

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

MERWAN M. JABER

Defendant-Appellant

: JUDGES:

:

: Hon. Sheila G. Farmer, P.J.

: Hon. W. Scott Gwin, J.

: Hon. Patricia A. Delaney, J.

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: Case No. 2015 AP 06 0028

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O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the New Philadelphia
Municipal Court, Case Nos. CRB
1401321, TRD 1407502

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

April 8, 2016

APPEARANCES:

For Plaintiff-Appellee:

TARA WRIGHT-TIMBERLAKE
Assistant Prosecutor
City of New Philadelphia
150 East High Ave.
New Philadelphia, OH 44663

For Defendant-Appellant:

MERWAN MARK JABER, Pro se
2441 Eastwood Ave.
Akron, OH 44305

Delaney, J.

{¶1} Defendant-Appellant Merwan M. Jaber appeals the March 6, 2015 judgment entry of the New Philadelphia Municipal Court to deny his motion to suppress. Plaintiff-Appellee is the State of Ohio. The State did not file an Appellee's brief.

FACTS AND PROCEDURAL HISTORY

{¶2} On November 23, 2014, Defendant-Appellant Merwan M. Jaber was cited for a violation of the City of New Philadelphia Ord. 335.10(d) for expired license plates and a violation of City of New Philadelphia Ord. 513.03(a)(c)(2) for possession of marijuana. Jaber filed a motion to suppress all the evidence based on the warrantless seizure of his person. The trial court held a hearing on the motion to suppress on November 27, 2015. The following evidence was adduced at the hearing.

{¶3} On November 23, 2014, Officer James Miller with the City of New Philadelphia Police Department was driving his marked cruiser westbound on West High Avenue in New Philadelphia, Ohio. He observed a car driving with an expired sticker on the back of the plate. (T. 9). Officer Miller ran the license plate of the vehicle through the LEADS system and the system indicated the license plate was expired. (T. 9). Officer Miller initiated a traffic stop on the vehicle based on the expired license plate. (T. 9). The officer could not recall the time he initiated the traffic stop, but he testified it was dark outside. (T. 10).

{¶4} Jaber was the driver of the vehicle with the expired plates. Jaber pulled his vehicle into the parking lot of a Speedway gas station. (T. 10). As Officer Miller was approaching Jaber's car, he observed Jaber attempting to conceal something or put something between his legs. (T. 10). The officer testified he could see Jaber's hands

motioning down toward his legs and his arms were moving. It looked like Jaber was fidgeting around down between his legs. (T. 10-11). Officer Miller stated that usually when people were pulled over, they sit still because they are nervous or they put their hands on the steering wheel. (T. 10).

{¶5} As Officer Miller approached closer to the vehicle, he advised Jaber that he needed to put his hands on the steering wheel. (T. 11). Jaber put his hands on the steering wheel but then he took his right hand off and moved his hand down by his right knee. (T. 11). It appeared to Officer Miller that Jaber was dropping something or putting something down, so Officer Miller again advised Jaber to put his hands on the steering wheel. (T. 11).

{¶6} The trial court admitted State's Exhibit A, which was a video recording of Officer Miller's chest cam on November 23, 2014. At 17:11:27, Officer Miller is standing at the door of Jaber's vehicle. Officer Miller shined his flashlight on the lap area of Jaber's pants and on Jaber's sweater. (T. 11). The officer testified he observed a green vegetable matter smashed all over the front of Jaber's sweater, the lap area of his pants, and on the seat of the car. (T. 11). Officer Miller believed the green vegetable matter to be marijuana. (T. 13). He also called for backup after he observed the marijuana and because he believed Jaber was attempting to destroy the evidence. (T. 11-12).

{¶7} Once the backup unit arrived, Officer Miller removed Jaber from his car. (T. 12). The chest cam video records this time at 17:13:21. Officer Miller used his chest cam to record where he observed marijuana on Jaber's body. (T. 12). The chest cam recording shows 17:14:04. In the chest cam recording, a green vegetable matter is seen on the back of Jaber's pants. Officer Miller then removed the marijuana from Jaber's body and

put it in a baggie. (T. 12). The chest cam video shows this being done at 17:18:47. Jaber was placed into custody and detained in Officer Miller's cruiser at 17:19:49. (T. 13). Officer Miller looked in the vehicle and smelled burnt marijuana. (T. 13). He also observed a rolling paper with marijuana on it where Officer Miller had observed Jaber putting his right hand down by his right knee. (T. 13). Officer Miller then gave Jaber a citation for the expired plate and a summons for the possession of marijuana. The citation reflects it was written at 17:44. He gave Jaber a warning for the rolling papers he observed in the vehicle. (T. 13). Jaber was then released.

{¶8} Officer Miller could not recall his exact conversation with Jaber on November 23, 2014. (T. 14). Officer Miller recalled that Jaber might have said to him that he did not know what the substance was or that it was a spice, like oregano. (T. 14).

{¶9} Officer Miller believed that when he initiated a traffic stop, Jaber was in the midst of smoking marijuana and he tried to destroy it by smashing it all over the place. He tried to discard the rest down by his leg when Officer Miller walked up to the car. (T. 13).

{¶10} At the conclusion of the hearing, the trial court overruled the motion to suppress. (T. 37-38). The trial court journalized its decision on March 6, 2015.

{¶11} The trial court held a bench trial on May 5, 2015. At the trial, the State presented evidence that the green vegetable matter collected by Officer Miller tested positive for marijuana. The trial court found Jaber guilty for possession of marijuana and for expired plates. The trial court imposed a \$150.00 fine on the possession charge, \$25.00 in court costs for the expired plates, and a six-month license suspension.

{¶12} Jaber now appeals the March 6, 2015 judgment entry denying his motion to suppress.

ASSIGNMENT OF ERROR

{¶13} Jaber raises one Assignment of Error:

{¶14} “THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION IN FAILING TO SUPPRESS EVIDENCE OBTAINED DURING A PROLONGED STOP AND WARRANTLESS SEIZURE OF HIS PERSON.”

ANALYSIS

{¶15} Jaber does not challenge his stop by Officer Miller for driving with an expired license plate. Jaber argues his continued detention, removal from his vehicle, and the search of his vehicle were unlawful. Jaber contends in his sole Assignment of Error that the trial court erred when it denied his motion to suppress. We disagree.

Standard of Review

{¶16} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶17} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See, *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See, *Williams, supra*. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a 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*, 95 Ohio App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

Prolonged Traffic Stop

{¶18} Jaber contends in his brief that Officer Williams unconstitutionally prolonged the traffic stop, which led to the discovery of the marijuana on his person.

{¶19} “ [W]hen detaining a motorist for a traffic violation, an officer may delay a motorist for a time period sufficient to issue a ticket or a warning.” “ *State v. Batchili*, 113 Ohio St.3d 403, 2007–Ohio–2204, 865 N.E.2d 1282, ¶ 12, quoting *State v. Keathley*, 55 Ohio App.3d 130, 131, 562 N.E.2d 932 (2nd Dist.1988). “This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates.” *Id.*, citing *State v. Bolden*, 12th Dist. Preble No. CA2003–03–007, 2004–Ohio–184, ¶ 17, citing *Delaware v. Prouse*, 440 U.S. 648, 659, 99 S.Ct. 1391, 59 L.Ed.2d

660 (1979). Further, “ ‘[i]n determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation.’ ” *Id.*, quoting *State v. Carlson*, 102 Ohio App.3d 585, 598–599, 657 N.E.2d 591(9th Dist. Medina 1995), citing *State v. Cook*, 65 Ohio St.3d 516, 521–522, 605 N.E.2d 70(1992), and *United States v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605(1985). See also *State v. Whitman*, 184 Ohio App.3d 740, 2009–Ohio–5647, 922 N.E.2d 293 (5th Dist.); *State v. Woodson*, 5th Dist. Stark No. 2007–CA–00151, 2008–Ohio–670, ¶ 21.

