IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 29548
	:	
v.	:	Trial Court Case No. 2022 CR 00480
	:	
DEMETRIUS DIXON	:	(Criminal Appeal from Common Pleas
	:	Court)
Appellant	:	
	:	

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O P I N I O N

Rendered on January 6, 2023

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MATHIAS H. HECK, JR., by RICKY L. MURRAY, Attorney for Appellee

CHRISTOPHER BAZELEY, Attorney for Appellant

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LEWIS, J.

{¶ 1} Defendant-Appellant Demetrius Dixon appeals from his conviction for possession of heroin following a no contest plea. Dixon contends that the trial court erred in overruling his motion to suppress. For the following reasons, we affirm the judgment of the trial court.

I.   Facts and Course of Proceedings

{¶ 2} On the evening of February 7, 2022, Dixon's vehicle was pulled over by a Dayton police officer for suspected speeding and a turn signal violation. During the traffic stop, the police officer discovered that Dixon's driver's license was suspended and Dixon had a number of outstanding warrants. While the officer was drafting Dixon's traffic citations, the police department's canine unit arrived and did a sweep of the outside of Dixon's vehicle. The canine alerted to the presence of illegal drugs, which ultimately were found in a search of the trunk of Dixon's vehicle.

{¶ 3} On March 16, 2022, a Montgomery County grand jury indicted Dixon on one count of possession of heroin and one count of possession of cocaine. Dixon pled not guilty and filed a motion to suppress. According to the motion, the stop and search of Dixon and his vehicle were "not done with articulable facts sufficient to raise reasonable suspicions that [Dixon] was engaging or was about to engage in illegal activity."

{¶ 4} On May 31, 2022, the trial court held a hearing on Dixon's motion to suppress. Officer Jason Bryant testified first for the State. Officer Bryant had worked as a police officer for the Dayton Police Department for two years. On February 7, 2022, he worked the 10:30 a.m. to 8:00 p.m. shift patrolling the West Side of Dayton. *Id.* at 8-

9.   He and Officer Matthew Brown were finishing up handling a domestic dispute when they heard a loud exhaust noise coming from a vehicle heading west on Third Street. They identified the vehicle as a black Chevy Tahoe.   *Id.* at 9-10.   According to Officer Bryant, he estimated the speed of the Tahoe as greater than the posted speed limit of 35 miles per hour.   *Id.* at 10.   Officer Bryant had received training to help him estimate the speed of moving vehicles and he was certified to do so through the Dayton Police Academy.   *Id.* at 11.   Officer Brown took the lead in following the Chevy Tahoe, and Officer Bryant followed Officer Brown in his cruiser.   *Id.* at 11-12.

{¶ 5} Officer Bryant observed Officer Brown activate his lights and siren.   But the Chevy Tahoe did not immediately pull over.   *Id.* at 13-14.   Eventually the Tahoe pulled over, and Officer Brown interacted with the driver of the Tahoe, Demetrius Dixon.   In response to questions, Dixon admitted that he did not have a valid driver's license.   *Id.* at 15.   While Officer Brown was drafting traffic citations, the canine police unit arrived. *Id.* at 17-18.   The canine alerted to drugs in the vehicle, and a search of the trunk revealed the presence of illegal narcotics.   *Id.* at 18-20.

{¶ 6} City of Dayton Police Officer Matthew Brown testified next for the State. He had worked for over three years for the Dayton Police Department in patrol and field training.   *Id.* at 32.   On the evening of February 7, 2022, while on patrol, he heard a loud vehicle going at a high rate of speed on Third Street.   Based on his visual and auditory observation, along with his training, he believed the vehicle was exceeding the speed limit of 35 miles per hour.   *Id.* at 35.   Officer Brown began following the vehicle and noticed that the driver failed to activate his turn signal 100 feet before turning left at a traffic light.

Officer Brown activated his overhead lights and his siren. *Id.* at 38. But the driver did not pull over the vehicle for approximately 30 seconds. *Id.* at 58. While Officer Brown was following him, Dixon drove over the center line. *Id.* at 39.

{¶ 7} After Dixon pulled over, he alerted Officer Brown that he did not have a valid driver's license. *Id.* at 45. Officer Brown patted down Dixon and placed him in the back seat of his police cruiser. *Id.* at 45-46. Officer Brown then discovered through the computer system in the police cruiser that Dixon had a number of outstanding warrants and a suspended driver's license. *Id.* at 48, 51. While Officer Brown was drafting traffic citations, the police canine unit arrived and conducted a sweep of the outside of Dixon's car. *Id.* at 46. Officer Brown did not cite Dixon for speeding but did cite him for failing to properly signal and for violations related to his suspended driver's license. *Id.* at 70.

