[Cite as *State v. Prince*, 2015-Ohio-1923.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellant v. DMITRI L. PRINCE Appellee	C.A. No. 27331 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 2013-12-3583

DECISION AND JOURNAL ENTRY

Dated: May 20, 2015

MOORE, Judge.

{¶1} Plaintiff-Appellant the State of Ohio appeals from the entry of the Summit County Court of Common Pleas granting Defendant-Appellee Dmitri Prince's motion to suppress. We reverse and remand the matter for proceedings consistent with this opinion.

I.

{¶2} Around 10:00 p.m. on December 29, 2013, police began to follow a car driven by Mr. Prince. After Mr. Prince failed to use a turn signal when making a left turn, police stopped the vehicle. Officer Andrew Moss approached the driver side and Officer Michael DiFrancesco approached the passenger side of the vehicle. As Officer Moss got close to the vehicle, he noticed Mr. Prince reach down toward his legs in what Officer Moss described as a "furtive" movement. Mr. Prince showed Officer Moss his license and insurance and Officer Moss asked if Mr. Prince had anything illegal on him or in the car. Mr. Prince responded in the negative and Officer Moss asked if it would be alright if he checked. According to Officer Moss and Officer

DiFrancesco, Mr. Prince agreed to both a pat down and a search of his vehicle. According to Mr. Prince, he only agreed to a pat down and did not consent to a search of his vehicle. After multiple searches, Officer Moss discovered a hand gun under the driver's seat of the vehicle near where Mr. Prince had been seen reaching. Mr. Prince was thereafter placed under arrest.

{¶3} Ultimately, Mr. Prince was indicted on one count of carrying a concealed weapon in violation of R.C. 2923.12(A)(2), one count of improperly handling a firearm in a motor vehicle in violation of R.C. 2923.16(B), (I)(2), and one count of turn and stop signals for failing to use his turn signal. Mr. Prince filed a motion to suppress asserting that police lacked reasonable suspicion to stop his car, that police lacked reasonable suspicion or probable cause to detain him and his vehicle to search it, and that Mr. Prince did not consent to a search of the car. The trial court held a hearing on the motion. At the close of the hearing, Mr. Prince argued that the furtive movement observed by Officer Moss did not provide reasonable suspicion for a search, that Mr. Prince did not consent to a search of the vehicle, and that, even if he did initially consent to a search, he revoked that consent while Officer Moss was searching the vehicle and prior to finding the gun. The State responded, asserting that the furtive movement and surrounding circumstances authorized the search of the vehicle and that Mr. Prince had consented to a search of the vehicle. The trial court, while not explicitly resolving any of the conflicts in the evidence, nonetheless appears to have concluded that the officers lacked reasonable suspicion to further detain Mr. Prince to conduct a search of the vehicle. Thus, according to the trial court, Mr. Prince's detention was illegal, and the State had to demonstrate that Mr. Prince's consent was voluntary and it failed to do so. The trial court granted the motion to suppress on that basis.

{¶4} The State has appealed, raising a single assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING THE MOTION TO SUPPRESS.

{¶5} The State argues that the trial court erred in concluding that police lacked reasonable suspicion to search Mr. Prince's car and that Mr. Prince's consent was not voluntary.

> Appellate review of a motion to suppress presents a mixed question of law and fact. When considering 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. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

(Internal citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶6} Two of the primary issues before the trial court were (1) whether the furtive movements of Mr. Prince and the surrounding circumstances provided the police with reasonable suspicion, authorizing the search of the vehicle; and (2) if not, whether Mr. Prince consented to the search of the vehicle.[1] Unfortunately, the trial court did not directly address either issue. Instead, the trial court appears to have concluded that the basis for detaining Mr. Prince had terminated prior to Officer Moss conducting the search of the vehicle. Thus, in the trial court's view, Mr. Prince was subjected to an illegal detention, and the only way a search could be authorized is if the State demonstrated voluntary consent as contemplated by *State v. Robinette*, 80 Ohio St.3d 234 (1997).

[1] Mr. Prince also alleged in the motion to suppress that the police lacked reasonable suspicion to stop his vehicle. While the trial court did not explicitly find that the police possessed reasonable suspicion to stop Mr. Prince's car, it did note that it was unrefuted that Mr. Prince failed to use his turn signal prior to making a left turn. Thus, it appears that the trial court did find that the initial stop was authorized. Given that the parties have not discussed the propriety of the initial stop on appeal, we decline to further consider the issue.

