

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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| STATE OF OHIO | : | JUDGES: |
| | : | Hon. Sheila G. Farmer, P.J. |
| | : | Hon. W. Scott Gwin, J. |
| Plaintiff-Appellee | : | Hon. Craig R. Baldwin, J. |
| | : | |
| -vs- | : | |
| | : | Case No. 16-CAA-0006 |
| JORDYN J. UTE | : | |
| | : | |
| Defendant-Appellant | : | <u>OPINION</u> |

CHARACTER OF PROCEEDING: Criminal appeal from the Delaware County
Court of Common Pleas, Case No.
15CRI070339

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: August 29, 2016

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Gwin, J.,

{¶1} Defendant-appellant Jordyn J. Ute [“Ute”] appeals the January 4, 2016 Judgment of the Delaware County Court of Common Pleas overruling her motion to suppress evidence. Plaintiff-appellee is the State of Ohio.

Facts and Procedural History

{¶2} On November 14, 2014, at approximately 11:32 AM, Trooper Ryan May and Sgt. Kurt Beidelschies of the Ohio State Highway Patrol were patrolling the area of U.S. Route 23 in Delaware County.

{¶3} The Ohio State Highway Patrol had been given an alert for a gray-colored sedan in the area. The Marion Police Department informed the officers that the vehicle was allegedly connected with a suspect involved in a shooting in the City of Marion.

{¶4} When Trooper May passed a gray Nissan Altima sedan driving in the same direction on the road, he noticed that the Altima slowed down to approximately 45 mph, which is 15 mph less than the posted speed limit of 60 mph. As he passed the Altima, Trooper May noticed the vehicle's right tires drove over the solid right side line on the road. Trooper May then initiated a traffic stop, and the Altima pulled over on the right side of the road.

{¶5} Trooper May approached the vehicle on the passenger side and made contact with all three occupants. The driver was identified as Ute. Seated behind Ute was Thaddeus J. Macon. Stephen D. Jackson was seated in the front passenger seat. Trooper May asked Ute for her driver's license. Trooper May then noticed that Mr. Jackson was behaving very nervously, not looking at the Trooper, and breathing heavily.

{¶6} Trooper May asked Ute to step out of the car. Ute was then advised of her *Miranda* rights. Trooper May had her walk back to his cruiser and explained to her why she had been stopped. Ute admitted at that point that she did not have a valid driver's license. Ute consented to Trooper May patting her down for weapons. Trooper May then placed Ute in his cruiser.

{¶7} Trooper May asked where Ute was coming and going from that day. Ute said she had driven from Marion to Columbus to purchase a cell phone. Ute also admitted that the Altima she was driving did not belong to her, instead stated it was a rental car that she had borrowed from a friend. Mr. Jackson was also patted down and placed in the cruiser with Ute.

{¶8} Based on Mr. Jackson's nervous behavior, Ute's lack of a driver's license, use of another's rental vehicle, and unusual explanation for their trip, Trooper May had a canine unit deployed around the vehicle. Trooper Wilson arrived with his dog within 9 minutes of the initial stop of the Altima. The canine gave a definite final response ("hit") by scratching at one of the doors. Based on the canine's alert, the troopers searched the Altima and found several pieces of loose marijuana on the floorboard and eight cases of "sleep aid" in the trunk in a cardboard box. Sergeant Beidelschies testified that, based on his training and experience, he is aware that "sleep aid" is commonly used as a cutting agent in the distribution of heroin. The officers attempted to contact the rental car company, since none of the occupants were on the rental agreement.

{¶9} The amount of marijuana discovered was of such a small amount that the officer did not cite Ute due to the policy not to collect samples of and cite for small,

residual amounts of marijuana. However, Ute and her two passengers were detained and transported to the Delaware Highway Patrol Post.

{¶10} After questioning by the officers, Ute admitted having contraband concealed in her vagina. In the presence of a female officer, Ute retrieved a hypodermic needle and a dollar bill containing a brown substance, which was later tested and found to be heroin.

{¶11} The traffic stop was recorded on the Ohio State Highway Patrol's cruiser camera system, and that DVD video was played during the suppression hearing and entered into evidence as State's Exhibit 1.

{¶12} On July 31, 2015, Ute was indicted for one count of possession of heroin in violation of 2925.11(A), a felony of the fifth degree. On October 20, 2015, Ute filed a motion to suppress. An evidentiary hearing on the motion was held on November 23, 2015. Following the hearing, the trial court overruled the motion to suppress.

{¶13} On January 4, 2016, Ute agreed to plead no contest to the charge. The trial court sentenced Ute to two years of community control sanctions.

Assignment of Error

{¶14} Ute raises one assignment of error:

{¶15} "I. THE TRIAL COURT ERRED IN DENYING DEFENDANT/APPELLANT'S MOTION TO SUPPRESS."

Law and Analysis

{¶16} 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.

{¶17} Ute does challenge the stop of the Altima; rather the question raised in Ute’s sole assignment of error is whether the lawful detention for the traffic infraction became an unlawful detention when the officers placed her in the police cruiser and transported her to the station for questioning.

{¶18} We must be mindful of the “ * * * elementary proposition of law that an appellant, in order to secure reversal of a judgment against him, must not only show some error but must also show that that error was prejudicial to him.” *Smith v. Flesher*, 12 Ohio St.2d 107, 111, 233 N.E.2d 137(1967); Accord, *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St.3d 169, 185, 2000-Ohio-128, 729 N.E.2d 726 *State v. Stanton*, 15 Ohio

St.2d 215, 217, 239 N.E.2d 92,94(1968); *Wachovia Mtg. Corp. v Aleshire*, 5th Dist. Licking No. 09 CA 4, 2009-Ohio-5097, ¶16. See, also, App.R. 12(D).

{¶19} In the case at bar, Ute admitted that she did not have a valid driver's license. (T. at 36; 47-48; 63; 64; 65). This occurred at the scene of the traffic stop. Ute was read her *Miranda* rights at that time. (T. 66). Accordingly, the trooper's had authority to arrest her and transport her to the station. There is no evidence in the record before this Court that Ute's admission to having contraband concealed on her person while at the station was involuntary. Ute was released to her father later that evening.

{¶20} Because the troopers had probable cause to arrest Ute, the detention was not unlawful.

{¶21} Ute's sole assignment of error is overruled.

{¶22} For the foregoing reasons, the judgment of the Court of Common Pleas of Delaware County, Ohio, is affirmed.