{¶ 8} Officer Randy Betsinger testified next for the State. He had worked for the Dayton Police Department for a total of over 7 years, the last three of which have been in the canine unit. On the night of February 7, 2022, he was dispatched to conduct a search of the outside of Dixon's vehicle. He arrived approximately seven minutes after Dixon's traffic stop was initiated. *Id.* at 78-80. The canine gave an alert signaling the presence of drugs. This canine was trained to alert for the presence of marijuana, heroin, cocaine, and methamphetamines. *Id.* at 81-82.

{¶ 9} On June 21, 2022, the trial court issued a decision overruling Dixon's motion to suppress. Subsequently, Dixon entered a no contest plea and was found guilty of one count of possession of heroin, a third-degree felony; the count of possession of cocaine was dismissed. The trial court sentenced Dixon to community control sanctions for a

period not to exceed five years.   Dixon filed a timely notice of appeal.

II.   The Trial Court Did Not Err in Overruling Dixon's Motion to Suppress

{¶ 10} Dixon's sole assignment of error states:

THE TRIAL COURT ERRED WHEN IT FOUND THAT POLICE OFFICERS HAD A REASONABLE SUSPICION THAT DIXON WAS ENGAGED IN CRIMINAL ACTIVITY.

{¶ 11} An appellate review of the denial of a motion to suppress presents a mixed question of law and fact.   *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.   In addressing Dixon's motion to suppress, the trial court, as the trier of fact, determines the credibility of the witnesses and weighs the evidence presented at the hearing.   *State v. Morgan*, 2d Dist. Montgomery No. 18985, 2002-Ohio-268, ¶ 2.   When reviewing the ruling of a trial court on a suppression issue, an appellate court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence.   *Id.*   However, "the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard."   *Id.*

{¶ 12} A law enforcement officer must have a "reasonable articulable suspicion" that a person is or has been engaged in criminal activity before he is justified in initiating a traffic stop.   *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "This standard requires something less than probable cause; an officer's belief that a person is acting in violation of the law is sufficient to justify an investigatory stop."   *State v. VanScoder*, 92 Ohio App.3d 853, 855, 637 N.E.2d 374 (9th Dist.1994).

{¶ 13} In overruling Dixon's motion to suppress, the trial court stated, in part:

The court had the opportunity to listen to the officers' testimony. The court also had the opportunity to see a video made from the cruiser cam.

Two (2) violations are relevant here. The first is speeding. The officers have some experience on the street. They testified about training. The combination of their experience and training gives them significant ability to estimate speed. The officers saw the black Chevy SUV operating on West Third Street. It was dark out but the street lights were operating. The officers noted the snow free main lanes, but snow on other parts of the street. The court finds credible the officers' testimony that Defendant was speeding when he operated his black Chevy SUV on February 7, 2022. The second violation of importance here is the failure to signal within one hundred feet of an intersection. R.C. 4511.31(A) requires that a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. Review of State's Exhibit 1 and consideration of the officers' testimony leads to a reasonable finding that Defendant did not signal intention to turn continuously during not less than the last one hundred feet traveled by his vehicle.

The law, as indicated here is the officer must have probable cause. The court concludes there was probable cause to believe Defendant was

committing a traffic crime of speeding and turn signal violation. Thus, Defendant could be stopped.

June 21, 2022 Decision, p. 6.

{¶ 14} Dixon contends on appeal that the Fifth District Court of Appeals previously faced a similar issue and held that "R.C. 4511.09(C)(1) prevents an officer from arresting or even charging a driver for a speeding violation based upon their visual estimation of the speed of the motor vehicle." Appellant's Brief, p. 6, citing *State v. Miller*, 5th Dist. Fairfield No. 2012-CA-25, 2012-Ohio-6147, ¶ 11. According to Dixon, "the trial court failed to explain how Dixon's speed, estimated visually, is a proper basis to initiate an investigation when R.C. 4511.091 expressly prohibits them from doing so." Appellant's Brief, p. 7. The State counters that our recent decision in *State v. Mundy*, 2d Dist. Clark No. 2020-CA-23, 2021-Ohio-605, in which we considered but rejected the 5th District's holding in *Miller*, is controlling, and therefore we should affirm the trial court's judgment.

