[Cite as *Bedford v. Clarke*, 2011-Ohio-941.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95594

CITY OF BEDFORD

PLAINTIFF-APPELLEE

vs.

NEVILLE CLARKE

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Bedford Municipal Court
Case No. 10 TRC 00341

BEFORE: Jones, J., Celebrezze, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: March 3, 2011

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LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Neville Clarke ("Clarke"), appeals the trial court's decision to deny his motion to suppress without first holding a hearing. Finding merit to the appeal, we reverse.

{¶ 2} In January 2010, Clarke was cited for two violations of driving while under the influence of drugs or alcohol ("OVI") in violation of R.C. 4511.19 and one violation of failure to obey a traffic control device in violation of Bedford Codified Ordinances 313.01. He filed

two identical motions to suppress, challenging whether the police had probable cause to arrest him and whether the police followed proper procedure in administering the Breathalyzer tests. The trial court denied both motions without a hearing. On the date of trial, Clarke pled no contest to one count of OVI and the traffic charge; the prosecutor dismissed the other OVI charge. The trial court sentenced Clarke to three days in jail and a $500 fine.

{¶ 3} Clarke now appeals, raising the following assignment of error for our review:

{¶ 4} "I. The trial court erred and abused its discretion by denying the defendant's motion to suppress evidence without the presentation of evidence."

{¶ 5} Crim.R. 12(C)(3) provides that prior to trial, any party may raise a motion to suppress evidence, including but not limited to statements and identification testimony, on the ground that it was illegally obtained. Crim.R. 12(F) provides that "[t]he court may adjudicate a motion based upon briefs, affidavits, the proffer of testimony and exhibits, a hearing, or other appropriate means."

{¶ 6} Clarke maintains that the trial court was required to hold a hearing on the merits of his motion because he alleged various constitutional violations as well as the failure of the police to properly obtain Breathalyzer results. The City argues that the trial court was not required to hold a hearing before denying the motion.

{¶ 7} Although not mentioned by either party in the appellate briefs, we first look at whether the trial court erred in failing to make findings of fact and conclusions of law. Crim.R. 12(F) further provides that "[w]here factual issues are involved in determining a

motion, the court shall state its essential findings on the record." Here, in denying the motion to suppress, the trial court stated only that "for good cause not found, the Court finds said motion not well taken and the same is hereby denied." On the day of trial, the motion to suppress was not mentioned by either party or the court.

{¶ 8} Crim.R.12(F) mandates, by use of the word "shall," that the trial court state its essential findings on the record when issues of fact are involved in determining a motion. But we have found that a trial court's failure to provide its "essential findings" on the record in a case may not be fatal to a review of the trial court's ruling on the motion when the record provides a sufficient basis to review appellant's assignments of error. *State v. Bennett*, Cuyahoga App. No. 86962, 2006-Ohio-4274, appeal not allowed by 114 Ohio St.3d 1425, 2007-Ohio-2904, 868 N.E.2d 679; *State v. Ogletree*, Cuyahoga App. No. 86285, 2006-Ohio-448; *State v. Martin*, Cuyahoga App. No. 89030, 2007-Ohio-6062. In this case, however, we have no basis upon which to review the trial court's ruling. After the trial court denied the motion to suppress, Clarke pled no contest to the amended charges. No testimony was offered on the charges; the court merely asked what his blood alcohol level was at the time he took the Breathalyzer test. Nor did the trial court reduce its findings to writing or state them on the record. See *State v. Alhajjeh*, Cuyahoga App. No. 93077, 2010-Ohio-3179 (finding that the trial court's stating its findings on the record was sufficient to meet the requirements of Crim.R. 12(F)). Therefore, there is nothing substantive in the record for us to review.

