[Cite as *State v. McKim*, 2026-Ohio-3378.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO

STATE OF OHIO, Plaintiff - Appellee -vs- DAVID W. MCKIM, Defendant - Appellant	Case Nos. 26CA000002 and 26CA000003 Opinion And Judgment Entry Appeal from the Cambridge Municipal Court, Guernsey County, Ohio, Case Nos. TRC2502742 and TRC2601590 Judgment: Affirmed Date of Judgment Entry: August 28, 2026

BEFORE: William B. Hoffman; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: WILLIAM H. FERGUSON, Cambridge Law Director, for Plaintiff-Appellee; JOSEPH SHELL and LOUIS E. GRUBE, for Defendant-Appellant.

Montgomery, J.

{¶1} Defendant-Appellant, David McKim, appeals the judgment entered by the Guernsey County Municipal Court convicting him following his plea of no contest to operating a motor vehicle with a prohibited urine alcohol level (R.C. 4511.19(A)(1)), and sentencing him to sixty days in jail with fifty-seven days suspended. Plaintiff-Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND THE CASE

{¶2} In the evening of May 15, 2025, Appellant was involved in a single-car accident at the intersection of Byesville Road and Vocational Road in Guernsey County, Ohio, striking a guardrail. Patrolman Andrew Stewart of the Byesville Police Department was the first officer to arrive on the scene of the crash. Trooper Joshua Zaugg of the Ohio State Highway Patrol was dispatched to a report of a single-car crash, arriving after Ptl. Stewart.

{¶3} When Trp. Zaugg arrived, he spoke briefly with Ptl. Stewart before approaching Appellant's vehicle. The Trooper immediately noticed an odor of alcohol emanating from the vehicle. When the Trooper asked Appellant what happened, Appellant provided an explanation for the accident which did not match the evidence on the road of the direction and location of Appellant's vehicle and did not account for the lack of skid marks. During the encounter, Appellant stared straight ahead, his eyes were bloodshot and glassy, and his speech was slow and slurred. Appellant had a blank expression on his face and seemed to the Trooper to be confused as to where he was going and where he was coming from.

{¶4} Based on his observations of Appellant, the Trooper asked Appellant to step out of the vehicle. After Appellant exited the vehicle, the Trooper continued to detect the odor of alcohol. Appellant denied drinking alcohol and instead stated that he uses medical marijuana. The Trooper advised Appellant that his marijuana use would not explain the odor of alcohol. Appellant then acknowledged he had consumed alcohol. The Trooper administered field sobriety tests. The result of the tests indicated to the Trooper that Appellant was driving while intoxicated, and Appellant was placed under arrest for operating

a motor vehicle while intoxicated. Appellant submitted to a urine screen. The results of the screen confirmed Appellant's alcohol level was .142.

{¶5} Appellant was charged with operating a motor vehicle while intoxicated (trial court case number TRC2501590A, appellate case number 26-CA-3), operating a motor vehicle with a prohibited urine-alcohol content (trial court case number TRC2502742, appellate case number 26-CA-2), and failure to control (trial court case number TRC2501590B, appellate case number 26-CA-3). Appellant filed a multibranch motion to suppress, arguing: (1) the initial traffic stop by Ptl. Stewart was accomplished in the absence of a reasonable, articulable suspicion that Appellant had violated any law, (2) officers lacked a reasonable and articulable suspicion that Appellant was operating the vehicle under the influence of alcohol to detain Appellant in order to administer field sobriety tests, (3) field sobriety testing was not conducted in compliance with applicable rules and regulations, (4) the results of field sobriety tests are inadmissible because the methods used fail to satisfy the requirements for the admissibility of scientific evidence, (5) there was no lawful cause to detain Appellant after field sobriety testing, (6) Appellant's statements were obtained in violation of his constitutional rights, (7) the officer incorrectly advised Appellant concerning alcohol testing, (8) the urine test was not administered in compliance with applicable regulations, and (9) the results of the urine test are inadmissible because the methods used fail to satisfy the requirements for the admissibility of scientific evidence.

{¶6} The case proceeded to a suppression hearing in the Cambridge Municipal Court, at which only Trooper Zaugg testified. Following the hearing, Appellant abandoned all of his arguments set forth in his motion and argued only that the State failed to prove Ptl. Stewart had a reasonable, articulable suspicion of criminal activity to justify detaining

Appellant until Trp. Zaugg arrived. The trial court overruled the motion to suppress. The trial court found that Appellant's encounter with police did not begin with a traffic stop based upon an observed traffic violation, but by officers responding to a call of an accident. The trial court found that as such, the encounter was a consensual encounter pursuant to a community caretaking role, which does not trigger Fourth Amendment scrutiny. The trial court found Appellant failed to meet his initial burden of demonstrating there was a detention because the encounter with Ptl. Stewart occurred as part of that community caretaking function, and further Appellant failed to demonstrate he was detained by police at any point until Trp. Zaugg removed him from the vehicle for field sobriety testing.[1]

{¶7} Pursuant to a negotiated plea, Appellant entered a plea of no contest to driving with a prohibited urine alcohol level, and the remaining charges were dismissed. Appellant was convicted upon his plea, sentenced to sixty days incarceration with fifty-seven days suspended, and fined $575. It is from the January 5, 2026, judgment of the trial court Appellant prosecutes his appeal, assigning as error:

{¶8} "I. THE TRIAL COURT ERRED IN DENYING MCKIM'S MOTION TO SUPPRESS. DEC. 5."

