

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

ADRIAN TYO

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. CT2015-02

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas Court, Case No.
CR2014-0266

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 19, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Adrian Tyo appeals the October 21, 2014 Judgment Entry entered by the Muskingum County Court of Common Pleas denying his motion to suppress. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 25, 2014, Detective Matt Wilhite of the Muskingum County Sheriff's Office received a call from a confidential informant regarding a large amount of crystal methamphetamine being transported in a gray Ford Taurus, with temporary tags registered in the name of Keith Stires. The caller informed Detective Wilhite the car would leave a residence located in a trailer court off of Maysville Pike and head towards 857 Garden Road in Zanesville, Ohio. The confidential information was deemed to be reliable because of past information provided.

{¶3} The officer's identified the vehicle along Maysville Pike, and initiated a stop after observing the vehicle fail to stop at an intersection. A narcotics canine already at the scene alerted to the vehicle approximately five minutes later and the officer's searched the vehicle. After the search, a glass pipe and a baggie with methamphetamine was located on Appellant's person along with 58.6 grams of methamphetamine found in a quart zip lock bag inside of a Duke and Duchess cup. Appellant was holding the cup when he exited the vehicle, and both co-defendants stated the cup belonged to Appellant.

{¶4} As a result, Appellant was charged with one count of aggravated possession of methamphetamine.

{¶15} Appellant filed a motion to suppress the evidence. On October 20, 2014, the trial court conducted a hearing on the motion to suppress. Via Judgment Entry of October 21, 2014, the trial court denied the motion to suppress.

{¶16} Following a jury trial, Appellant was convicted of aggravated possession of methamphetamine.

{¶17} Appellant appeals, assigning as error:

{¶18} "I. THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE GATHERED IN VIOLATION OF HIS RIGHTS GUARANTEED BY THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES MADE APPLICABLE TO THE STATES BY THE FOURTEENTH AMENDMENT AND IN VIOLATION OF ARTICLE ONE, SECTION FOURTEEN OF THE OHIO CONSTITUTION."

I.

{¶19} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the findings of fact are against the manifest weight of the evidence. See: *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726.

{¶10} Secondly, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. See: *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶11} Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry (1994)*, 95 Ohio App.3d 93, 96, 641 N.E.2d 1172; *State v. Claytor (1993)*, 85 Ohio App.3d 623, 627, 620 N.E.2d 906; and *State v. Guysinger (1993)*, 86 Ohio App.3d 592, 621 N.E.2d 726. As the United States Supreme Court held in *Ornelas v. U.S. (1996)*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶12} Appellant argues when a police officer's objective justification to continue detention of a person stopped for a traffic violation for the purpose of searching the person's vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure. *State v. Robinette*, 80 Ohio St.3d 234, 685 N.E.2d 762 (1997).

{¶13} Here, Appellant does not challenge the stop; rather, Appellant argues the delay following the stop was unreasonable and in violation of the Fourth Amendment and Ohio Constitution.

{¶14} In *Robinette*, the Ohio Supreme Court held,

We will first determine whether Robinette's stop and continued detention were justified. It is undisputed that Officer Newsome's act of stopping Robinette was justified because Robinette was speeding. We also find that Newsome's instruction for Robinette to exit the vehicle was also justified because it was a traffic stop. *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 111, 98 S.Ct. 330, 333, 54 L.Ed.2d 331, 337, fn. 6. Once Newsome administered the warning for speeding to Robinette, the reason for the stop ended.

* * *

We note here that, pursuant to *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89, the officers' subjective motivation for continuing the detention is irrelevant. *Whren*, decided after our decision in *Robinette I*, held that as long as the circumstances objectively justify the continued stop, the Fourth Amendment is not offended. We therefore modify paragraph one of the syllabus in *Robinette I* to read as follows:

“When a police officer's objective *justification* to continue detention of a person stopped for a traffic violation for the purpose of searching the person's vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure.”

{¶15} At the October 20, 2014 Suppression Hearing, Detective Wilhite testified,

Q. What were you able to observe?

A. I seen [sic] the suspect vehicle approach the intersection, slow down. It did not come to a complete stop, and then made a right-hand turn onto Brandywine Boulevard. The vehicle was still moving before it turned.

Q. And at that point in time, was the decision made to conduct a traffic stop?

A. Yes, sir.

Q. And who conducted that traffic stop?

A. Patrolman Cody Love.

Q. Okay. With the stop taking place, do you know approximately how long it was before you had arrived at that same vehicle to that same -
- to the scene?

A. I was there pretty much the entire time. I didn't get out of the vehicle, but I pulled in to - - I went by the traffic stop, turned around, and then pulled into the - - I believe it's Chase Bank that's directly next to it, observed what was going on at that point.

Q. And do you have any idea how long it was before - - from the time that the traffic stop occurred until Detective Patenaude had his K-9 do a run around the vehicle?

A. A few minutes. Probably less than five.

Q. At some point, did you become actively involved in that stop - -

A. Yes, sir.

Q. - - or in that investigation? And when was that?

A. After Detective Patenaude had deployed his K-9 Connor and had advised that Connor had alerted to the presence of the odor of narcotics coming from the vehicle.

Q. And what did you do then?

A. It was at the point I approached the driver's side of the vehicle and asked the driver Keith Stires, to exit from the vehicle, asked for permission to search his pockets, and things of that nature, for weapons or any illegal narcotics.

Stires advised that I could search. The only thing located on Stires was a small penknife. Stires was then asked to step to the rear of the vehicle.

I then went around the other side of the vehicle to the passenger front where Mr. Tyo was seated. I asked Mr. Tyo to exit the vehicle. Mr. Tyo at this time was holding a large, I believe, 44 ounce soda cup that you would get from a convenient store, a fountain drink cup. I believe he took a drink from it before he got out of the vehicle, set it on top of the car.

I asked him if he - - asked him for permission to search his pockets. He declined permission. I then advised him that I was going to check for weapons, asked him if he had any weapons on him. He advised that he had a knife in his pocket.

At that time I began to feel the outer part of his pockets, not reaching into the pocket when I felt a large hard object in his right front pocket. It was at that point I went to remove that. It was identified as a glass methamphetamine pipe or drug pipe. When I pulled that pipe out of the pocket, a small Ziploc baggie of what has been identified as crystal methamphetamine came out of the pocket with the pipe. Also, in that pocket was a knife, I would say approximately 5 to 6 inches long folded in.

"Q. So the knife that you were able to locate that he indicated was on him was in the same pocket as the - -

A. Yes.

Q. - - the pipe and the contraband?

A. Yes, sir.

Q. After making that discovery, what did you do next?

A. I immediately placed Mr. Tyo in handcuffs and had him placed in the rear of Patrolman love's cruiser.

Tr. at 14-17.

{¶16} Here, a reliable confidential informant had informed the officers a large amount of crystal methamphetamine would be traveling in a gray Ford Taurus with temporary tags registered to a Keith Stires, and travelling from a trailer park residence along Maysville Pike. The officers identified the car, observed a traffic violation, and initiated a stop. A reasonable time of five minutes elapsed prior to a narcotics canine at the scene alerting to the vehicle. The officer conducted a weapons search of Appellant

finding a pocket knife, a pipe and a bag containing methamphetamine. A cup containing methamphetamine was also identified as belonging to Appellant.

{¶17} We find no constitutional violation occurred under these facts. The trial court did not err in denying the motion to suppress herein.

{¶18} Appellant's sole assignment of error is overruled.

{¶19} The judgment of the Muskingum County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur