[Cite as *State v. Ash*, 2016-Ohio-4619.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Patricia A. Delaney, J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	
-vs-	:	
	:	Case No. 16-CA-3
RYAN ASH	:	
	:	
Defendant-Appellant	:	OPINION

CHARACTER OF PROCEEDING:	Criminal appeal from the Licking County Municipal Court, Case No. 15-CRB-459
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 17, 2016

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
AMY S. DAVISON 40 West Main Street Newark, OH 43055	ALFRED ENGLISH 1549 Wood Iris Way Lawrenceville, GA 30045

Gwin, P.J.

{¶1} Appellant Ryan Ash ["Ash"] appeals the August 17, 2015 Judgment Entry of the Licking County Municipal Court overruling his motion to suppress.

Facts and Procedural History

{¶2} On March 18, 2015, Detective Doug Bline and Officer Jarrod Conley, of the Newark Police Department initiated an investigation of 404 Woods Ave., Newark, Ohio based on complaints concerning the constant short-term traffic at the residence and receiving numerous complaints of suspected drug activity at the location. (T. at 6-7).

{¶3} Per a plan, Detective Bline was observing the house from an unmarked vehicle parked across the street from 404 Woods Ave., Newark, Ohio, while Officer Conley was parked several blocks away in a marked City of Newark patrol car awaiting instructions from Detective Bline, (T. at 8; 9-10). Detective Bline and Officer Conley were in communication via radio. (Id.).

{¶4} Detective Bline observed Ash pull up to 404 Woods Ave. and enter the premises, where he remained for several minutes. Detective Bline observed Ash leave 404 Woods Ave. and proceed south on Shields Ave. (T. at 7-8).

{¶5} Detective Bline proceeded to follow Ash south on Shields Ave. Detective Bline continued following Ash until Ash came to the intersection of Shields Ave. and Granville Street, at this point Detective Bline testified that Ash, although he signaled his pending right turn, failed to properly signal within 100 feet of the turn. (T. at 8; 16-17).

{¶6} Detective Bline radioed Officer Conley and informed him of the traffic violation. Detective Bline followed Ash onto Granville Street where Detective Bline

testified that Ash failed to properly signal within 100 feet of the turn. (T. at 7-8; 10; 16-17).

{¶7} Detective Bline radioed Officer Conley of the second alleged traffic violation. Based on the observations of Detective Bline, Officer Conley stopped Ash. (T. at 22 -23).

{¶8} Officer Conley approached the passenger side of the vehicle and within seconds claimed that he smelled marijuana, but did not inform Ash why he was stopped by the officer. (T. at 26; 30). The video recording of the traffic stop was played for the court. (T. at 29; 30).

{¶9} A review of the video recording of the stop discloses Officer Conley continued speaking with Ash, requested and received Ash's identification. After repeated request from Ash, Officer Conley informs Ash of the grounds for the traffic stop and why he is requesting Ash to exit the vehicle.

{¶10} After Ash exited the vehicle, he was handcuffed. Ash and his vehicle were searched. During the search of Ash, marijuana was discovered in his pants pocket. During the search of the vehicle, marijuana was discovered in the console.

{¶11} On December 17, 2015, Ash was convicted after a jury trial of Drug Abuse (Newark City Code 624.03(a)) Resisting Arrest (R.C. 2921.33 (c)) and Obstructing Justice (R.C. 2921.32 (A)(6)).

Assignment of Error

{¶12} Ash raises one assignment of error,

{¶13} "I. THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANT'S MOTION TO SUPPRESS EVIDENCE FOUND DURING THE SEARCH OF THE APPELLANT'S VEHICLE AND PERSON."