{¶7} The trial court failed to make factual findings that would support its conclusion that the continued detention was illegal.[2] This Court has stated that

> when detaining a motorist for a traffic violation, an officer may delay the motorist for a time period sufficient to issue a ticket or a warning. This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates. In 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.

State v. Ross, 9th Dist. Lorain No. 12CA010196, 2012-Ohio-6111, ¶ 8, quoting *State v. Davenport*, 9th Dist. Lorain No. 11CA010136, 2012-Ohio-4427, ¶ 6, quoting *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶ 12.

{¶8} While the trial court found that the police lacked reasonable suspicion to further detain Mr. Prince, it did not find that the police had issued a citation or warning or that the police exceeded the time necessary to do so. *See Ross* at ¶ 8. We note that the record does not contain evidence concerning these facts; however, this is likely because the duration of the stop was not a focus of the hearing. Instead, at the start of the hearing, the prosecutor asked if the hearing was limited to the issue of whether the officers had a sufficient basis to search the vehicle. The court replied affirmatively and defense counsel did not state otherwise. While the State phrased the issue before the trial court in terms of whether probable cause existed for the search, it appears from the argument being made, the State was actually asserting that police had reasonable suspicion to search the vehicle based upon *State v. Smith*, 56 Ohio St.2d 405 (1978), syllabus, and its progeny.

[2] We note that the trial court's finding that "[a]fter stopping [Mr. Prince], the police ran a check and found that he had no outstanding warrants[,]" is unsupported by the record. While there is testimony that Mr. Prince had a valid license and proof of insurance, there is nothing that indicates if, or when, the police ran a check of his license.

{¶9} In *Smith*, the Ohio Supreme Court considered a fact pattern similar to the one before us. There the court held in its syllabus as follows: "Where a police officer stops and approaches a motor vehicle at night for a traffic violation and sees the driver, while exiting the car, furtively conceal something under the front seat, a limited search of that area is reasonable for the purpose of the officer's protection." *See also State v. Hunt*, 9th Dist. Lorain No. 94CA005795, 1994 WL 686834, *2-*3 (Dec. 7, 1994); *but see State v. Willette*, 4th Dist. Washington No. 11CA32, 2013-Ohio-223, ¶ 18 (noting that multiple protective searches can become unreasonable if unwarranted by the circumstances).

{¶10} If the search was authorized under *Smith*, it would be unnecessary to determine whether Mr. Prince consented. Unfortunately, the trial court did not address this issue. While the trial court noted that Officer Moss stated he observed Mr. Prince make furtive movements as Officer Moss approached the vehicle and also noted that Mr. Prince acknowledged bending down at that time (allegedly to retrieve his license), the trial court did not discuss *Smith* or its progeny and did not analyze any of the other relevant factors when it determined that reasonable suspicion did not exist. Thus, it seems the trial court failed to address the issue before it.

{¶11} Even assuming the trial court concluded that the furtive movements and surrounding circumstances did not supply sufficient reasonable suspicion to support the search at issue, there would remain the issue of whether Mr. Price consented to the search of the vehicle. The trial court's entry in this matter makes it difficult for this Court, as a reviewing court, to perform its function. The trial court noted that "there is disagreement as to whether [Mr. Prince] agreed to a search of his vehicle[,]" which is essentially an acknowledgement that the trial court had to make a credibility determination, i.e. whether it found the officers' or Mr. Prince's testimony more believable. However, it never explicitly did so. We remain mindful that the role

of this Court is not to resolve factual disputes. *See Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶ 8.

{¶12} In light of the fact that the trial court failed to resolve the issues specifically raised at the suppression hearing, we reverse its judgment so that it can consider the issues in the first instance. *See State v. Horvath*, 9th Dist. Medina No. 13CA0040-M, 2014-Ohio-641, ¶ 10. The trial court is instructed to determine in light of *Smith* and its progeny, whether reasonable suspicion authorized the search at issue, and, if necessary, to resolve the factual disputes surrounding the issue of consent. Given the unique circumstances of this case, if the trial court concludes it is necessary to receive additional evidence and/or testimony in order to make the required determinations, this opinion should not be read to prevent the trial court from doing so. The State's assignment of error is sustained.

III.

{¶13} We reverse the judgment of the Summit County Court of Common Pleas and remand the matter for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellant.

TYLER J. WHITNEY, Attorney at Law, for Appellee.