[Cite as *State v. Voyles*, 2010-Ohio-90.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio	Court of Appeals No. L-09-1175
Appellee	Trial Court No. TRC-08-33652
v.	
Daniel Voyles	**DECISION AND JUDGMENT**
Appellant	Decided: January 15, 2010

* * * * *

David Toska, Chief Prosecutor, and Michael J. Niedzielski, Assistant City Prosecutor, for appellee.

John H. Rion and Jon Paul Rion, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Daniel Voyles, appeals from a decision of the Toledo Municipal Court wherein appellant's motion to suppress was denied. For the reasons that follow, we affirm.

{¶ 2} This case was initiated on November 27, 2008, when appellant was cited for driving under the influence of alcohol, a violation of Ottawa Hills Codified Ordinance 73.01(A)(1)(A). After entering a plea of not guilty to the charge, appellant filed a motion to suppress. An evidentiary hearing for the suppression motion was scheduled for April 8, 2009. There is no evidence in the record that an evidentiary hearing took place. Instead, the record shows that on April 8, 2009, the matter was scheduled for trial on May 5, 2009.

{¶ 3} On May 5, 2009, appellant withdrew his former plea of not guilty and entered a no contest plea to the charge. He was found guilty and his case was continued until June 5, 2009. On May 12, the court ordered appellant's suppression motion held in abeyance until June 5, 2009. (There is nothing in the record explaining if this entry was sua sponte or in response to a motion or request of a party.) The record shows that on June 5, 2009, the court issued a bench warrant for appellant's arrest and set bond at $1,000.

{¶ 4} On June 10, 2009, the court issued the following orders. First, the court withdrew appellant's bench warrant. Next, the court denied appellant's motion to suppress and issued a nunc pro tunc as to the court's prior May 5, 2009 entry accepting appellant's no contest plea. Finally, the court sentenced appellant to three days in jail.

{¶ 5} Appellant asserts one assignment of error:

{¶ 6} "The trial court erred when it denied appellant's request for an evidentiary hearing on appellant's motion to suppress."

{¶ 7} A motion to suppress must provide a prosecutor with notice of the basis for the challenge. *Xenia v. Wallace* (1988), 37 Ohio St.3d 216, paragraph one of the syllabus. However, the basis need not be set forth with minute detail, only with sufficient particularity to put the prosecution on notice of the nature of the challenge. *State v. Shindler* (1994), 70 Ohio St.3d 54, 57-58. Once a defendant sets forth a sufficient basis for a motion to suppress, the burden shifts to the state to demonstrate proper compliance with the regulations involved. *State v. Johnson* (2000), 137 Ohio App.3d 847, 851, citing *State v. Plummer* (1986), 22 Ohio St.3d 292, 294.

{¶ 8} In his brief, appellant contends that appellee filed a motion on April 7, 2009, seeking dismissal of appellant's suppression motion on the basis that it fails to set forth a factual basis sufficient to justify the requested hearing. The record in this case contains a motion titled "[D]efendant's response to state's motion to dismiss" wherein appellant argues his motion is indeed sufficient enough to justify a hearing. Curiously, this court can find no evidence in the record before us that appellee ever filed a motion to dismiss based on the sufficiency of the suppression motion.[1] Nevertheless, the parties in this case have framed their arguments on appeal based on the assumption that appellant was denied a hearing because his motion was neither specific nor particular enough. We find no basis for this assumption given the fact that the record shows that an evidentiary hearing on the motion was at one time scheduled.

[1]The record contains no written motion nor is there any indication any such motion was filed in the Toledo Municipal Court's certified journal report.

{¶ 9} We further find that regardless of the reason appellant did not receive an evidentiary hearing, appellant has waived his argument.

{¶ 10} Reviewing the record, we focus on the court's nunc pro tunc entry of June 10, 2009. We can only surmise that in issuing this nunc pro tunc entry, the trial court attempted to correct the fact that appellant's plea was accepted while his motion to suppress was still pending. Crim.R. 36(A) permits trial courts, in their discretion, to correct clerical mistakes in judgments or orders arising from oversight or omissions, using a nunc pro tunc entry. "The term 'clerical mistake' refers to a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment. * * *" *State v. Brown* (2000), 136 Ohio App.3d 816, 819-820. As a ruling on a motion to suppress is a legal decision, a nunc pro tunc entry was not the proper vehicle for the court to use if it did intend to change the sequence of events as shown by the May 5th and May 12th entries in the record. There is nothing apparent in the record that indicates that a mistake or omission, mechanical in nature, was made on May 5th.

{¶ 11} Per Crim.R. 11(B)(2), a plea of no contest is an admission of the truth of the facts alleged in the complaint. The complaint alleged that appellant was driving with a prohibited blood alcohol concentration of .151. Appellant's suppression motion alleged that the arresting officer lacked reasonable suspicion to detain appellant for driving under the influence of alcohol, that the field sobriety tests were inadequately administered and that the breathalyzer machine was improperly calibrated. It is implicit in a defendant's plea of no contest that, because the facts alleged in the complaint are true, those facts

created reasonable suspicion to detain and arrest the defendant for the offense to which he enters the plea. See *State v. Davies* (May 5, 2000), 2d Dist. No. 99-CA-0078. Here, appellant entered his plea of no contest before the court issued a ruling on his suppression motion. He thus waived his right to challenge the court's handling of his suppression motion. Appellant's sole assignment of error is found not well-taken.

{¶ 12} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the cost of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
CONCUR.
JUDGE