Law and Analysis

{¶14} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154-155, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate witness credibility. See *State v. Dunlap*, 73 Ohio St.3d 308,314, 1995-Ohio-243, 652 N.E.2d 988; *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists to support those findings. See *Burnside,* supra; *Dunlap,* supra; *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1(4th Dist. 1998); *State v. Medcalf*, 111 Ohio App.3d 142, 675 N.E.2d 1268 (4th Dist. 1996). However, once this Court has accepted those facts as true, it must independently determine as a matter of law whether the trial court met the applicable legal standard. See *Burnside,* supra, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539(4th Dist. 1997); See, generally, *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740(2002); *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911(1996). That is, the application of the law to the trial court's findings of fact is subject to a *de novo* standard of review *Ornelas*, *supra*. Moreover, due weight should be given "to inferences drawn from those facts by resident judges and local law enforcement officers." *Ornelas*, supra at 698, 116 S.Ct. at 1663.

{¶15} In his assignment of error, Ash argues that because Detective BIine and Officer Conley had an obvious plan to conduct a traffic stop of anyone leaving 404 Woods Ave., Newark, Ohio, the subjective nature of the alleged traffic violations, and the behavior of Officer Conley during the traffic stop, there is a significant issue as to whether Officer

Conley possessed the requisite probable cause or reasonable suspicion that a traffic violation occurred. Consequently, the traffic stop was illegal, making any evidence discovered during the search of Ash and his vehicle inadmissible.

{¶16} An investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion that "the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621(1981). Reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301(1990). However, it requires something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889(1968). "[T]he Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570(2000).

{¶17} A police officer need not always have knowledge of the specific facts justifying a stop and may rely upon a dispatch. *Maumee v. Weisner*, 87 Ohio St.3d 295, 297, 720 N.E.2d 507(1999). This principle is rooted in the notion that effective law enforcement cannot be conducted unless officers can act on information transmitted by one officer to another, and that officers, who must often act quickly, cannot be expected to cross-examine their fellow officers about the foundation of the transmitted information. *Id.* The admissibility of evidence uncovered during a stop does not rest upon whether the officers relying upon a dispatch were themselves aware of the specific facts that led the colleagues to seek their assistance, but turns instead upon whether the officer who issued the dispatch possessed a reasonable suspicion to make a stop. *Maumee,* 87 Ohio St.3d

295, 297, 720 N.E.2d 507, citing *United States v. Hensley*, 469 U.S. 221, 231, 105 S.Ct. 675, 83 L.Ed.2d 604(1985). Thus, if the dispatch has been issued in the absence of a reasonable suspicion, then a stop in objective reliance upon it violates the Fourth Amendment. *Maumee,* 87 Ohio St.3d 295, 297, 720 N.E.2d 507. The state must therefore demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity. *Maumee*, 87 Ohio St.3d at 298, 720 N.E.2d 507.

{¶18} In this case, the dispatch was relayed from Detective Bline to Officer Conley. Officer Conley was entitled to rely upon the information given to him by a fellow officer. Ash takes exception with Detective Bline's testimony concerning the traffic violations he testified that he had observed and relayed to Officer Conley. Ash contends that Detective Bline had a subjective motive to pull over any vehicle leaving the premises where the drug activity had been reported to be occurring.

{¶19} The Ohio Supreme Court has emphasized that probable cause is not required to make a traffic stop; rather the standard is reasonable and articulable suspicion. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4358, 894 N.E.2d 1204, ¶ 23. Further, neither the United States Supreme Court nor the Ohio Supreme Court considered the severity of the offense as a factor in determining whether the law enforcement official had a reasonable, articulable suspicion to stop a motorist. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89(1996); *City of Dayton v. Erickson*, 76 Ohio St.3d 3, 665 N.E.2d 1091(1996).