{¶ 15} *Mundy* involved a motorist who was convicted for operating a vehicle under the influence of alcohol. The defendant contended that the police officer did not have reasonable and articulable suspicion to justify the traffic stop, because the officer's unaided visual estimation of his speed could not form a lawful basis for the stop. The defendant cited R.C. 4511.091(C) in support of his contention, which provides that a person cannot be "arrested, charged, or convicted" of speeding based solely on an officer's visual estimate of speed.

{¶ 16} After considering caselaw from other districts, including the *Miller* case from the Fifth District, we concluded, in pertinent part:

We do not believe that the fact that a conviction may not be had for the charge that was the basis of a stop, by itself, makes the stop unlawful. The lawfulness of a traffic stop is a separate constitutional question. As the Ohio Supreme Court has stated, "if an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid." *Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, at ¶ 8.

A visual estimation of a vehicle's speed can constitute reasonable and articulable suspicion. " 'Visual observation has long been held a valid means of determining the speed of a moving vehicle as long as the witness has a reliable opportunity to view the vehicle.' " * * * And until R.C. 4511.091(C)(1) was added, the Ohio Supreme Court and a majority of appellate courts had held that a visual estimation of speed was sufficient to convict a person for speeding. * * * Of course, the estimating officer's training and experience visually estimating vehicle speed is an important factor in the analysis. * * *

Thus, whether Mundy could have been convicted of violating the prima facie speed limit did not affect the analysis of the traffic stop's lawfulness. Officer Ivory's decision was prompted by his visual estimation of the car's speed, as well as the car's apparent acceleration after passing a marked police cruiser, which suggested to Ivory that the car was fleeing.

Ivory testified that he had been a police officer for over 17 years, that he

was a speed-enforcement instructor, and that he had been trained to

visually estimate a vehicle's speed. Based on that training and experience,

Officer Ivory estimated that Mundy was going 15 mph above the posted

speed limit. We are satisfied that the totality of the circumstances justified

the traffic stop.

(Citations omitted.) *Mundy* at ¶ 17-19.

{¶ 17} In his reply brief, Dixon contends that "neither officer testified about the

amount or content of the training they received with any amount of detail consistent with

Mundy" and that "the State failed to provide foundational evidence that would allow the

trial court to determine whether either Officer Bryant's or Officer Brown's training was

sufficient to allow them to visually estimate Dixon's speed." Appellant's Reply Brief, p.

3. Further, Dixon contends that the trial court erred in relying on Officer Brown's

testimony regarding the turn signal violation, because "the State fails to point to any

portion of the record where Officer Brown testified that he was trained in the visual

estimation of distance." *Id.* at 3-4.

{¶ 18} The trial court found that "[t]he officers have some experience on the street.

They testified about training. The combination of their experience and training gives

them significant ability to estimate speed." This finding was supported by competent,

credible evidence. In particular, Officer Bryant testified that he was trained to monitor

and estimate speeds and that he was certified through the Dayton Police Academy.

Further, Officer Brown testified that he was trained to estimate speeds by looking at how

a car is traveling and by sound. Officer Brown also conducts field training for other officers. Moreover, Officer Brown's testimony, in conjunction with the video from his cruiser's dash camera, supported the trial court's finding that Officer Brown had reasonable, articulable suspicion that Dixon had committed a turning signal violation.

{¶ 19} We are mindful of the concern that "[t]here are so many traffic laws that a police officer looking for a reason to stop a motorist rarely has to look far." Katz, Martin, & Macke, *Baldwin's Ohio Practice Criminal Law*, Automobile Stops, Section 15:2.20 (3d Ed. 2022). And allowing a traffic stop based on a visual estimation of speed that ultimately cannot result in a speeding citation adds to the broad discretion a police officer has to initiate a traffic stop. But this discretion is checked, as it always has been, by the ability of the defendant to engage in a robust cross-examination of the police officer's experience and training and what the police officer observed. Further, the existence of cameras in the cruisers and, now, body cameras on the police officers adds to the tools that defendants have at their disposal to ensure that the discretion is checked.

{¶ 20} Based on a review of the evidence of record, we cannot conclude that the trial court erred in overruling Dixon's motion to suppress. The sole assignment of error is overruled.

III.   Conclusion

{¶ 21} Having overruled Dixon's assignment of error, the judgment of the trial court is affirmed.

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TUCKER, P.J. and WELBAUM, J., concur.