

[Cite as *Cleveland v. Wilson*, 2017-Ohio-540.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104746

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

ANTWAN D. WILSON

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2016 TRD 015378

BEFORE: Keough, A.J., E.A. Gallagher, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: February 16, 2017

APPELLANT

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Antwan D. Wilson (“Wilson”), appeals from the judgment of the Cleveland Municipal Court finding him guilty of driving with a suspended license and expired license plates. Finding no merit to the appeal, we affirm.

{¶2} The record reflects that on April 22, 2016, Wilson was issued a citation for driving under suspension in violation of Cleveland Cod. Ord. 435.07, and driving with expired plates in violation of Cleveland Cod. Ord. 435.09(E). After a bench trial, the court found Wilson guilty of both charges. The court sentenced him to a \$260 fine and court costs, and this appeal followed.

I. The Traffic Stop

{¶3} Wilson’s first assignment of error states:

After an officer has completed the investigation into a motorist’s traffic violation, continued detention of the motorist without individualized suspicion of criminal activity violates the Fourth Amendment.

{¶4} As this court stated in *State v. Bennett*, 8th Dist. Cuyahoga No. 86962, 2006-Ohio-4274, ¶ 21:

A police officer may effect a traffic stop of any motorist for any traffic infraction, even if the officer’s true motive is to detect more extensive criminal conduct. *United States v. Mesa*, 62 F.3d 159, 162 (C.A.6,1995). When conducting the stop of a motor vehicle for a traffic violation, an officer may detain the vehicle for a time sufficient to investigate the reason for which the vehicle was initially stopped. *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184. Generally, the duration of the stop is limited to the time necessary to effectuate the purpose for which the stop was made. *Id.* This time period includes the time necessary to run a computer check on the driver’s license, registration, and vehicle plates. *See Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d

660 (1979). The detention may continue beyond this time frame, however, when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop. *State v. Beltran*, 12th Dist. Preble No. CA2004-11-015, 2005-Ohio-4194, ¶ 16, citing *State v. Myers*, 63 Ohio App.3d 765, 580 N.E.2d 61 (1990). *See also United State v. Hill*, 195 F.3d 258, 264; *Mesa*, *supra*.

{¶5} Thus, Wilson's first assignment of error is a correct statement of the law.

Wilson makes no argument, however, regarding how or why this statement of the law applies to the facts of this case. In its brief, the state asserts that Wilson was stopped because his license plates were expired, and upon investigating, the police officer then learned that Wilson's driver's license was suspended. Thus, we presume that Wilson means to argue that the stop was improperly extended, while the state contends that the stop was properly extended.

{¶6} Wilson has failed to provide this court with a transcript of the trial court proceedings, however, from which we could have gleaned the facts relevant to the first assignment of error. It is well established that the duty to provide a transcript for appellate review falls upon the appellant because the appellant bears the burden of showing error by reference to matters in the record. *State v. Conner*, 192 Ohio App.3d 166, 171, 948 N.E.2d 497 (6th Dist.2011). When a complete transcript is not available, the appellant has the option of providing a narrative statement of the proceedings, as provided for in App.R. 9(C), or an agreed statement as provided for in App.R. 9(D). Here, the record certified to this court is an App.R. 9(A) record and contains the original

papers and a certified copy of the journal entries. Wilson has not provided this court with a transcript of the trial nor a statement as permitted by App.R. 9(C) or (D).

{¶7} “Where no transcript of proceedings of the trial is included in the record on appeal, and no substitute statement of evidence is provided, and no statement has been filed to indicate that a transcript is not needed in order to consider the appeal, the appellant cannot demonstrate the error of which he complains, and the appellate court must affirm.” *Corsaro, Giganti & Assocs. v. Stanley*, 8th Dist. Cuyahoga No. 77201, 2000 Ohio App. LEXIS 4299, *5 (Sept. 21, 2000). Absent a transcript of the proceedings, the appellate court must presume that the proceedings before the trial court were proper and must affirm the trial court’s decision. *State v. Estrada*, 126 Ohio App.3d 553, 556, 710 N.E.2d 1168 (7th Dist.1998).

{¶8} Because Wilson failed to request a transcript or provide a substitute statement of the evidence, we presume the regularity and validity of the trial court proceedings. The first assignment of error is therefore overruled.

II. Alleged Violation of the Ninth and Tenth Amendments

{¶9} Wilson’s second assignment of error asks:

After a law enforcement officer has stopped a traveler for a traffic infraction, does the issuance of [a] ticket after [the] motorist gives notice to the officer of exercising of [the] constitutional right to travel violate the Ninth and Tenth Amendments’ rights and powers retained by the people?

{¶10} It appears that Wilson is arguing that citations for traffic offenses violate the Ninth and Tenth Amendments to the United States Constitution because United States citizens have a constitutional right to travel. Wilson’s argument is without merit.