{¶20} In *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, the defendant argued that his actions in the case – twice driving across the white edge

line – were not enough to constitute a violation of the driving within marked lanes statute, R.C. 4511.33. Id. at ¶ 15. The appellant further argued that the stop was unjustified because there was no reason to suspect that he had failed to first ascertain that leaving the lane could be done safely or that he had not stayed within his lane "as nearly as [was] practicable," within the meaning of R.C. 4511.33(A)(1). In rejecting these arguments, the Supreme Court noted, "the question of whether appellant might have a possible defense to a charge of violating R.C. 4511.33 is irrelevant in our analysis of whether an officer has a reasonable and articulable suspicion to initiate a traffic stop. An officer is not required to determine whether someone who has been observed committing a crime might have a legal defense to the charge." Id. at ¶ 17. The Supreme Court concluded that a law-enforcement officer who witnesses a motorist drift over lane markings in violation of a statute that requires a driver to drive a vehicle entirely within a single lane of traffic has reasonable and articulable suspicion sufficient to warrant a traffic stop, even without further evidence of erratic or unsafe driving.

{¶21} In *Devenpeck v. Alford*, the United States Supreme Court explained,

> Our cases make clear that an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause. See *Whren v. United States*, 517 U.S. 806, 812–813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (reviewing cases); *Arkansas v. Sullivan*, 532 U.S. 769, 121 S.Ct. 1876, 149 L.Ed.2d 994 (2001) (*per curiam*). That is to say, his subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause. As we have repeatedly explained, "'the fact that the officer does not have the state of mind which

> is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" *Whren, supra*, at 813, 116 S.Ct. 1769 (*quoting Scott v. United States*, 436 U.S. 128, 138, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978)). "[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, whatever the subjective intent." *Whren, supra*, at 814, 116 S.Ct. 1769. "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990).

125 U.S. 588, 593-594, 125 S.Ct. 588, 160 L.Ed.2d 537(2004).

{¶22} In *State v. Mills*, 62 Ohio St.3d 357, 582 N.E.2d 972(1992), the Ohio Supreme Court noted that the evaluation of evidence and the credibility of the witnesses are issues for the trier of fact in the hearing on the motion to suppress. Id. at 366, 582 N.E.2d at 981-982; *Accord, State v. Brinkley*, 105 Ohio St.3d 231, 2005-Ohio-1507, 824 N.E.2d 959, ¶58. In ruling on a motion to suppress, "the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8, *citing State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). On appeal, we "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside,* ¶8, *citing State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). Accepting those facts as true, we must then "independently

determine as a matter of law, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *State v. Burnside*, 100 Ohio St.3d 152, ¶8; *Accord, State v. Leak,* 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.2d 821, ¶12.

{¶23} The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 1997-Ohio-260, 674 N.E.2d 1159. Reviewing courts should accord deference to the trial court's decision because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846(1988).

{¶24} Ultimately, "the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact 'unless it is patently apparent that the fact finder lost its way.'" *State v. Pallai*, 7th Dist. Mahoning No. 07 MA 198, 2008-Ohio-6635, ¶31, *quoting State v. Woullard,* 158 Ohio App.3d 31, 2004-Ohio-3395, 813 N.E.2d 964 (2nd Dist. 2004), ¶ 81. In other words, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. Mahoning No. 99 CA 149, 2002-Ohio-1152, at ¶ 13, *citing State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist. 1999).

{¶25} In *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 81, 461 N.E.2d 1273 (1984), the Ohio Supreme Court explained, "[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the

witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." *See, also State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212(1967).

{¶26} We accept the trial court's conclusion that Ash's violations of the traffic laws gave Officer Conley reasonable suspicion to stop Ash's vehicle because the factual findings made by the trial court are supported by competent and credible evidence. Thus, the trial court did not err when it denied Ash's motion to suppress on the basis that the initial stop of his vehicle was valid. *State v. Busse*, 5th Dist. Licking No. 06 CA 65, 2006-Ohio-7047, ¶ 20.

{¶27} Ash's sole assignment of error is overruled.

{¶28} The judgment of the Licking County Municipal Court, Licking County, Ohio is affirmed.

By Gwin, P.J.,

Delaney, J., and

Baldwin, J., concur