{¶ 9} We do note that Clarke failed to request findings of fact and historically this court has held that an appellant waives his right to challenge a violation of Crim.R. 12(F) if he or she does not make a timely request for the findings. See *State v. Martin*, Cuyahoga App. No. 89030, 2007-Ohio-6062, appeal not allowed by 117 Ohio St.3d 1441, 2008-Ohio-1279, 883 N.E.2d 458 (stating that "[i]t is well-settled in Ohio * * * that in order for a court to have a duty to issue findings of fact, there must be a request from the defendant.") Our review of relevant case law shows that in cases where we found that a violation of Crim.R. 12(F) did not require reversal, there was other evidence in the record from which we could review and determine whether the trial court erred in ruling on the motion to suppress. See *Martin*; *Ogletree; State v. Arrington*, Cuyahoga App. No. 92556, 2009-Ohio-4721; *State v. Little* (Oct. 12, 2000), Cuyahoga App. No. 77258.

{¶ 10} Notably, in *State v. Brown*, 64 Ohio St.3d 476, 1992-Ohio-96, 597 N.E.2d 97, the Ohio Supreme Court held that "[w]hen a defendant makes no request to the trial court to state findings of fact in support of an order overruling a motion to dismiss on speedy trial grounds, and the trial court does not state its findings of fact, an appellate court errs in reversing a conviction on the ground that the defendant was denied a speedy trial *if there is sufficient evidence demonstrating that the trial court's decision was legally justified and supported by the record*." (Emphasis added.) Id. at syllabus. We extended the holding in *Brown* to include motions to suppress in *State v. Burrell* (Apr. 16, 1998), Cuyahoga App. No. 72113, appeal not allowed by (1998), 83 Ohio St.3d 1429, 699 N.E.2d 945 (holding that the

trial court did not err in failing to comply with Crim.R.12 because there was sufficient evidence in the record to support the trial court's ruling).

{¶ 11} Thus, it does not appear to be a blanket rule that an appellant must request factual findings in order to invoke Crim.R.12(F). If, as in this case, there is insufficient evidence in the record demonstrating that the trial court's decision is justified, then a trial court may violate Crim.R. 12(F) even if the appellant fails to make a timely request.

{¶ 12} Crim.R. 12(F) does require, however, that there be factual issues in dispute before a trial court is required to make findings of fact. In the case at bar, Clarke challenged whether the police had probable cause to arrest him, the manner in which police administered the Breathalyzer test, and the admissibility of statements he made to the police. Based on his motion, we find that there were factual issues for the trial court to determine. Although Crim.R. 12(F) does not mandate that the trial court hold a hearing, we are hard pressed to find how the trial court could overrule the motions based solely on the brief that Clarke filed. Moreover, the trial court denied the motions to suppress within three days after Clarke filed each one, thereby without even allowing the City an opportunity to respond to the motions. Thus, since the trial court neither held a hearing nor made factual findings, we cannot properly review whether the court erred in overruling the motions to suppress.

{¶ 13} Therefore, the sole assignment of error is sustained. The conviction is reversed and the case is remanded to the trial court for findings of fact and conclusions of law. If the

trial court is unable to make proper findings of fact and conclusions of law based on the written motions, the trial court is to hold a hearing on the motions to suppress.

{¶ 14} Accordingly, judgment is reversed and remanded.

It is ordered that appellant recover of appellee 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 Bedford Municipal Court to carry this judgment into execution.

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

LARRY A. JONES, JUDGE

FRANK D. CELEBREZZE, JR., P.J., CONCURS;
COLLEEN CONWAY COONEY, J., DISSENTS
WITH SEPARATE OPINION

COLLEEN CONWAY COONEY, J., DISSENTING:

{¶ 15} I respectfully dissent. I would affirm the denial of the motion to suppress because the motion failed to "state with particularity the grounds upon which it is made" as required by Crim.R. 47.

{¶ 16} The motion Clarke filed could be filed in almost every OVI case. It failed to give the State adequate notice of the specific grounds for challenging the admissibility of the evidence. See *State v. Ellis,* 4th Dist. No. 06CA3071, 2007-Ohio-2177.