PRELIMINARY MATTER

{¶9} Appellant filed two separate notices of appeal in this case, both bearing the two case numbers assigned by the trial court. The notices of appeal were assigned two separate appellate numbers: 26-CA-02 relates to the charge of operating a motor vehicle with a

[1] Trp. Zaugg's body camera video was admitted at the hearing. In the video, Ptl. Stewart related to Trp. Zaugg that he observed indicia of intoxication during his encounter with Appellant. Appellant objected to the admission of any hearsay statements of Ptl. Stewart in the video, and the trial court agreed to disregard any hearsay in the video. While the Rules of Evidence do not apply in suppression hearings and the trial court could have considered hearsay, it is within the discretion of the trial court to exclude evidence which violates the Rules of Evidence at a suppression hearing. *Lakewood v. Tittl,* 2026-Ohio-2413, ¶ 44 (8th Dist.).

prohibited urine alcohol content, of which Appellant was convicted upon his no contest plea, and 26-CA-03 relates to the dismissed charges of operating a motor vehicle under the influence of alcohol and failure to control. However, Appellant's assignment of error relates to the trial court's judgment overruling his motion to suppress, which related to all three charges pending in the trial court prior to the later negotiated plea. As such, we hereby consolidate the appeals for purposes of this opinion and judgment entry.

STANDARD OF REVIEW

{¶10} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside,* 2003-Ohio-5372, ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate witness credibility. *See State v. Dunlap*, 1995-Ohio-243; *State v. Fanning*, 1 Ohio St.3d 19, 20 (1982). Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists to support those findings. *See Burnside* at ¶ 8. However, once this Court has accepted those facts as true, it must independently determine as a matter of law whether the trial court met the applicable legal standard. *Id., citing State v. McNamara,* 124 Ohio App.3d 706, 707 (4th Dist. 1997); *See, generally*, *United States v. Arvizu*, 534 U.S. 266 (2002); *Ornelas v. United States,* 517 U.S. 690 (1996). That is, the application of the law to the trial court's findings of fact is subject to a de novo standard of review. *Ornelas* at 697. Moreover, due weight should be given "to inferences drawn from those facts by resident judges and local law enforcement officers." *Id.* at 698.

ANALYSIS

{¶11} Crim. R. 47 requires that a motion "state with particularity the grounds upon which it is made." The Ohio Supreme Court has found this Rule applicable to motions to suppress:

> The prosecutor must know the grounds of the challenge in order to prepare his case, and the court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the merits. *State v. Johnson* (1974), 16 Ore. App. 560, 567-570, 519 P. 2d 1053, 1057. Therefore, the defendant must make clear the grounds upon which he challenges the submission of evidence pursuant to a warrantless search or seizure. *Id. United States v. Culo*tta (C.A. 2, 1969), 413 F. 2d 1343, 1345; *Duddles v. United States* (D.C. App. 1979), 399 A. 2d 59, 61-62. Failure on the part of the defendant to adequately raise the basis of his challenge constitutes a waiver of that issue on appeal. *State v. Carter* (Utah 1985), 707 P. 2d 656; see, also, *United States v. Di Stefano* (C.A. 2, 1977), 555 F. 2d 1094; *United States v. Arboleda* (C.A. 2, 1980), 633 F. 2d 985; *United States v. Hensel* (C.A. 1, 1983), 699 F. 2d 18, 41; *State v. Kremer* (1976), 307 Minn. 309, 239 N.W. 2d 476; *People v. Lyles* (1985), 106 Ill. 2d 373, 478 N.E. 2d 291.
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> *City of Xenia v. Wallace,* 37 Ohio St.3d 216, 218-219 (1988).

{¶12} In the instant case, Appellant argues the State failed to present evidence as to how long he was detained prior to Trp. Zaugg's arrival and failed to present evidence as to the reason Ptl. Stewart detained him. However, Appellant failed to raise this issue in his multi-branch motion to suppress. We find due to Appellant's failure to raise this issue with

sufficient particularity to put the State on notice that Ptl. Stewart's detention of him pending Trp. Zaugg's arrival was an issue in this case, the burden did not shift to the State to demonstrate cause for the detention, and we find Appellant waived this issue on appeal.

{¶13} Further, as found by the trial court, this case did not begin with a traffic stop. While Appellant argued in his motion to suppress that Ptl. Stewart lacked a reasonable, articulable suspicion of criminal activity to justify stopping his vehicle, it is clear from the record that this was not a traffic stop, but instead it was an accident. Trp. Zaugg was dispatched to the scene of a single-car crash, and in his body camera video, Appellant admits to striking a guardrail. Police officers have a duty and a need to investigate automobile accidents, and police officers therefore do not need a reasonable, articulable suspicion of criminal activity to approach a driver while investigating an accident. *State v. Miracle,* 2002-Ohio-4480, ¶ 24 (12th Dist.). In addition, once an officer has initiated a lawful stop, the officer may make ordinary inquiries that are incident to the stop, including checking the driver's license status, and an officer is permitted to complete these ordinary inquiries even after the initial reason for the stop was resolved. *State v. Fips*, 2026-Ohio-1207, ¶ 15. Appellant's motion did not allege that Ptl. Stewart improperly detained him longer than necessary to investigate the accident or complete a check on his driver's license while investigating the accident. The trial court therefore correctly determined Appellant failed to meet his burden of establishing Ptl. Stewart detained Appellant, and no detention occurred until Trp. Zaugg removed Appellant from his car for the purpose of conducting field sobriety tests.

{¶14} The assignment of error is overruled.

CONCLUSION

{¶15} The judgment of the Cambridge Municipal Court is affirmed.

{¶16} Costs are assessed to Appellant.

By: Montgomery, J.

Hoffman, P.J. and

Popham, J. concur.