

[Cite as *State v. Bangoura*, 2009-Ohio-3339.]

COURT OF APPEALS  
LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Sheila G. Farmer, J.
	:	Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 08 CA 95
AMADOU BANGOURA	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Licking County Court  
Of Common Pleas Case No. 07 CR 586

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 26, 2009

APPEARANCES:

For Plaintiff-Appellee For Defendant-Appellant

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*Edwards, J.*

{¶1} Appellant, Amadou Bangoura, appeals a judgment of the Licking County Common Pleas Court convicting him of attempted aggravated possession of drugs (R.C. 2923.02(A), R.C. 2925.11(A),(C)(1)(c)), possession of marijuana (R.C. 2925.11(A),(C)(3)(a)) and falsification (R.C. 2921.13(A)(3)) upon a plea of no contest. Appellee is the State of Ohio.

#### STATEMENT OF FACTS AND CASE

{¶2} On September 14, 2007, Detective Doug Bline of the Newark Police Department was on routine patrol in the City of Newark. He noticed a silver Dodge Magnum pass him heading west on Church Street. The car had been observed at the Budget Inn for several days at a room rented by appellant. The police department had received loose, uncorroborated information from various street sources that persons driving this vehicle were involved in drug trafficking.

{¶3} Detective Bline followed the car. Within two blocks, he saw the vehicle make a right turn without using a turn signal. The officer stopped the car.

{¶4} Detective Bline approached the passenger side and asked appellant, who was the passenger, for identification. He received a name he could not pronounce from the passenger and a South Carolina identification card with a picture of someone who was not appellant.

{¶5} The officer then approached the driver, who admitted that he turned without signaling because he was watching girls on the opposite side of the street. The driver gave the officer a rental contract for the car which indicated that it had been

rented by a third party and not by appellant or the driver. The driver indicated that they were in Newark to attend a party.

{¶6} The driver gave Detective Bline permission to search the vehicle. The officer found illegal drugs and an identification card for appellant using his real name.

{¶7} Appellant was indicted by the Licking County Grand Jury for attempted aggravated possession of drugs, possession of marijuana and falsification. He filed a motion to suppress arguing that the officer did not have cause to stop the vehicle, detain appellant, and/or arrest appellant, and the officer did not have reasonable cause to search the vehicle for drugs. Appellant also argued that statements taken from appellant were obtained in violation of his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel.

{¶8} Following an evidentiary hearing, the court overruled the motion to suppress, finding the officer had a reasonable suspicion of criminal activity to stop the vehicle based on the failure to signal prior to turning. The court found that the driver consented to the search of the vehicle and appellant was properly Mirandized prior to making any statements.

{¶9} Appellant entered a plea of no contest to all charges. He was sentenced to one year incarceration for attempted aggravated possession of drugs and six months incarceration for falsification, to be served concurrently. He was fined \$400.00 for possession of marijuana. He was sentenced to three years of post-release control following any prison sentence imposed. Appellant assigns a single error on appeal:

{¶10} "THE TRIAL COURT ERRED WHEN IT DETERMINED APPELLANT'S TRAFFIC STOP WAS NOT PRETEXTUAL."

{¶11} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982) 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. Second, an appellant may argue that the trial court failed to apply the appropriate test or correct law to the findings of fact. See *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141, overruled on other grounds. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue that the trial court incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906; *State v. Guysinger*, supra.

{¶12} Appellant specifically contends that his Motion to Suppress should have been granted since Detective Bline admitted on cross-examination that he made a determination to stop the vehicle from the first time he saw it based on reports of drug activity and "if a legitimate reason is there to stop it." Tr. 26. Appellant argues that the stop was pretextual and that the officer did not have a reasonable, articulable suspicion of criminal activity based on the reports of drug activity to justify the stop of the vehicle.

{¶13} However, in *Dayton v. Erickson*, 76 Ohio St.3d 3, 665 N.E.2d 1091, 1996-Ohio-431, the Ohio Supreme Court stated: "[w]here a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity." *Id.* at 11.

{¶14} Similarly, this Court, in *State v. McCormick* (Feb. 2, 2001), Stark App. No. 2000CA00204, 2001 WL 111891, held that any traffic violation, even a de minimis violation, would form a sufficient basis upon which to stop a vehicle. "[T]he severity of the violation is not the determining factor as to whether probable cause existed for the stop. *State v. Weimaster* (Dec. 21, 1999), Richland App. No. 99CA36, 2000 WL 1615 at 3. Rather, ' \* \* \* [w]here an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid \* \* \*'" *Id.* at 3, citing *Erickson* at 11-12, 665 N.E.2d 1091. See also *State v. Rice*, Stark App. No. 2005CA00242, 2006-Ohio-3703, ¶35 (stop of vehicle for failure to signal before turning was constitutionally valid even if officer had an ulterior motive for stopping appellant).

{¶15} As set forth above, Detective Bline testified at the suppression hearing that he stopped the vehicle in which appellant was riding after observing the driver turn without signaling. Therefore, the stop of the vehicle was constitutionally valid even if the stop was a pretext for the officer's motive of investigating the reports of drug activity concerning the vehicle.

{¶16} The assignment of error is overruled.

{¶17} Accordingly, the judgment of the Licking County Court of Common Pleas is affirmed.

By: Edwards, P. J.

Farmer, J. and

Delaney, J. concur

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JUDGES

JAE/r0603