{¶11} Although not explicitly mentioned in the Constitution, the right to travel freely from one state to another has long been recognized as a fundamental right under the United States Constitution. *Shapiro v. Thompson*, 394 U.S. 618, 631, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969), *overruled in part on other grounds*, *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974). The right of interstate travel may only be limited by a compelling government interest. *Id.* at 634.

{¶12} Wilson’s right to travel interstate is not at issue in this case, however; the issue is his right to operate a motor vehicle on Ohio’s public roads. Driving is not a fundamental right but a privilege subject to reasonable regulation under the police power of the state in the interest of public safety. *State v. Bradley*, 12th Dist. Warren No. CA89-09-052, 1990 Ohio App. LEXIS 1270, *7 (Apr. 2, 1990). Moreover, Congress has left the area of traffic regulation to the responsibility of each state and local municipality. *Id.* Thus, “the states not only have the authority but the right to regulate * * * traffic within their borders.” *Id.*

{¶13} Here, the city of Cleveland issued ordinances regulating the licensing of drivers and vehicles operating on its roadways to ensure the competency of such drivers and motorist safety. The ordinances were a valid use of its police power and, thus, Wilson’s citation for violating those ordinances was proper.

{¶14} Neither the Ninth nor the Tenth Amendments to the United States Constitution prohibit the issuance of citations for traffic offenses. The Ninth Amendment to the United States Constitution provides that “[t]he enumeration in the

Constitution of certain rights shall not be construed to deny or disparage others retained by the people.” It is viewed as a restraint on the federal government from acting to expand its powers on rights not listed in the Bill of Rights and, standing alone, does not confer any substantive rights. *Nicolette v. Caruso*, 315 F.Supp.2d 710, 718 (W.D.Pa.2003). Thus, it is irrelevant to Wilson’s traffic citation.

{¶15} The Tenth Amendment to the United States Constitution provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” It does not mean that the states have no power to regulate traffic. Indeed, as noted earlier, Congress has specifically left the area of traffic regulation to the states and local municipalities.

{¶16} Wilson’s traffic citation did not violate any rights set forth in the Ninth and Tenth Amendments to the United States Constitution, nor did it violate his constitutional right to interstate travel. The second assignment of error is therefore overruled.

III. Jurisdiction

{¶17} Wilson’s third assignment of error states:

After receiving [a] citation and challenging the Cleveland Municipal Court’s jurisdiction by affidavit pursuant to Article 3 Section 2 of the Constitution, the court failed to provide [a] delegation of authority order or provide oaths of office. Does [the court’s] failure constitute violation of the U.S. Constitution and warrant dismissal?

{¶18} Wilson argues that the Cleveland Municipal Court did not have jurisdiction to decide this matter. He contends that on May 18, 2016, he filed a declaration with the municipal court in which he asserted that the court had no jurisdiction over him because he is King Antwan D. Wilson-Ali Bey, a member of the Moorish Nation and, therefore,

not subject to any American court. In his declaration, he also asserted that the municipal court was required to demonstrate its authority and jurisdiction over him. On appeal, Wilson contends that because the municipal did not do so, it violated the United States Constitution, and his conviction should therefore be reversed and the charges dismissed. We disagree.

{¶19} R.C. 1901.20 addresses subject matter jurisdiction for municipal courts and provides that municipal courts have jurisdiction over traffic offenses. *Cleveland v. Hasan*, 8th Dist. Cuyahoga No. 98490, 2013-Ohio-820, ¶ 16. *See also State ex rel. Brady v. Howell*, 49 Ohio St.2d 195, 360 N.E.2d 704 (1977) (municipal court has jurisdiction to hear a case involving a traffic violation).

{¶20} Further, the United States does not recognize the Moorish Nation as a sovereign state. *State v. Wyler*, 8th Dist. Cuyahoga No. 102889, 2016-Ohio-1118, ¶ 12, citing *Speed v. Mehan*, E.D. Mo. No. 4:13CV1841, 2013 U.S. Dist. LEXIS 153429, *5 (Oct. 25, 2013); *Allah El v. DA for Bronx Cty.*, S.D.N.Y. No. 09CV8746, 2009 U.S. Dist. LEXIS 105869, *3 (Nov. 4, 2009); *Benton-El v. Odom*, E.D. Mo. No. 5:05-CV-242, 2007 U.S. Dist. LEXIS 44270, *6 (June 19, 2007). A self-proclaimed “king” cannot bestow sovereign immunity upon himself, and “therefore, his purported status as a Moorish-American citizen does not ‘enable him to violate state and federal laws without consequence.’” *Wyler* at ¶ 12, quoting *South Carolina v. Ajani Nasir Ali*, D.S.C. No. 1:12-2629-TLW-PJG, 2012 U.S. Dist. LEXIS 183680, *3 (Dec. 4, 2012).

{¶21} In light of the above, it is apparent that the municipal court had jurisdiction over Wilson's traffic offenses. The third assignment of error is overruled.

{¶22} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the municipal court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the municipal court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE _____

EILEEN A. GALLAGHER, J., and
SEAN C. GALLAGHER, J., CONCUR