which they were originally issued to a succeeding motor vehicle purchased by the same person in whose name the original registration and license plates were issued shall be done within a period not to exceed 30 days. During that thirty-day period, the license plates from the motor vehicle for which they were originally issued may be displayed on the succeeding motor vehicle, and the succeeding motor vehicle may be operated on the public roads and highways in this state.”

{¶ 28} King argues that the fact that she had license plates on her car that were registered to another vehicle is “neutral or ambiguous conduct, because the law specifically allows the display of such plates and the operation of the vehicle. R.C. 4503.12(A), 4549.08(A)(3).” The State responds, “[r]egardless of whether or not a traffic violation did, in fact, occur, Officer Wolpert possessed a reasonable and objective suspicion that a traffic violation may have occurred, which justified the

brief investigatory detention.”

{¶ 29} Having reviewed the record, and deferring to the trial court’s assessment of witness credibility, we agree with the State that Wolpert and Beavers had a reasonable, articulable suspicion justifying their stop of King, since the license plates on her car were registered to another vehicle. We note that both parties direct our attention to *State v. Chatton* (1984), 11 Ohio St.3d 59. After observing Chatton’s vehicle on the roadway without a front and a rear license plate, an officer on patrol initiated a traffic stop. The officer approached Chatton’s vehicle on foot, and upon reaching the vehicle, the officer observed a cardboard temporary license tag lying on the rear deck of the vehicle below the rear window. The officer continued to proceed to the driver’s side of the vehicle, and he asked Chatton for his license, based upon the officer’s experience that temporary tags often conceal the identity of stolen vehicles. A computer check of the driver’s license revealed that Chatton’s license had been suspended. Chatton denied the suspension, and the officer again ran the computer check, obtaining the same result. Chatton was placed under arrest, patted down and handcuffed. The subsequent search of his vehicle produced a firearm and, although Chatton’s license was in fact erroneously listed as suspended, he was indicted for carrying a concealed weapon. *Id.*

{¶ 30} The trial court overruled Chatton’s motion to suppress, and he pled no contest. Chatton was sentenced to a term of one to ten years, suspended. The court of appeals reversed Chatton’s conviction, determining that the trial court erred in overruling his motion to suppress, since any reasonable suspicion that appellee

was violating the law was extinguished upon the officer's observance of the temporary tag. In affirming the court of appeals, the Supreme Court of Ohio determined, "[i]f we were to uphold the detention of appellee to check the validity of his driver's license upon the generalized statement that temporary tags are sometimes used in criminal activity, we would be sanctioning, in effect, the detention of the driver of any vehicle bearing temporary tags." *Id.*, at 62.

{¶ 31} Unlike in *Chatton*, the officers herein were justified in their detention of King. Her plates were registered to another vehicle, and under the circumstances, as the trial court determined, Wolpert was justified in determining whether an innocent explanation existed or if criminal activity was occurring. See *State v. Cromes*, Shelby App. No. 17-06-07, 2006-Ohio-6924, ¶ 30 (holding officer was justified in initiating traffic stop where computer check revealed that license plates on vehicle were registered to a different vehicle.) Also, unlike in *Chatton*, where the investigation extinguished reasonable suspicion of criminal activity, in the course of Wolpert's investigation, he discovered contraband, in plain view and subject to seizure, visible in King's purse.

{¶ 32} We finally note, in the course of the suppression hearing, King asserted that the traffic violation for which she was cited was dismissed, since the tags on her vehicle were within the exception provided in R.C. 4503.12(A)(4), and that Wolpert accordingly lacked a reasonable articulable suspicion in the first instance to detain her. As the trial court correctly determined, "the strict focus of the [suppression] hearing is not what happened after the fact but what happened, what was within the knowledge of the officer at the time of the stop." See *Dayton*

v. *Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, at 6 (the issue of whether an investigatory traffic stop is reasonable requires an “objective assessment of a police officer’s actions in light of the facts and circumstances then known to the officer.”)

{¶ 33} There being no merit to King’s assignment of error, it is overruled, and the judgment of the trial court is affirmed.

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FROELICH, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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