{¶20} However, “[a]n officer may not expand the investigative scope of the detention beyond that which is reasonably necessary to effectuate the purposes of the initial stop unless any new or expanded investigation is supported by a reasonable, articulable suspicion that some further criminal activity is afoot.” *Whitman, supra* at ¶ 12; *Woodson, supra* at ¶ 22, citing *State v. Retherford*, 93 Ohio App.3d 586, 600, 639 N.E.2d 498 (2nd Dist. 1994), citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–882, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). “In determining whether a detention is reasonable, the court must look at the totality of the circumstances.” *State v. Matteucci*, 11th Dist. Lake No. 2001–L–205, 2003–Ohio–702, ¶ 30, citing *State v. Bobo*, 37 Ohio St.3d 177, 178, 524 N.E.2d 489 (1988). See also *Woodson*, 2008–Ohio–670, ¶ 22.

{¶21} We first find there was a legal basis for the stop. Officer Williams initiated the traffic stop because he observed the tag on Jaber’s license plate was expired. The next inquiry is whether there was an illegally prolonged detention given the officer’s observations. *State v. Fensler*, 5th Dist. No. 2015 AP 04 0018, 2015-Ohio-4597, -- N.E.3d

--, ¶ 13 citing *Batchili, supra* at ¶ 8. As Officer Miller was approaching Jaber's car, he observed Jaber attempting to conceal something or put something between his legs. (T. 10). The officer testified he could see Jaber's hands motioning down toward his legs and his arms were moving. It looked like Jaber was fidgeting around down between his legs. (T. 10-11). Officer Miller stated that usually when people were pulled over, they sit still because they are nervous or they put their hands on the steering wheel. (T. 10). Officer Miller advised Jaber to put his hands on the steering wheel. Jaber put his hands on the steering wheel, but then he removed his right hand and lowered it towards his right knee as if he was dropping something or putting something down. Officer Miller again advised Jaber to put his hands on the steering wheel. (T. 11).

{¶22} Officer Miller's chest cam recording was admitted as evidence. The chest cam recording begins at 17:11:27 when Officer Miller was at the vehicle. The officer shined his flashlight on the lap area of Jaber's pants and on Jaber's sweater. (T. 11). The officer testified he observed a green vegetable matter smashed all over the front of Jaber's sweater, the lap area of his pants, and on the seat of the car. (T. 11). Officer Miller believed the green vegetable matter to be marijuana. (T. 13). He also called for backup after he observed the marijuana and because he believed Jaber was attempting to destroy the evidence. (T. 11-12).

{¶23} At 17:13:21, Officer Miller asked Jaber to step out of the car. Officer Miller recorded the green vegetable matter on Jaber's clothing at 17:14:04. Jaber was placed in the police cruiser at 17:19:49. The citation reflects it was written at 17:44.

{¶24} The evidence in the record supports Officer Miller's expanded investigation beyond the purpose of his initial stop for an expired license plate. When Officer Miller

approached Jaber's vehicle, he testified he had a reasonable, articulable suspicion that further criminal activity was afoot based on Jaber's hand movements while seated in the vehicle. Officer Miller asked Jaber to keep his hands on the steering wheel, but Jaber moved his right hand off the steering wheel requiring Officer Miller to advise him again to keep his hands on the steering wheel. When Officer Miller looked into Jaber's car to speak with him, the officer observed green vegetable matter in plain view on Jaber's sweater, lap area, and seat. Officer Miller recognized the green vegetable matter as marijuana.

{¶25} Looking at the totality of the circumstances, we find Officer Miller's detention of Jaber beyond the investigation for an expired license plate was supported by a reasonable and articulable suspicion that Jaber was engaged in further criminal activity.

{¶26} Jaber's sole Assignment of Error is overruled.

CONCLUSION

{¶27} The judgment of the New Philadelphia Municipal Court is affirmed.

By: Delaney, J.,

Farmer, P.J. and

Gwin, J., concur.