

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 22AP0016

Appellee

v.

THOMAS R. HOLLER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 2020 CRC-I 000436

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 24, 2023

HENSAL, Presiding Judge.

{¶1} Thomas R. Holler, appeals his conviction by the Wayne County Court of Common Pleas. This Court affirms.

I.

{¶2} On August 19, 2020, a deputy sheriff working in Chippewa Township stopped Mr. Holler’s vehicle for a traffic violation and for having an inoperative vehicle light. The deputy approached the vehicle, requested Mr. Holler’s driver’s license and registration, and returned briefly to his cruiser to determine whether Mr. Holler had any outstanding warrants. The deputy—who had not yet processed a citation—then approached the vehicle again. After the deputy shined his flashlight in the backseat and asked Mr. Holler whether he had any contraband, Mr. Holler acknowledged that he had consumed one beer and that he was nervous about receiving a citation. The deputy asked Mr. Holler to step from the vehicle.

{¶3} Once Mr. Holler had done so, the deputy asked whether he had anything illegal in his possession. Mr. Holler told the deputy that he had an open beer in a cooler, and the deputy asked for permission to search the car. Mr. Holler acknowledged that he had a firearm in the car and that he did not have a concealed-carry permit. The deputy informed Mr. Holler that he was going to be detained and, during a pat-down, discovered an Adderall tablet. The deputy found additional contraband when he searched Mr. Holler's vehicle.

{¶4} Mr. Holler was charged with improperly handling firearms in a motor vehicle, carrying a concealed weapon, aggravated possession of drugs, possession of drugs, and a marked-lanes violation. Mr. Holler moved to suppress all of the evidence gained after the deputy's request for Mr. Holler to exit the vehicle, characterizing the deputy's request as an extension of the traffic stop that itself required a reasonable suspicion of criminal activity because the deputy's motivation was to conduct field sobriety tests. In its decision denying the motion, the trial court concluded that "the traffic stop was lawful and the deputy may briefly detain an individual without reasonably articulable facts giving rise to suspicion of criminal activity." Mr. Holler changed his plea to no contest, and the trial court sentenced him to twenty-four months of community control.

{¶5} Mr. Holler appealed the trial court's order that denied his motion to suppress. This Court reversed, noting that "[u]pon review of the trial court's entry, it appears that the trial court only considered whether Mr. Holler's traffic stop and initial detention were lawful * * * [but] [i]t does not appear that the trial court considered Mr. Holler's argument that his *continued* detention was unlawful because it was not based on reasonable suspicion." (Emphasis in original.) *State v. Holler*, 9th Dist. Wayne No. 21AP0013, 2021-Ohio-4599, ¶ 14. Consequently, this Court remanded the matter "for the trial court to consider Mr. Holler's arguments regarding the legality of his continued detention in the first instance." *Id.* at ¶ 16.

{¶6} On remand, the trial court specifically concluded that the deputy was justified in asking Mr. Holler to exit the vehicle under *Pennsylvania v. Mims*, 434 U.S. 106 (1977) and noted that there was no evidence that the deputy asked Mr. Holler to do so for the purpose of field sobriety testing. The trial court also wrote that “[t]he admission of the contraband in his vehicle changed the nature of the traffic stop to a request to search the vehicle[]” and concluded that “Mr. Holler’s admission, that there was contraband * * * in his vehicle, provided the deputy justification to request to search the vehicle for contraband as well as make additional inquiries and continue the detention * * * .” The trial court re-entered Mr. Holler’s judgment entry of conviction, and Mr. Holler appealed.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DENYING MR. HOLLER’S MOTION TO SUPPRESS.

{¶7} Mr. Holler’s only assignment of error argues that the trial court erred by denying his motion to suppress. This Court does not agree.

{¶8} This Court’s review of the trial court’s ruling on the motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The trial court acts as the trier of fact during a suppression hearing and is best equipped to evaluate the credibility of witnesses and resolve questions of fact. Consequently, this Court accepts a trial court’s findings of fact if supported by competent, credible evidence. *Burnside* at ¶ 8. Once this Court has determined that the trial court’s factual findings are supported by the evidence, we consider the trial court’s legal conclusions de novo. *See id.* In other words, this Court accepts the trial court’s findings of fact as true and “must then independently determine, without deference to

the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 710 (4th Dist.1997).

{¶9} Mr. Holler has not challenged the trial court’s findings of fact. In its first ruling on the motion to suppress, the trial court found that when the deputy approached Mr. Holler’s vehicle about ninety seconds after initiating the traffic stop, Mr. Holler appeared to the deputy to be nervous. According to the deputy, Mr. Holler’s hands were shaking more than he would have expected under the circumstances, and the deputy noted that Mr. Holler’s stomach was also shaking. In this regard, the trial court found that Mr. Holler appeared to rest his hand on the driver’s side door to prevent his hand from shaking. The trial court noted that the deputy returned to the vehicle after about two minutes and, at that point, had not yet started to prepare a citation. After Mr. Holler acknowledged that he had consumed one beer that evening, the deputy asked him to step from the vehicle. The trial court found that the deputy’s articulated purpose for doing so was “particularly about [Mr. Holler’s] nervousness.” According to the trial court’s findings, Mr. Holler admitted that he had an open container of beer in the car soon thereafter and consented to a search of his vehicle, which led to the discovery of further contraband. The trial court also found that about eight minutes passed between the initiation of the stop and Mr. Holler’s admission that he had an open container in the car and, according to the deputy’s testimony, a traffic stop usually lasts ten minutes or longer.

{¶10} Mr. Holler’s legal argument is a narrow one: he maintains that *Mimms* does not apply to this case and, consequently, that the trial court incorrectly concluded that the deputy was justified in asking him to exit the vehicle. In *Mimms*, the United States Supreme Court considered “the narrow question of whether the order to get out of [a] car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment.” *Mimms*, 434 U.S.

at 109. Noting that it was the officer's practice to do so during every traffic stop, the Supreme Court characterized the "additional intrusion" of exiting a vehicle as "de minimis"—"a mere inconvenience [that] cannot prevail when balanced against legitimate concerns for the officer's safety." *Id.* at 111. *See also State v. Evans*, 67 Ohio St.3d 405, 408 (1993) ("[A] *Mimms* order does not have to be justified by any constitutional quantum of suspicion.").

{¶11} In a later case, the United State Supreme Court considered another issue related to the constitutionality of traffic stops: whether an officer's subjective motivation for initiating a traffic stop invalidates objectively reasonable conduct. *Whren v. United States*, 517 U.S. 806, 811-812 (1996). Rejecting this argument, the Supreme Court concluded that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.* at 813. This principle also applies when an officer orders a driver to exit a vehicle once a traffic stop is in progress. *Ohio v. Robinette*, 519 U.S. 33, 38-39 (1996). In *Robinette*, a deputy sheriff initiated a traffic stop, obtained the driver's license, and returned to his cruiser to check for other violations. Finding none, the deputy approached again and ordered the driver to exit the vehicle. In the course of their further interaction, the deputy asked for the driver's consent to search the vehicle. *Id.* at 35-36. The Ohio Supreme Court had concluded that the officer's subjective intention placed the stop outside the parameters of *Mimms*:

When the motivation behind a police officer's continued detention of a person stopped for a traffic violation is not related to the purpose of the original, constitutional stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some separate illegal activity justifying an extension of the detention, the continued detention constitutes an illegal seizure.

Robinette at 37-38, quoting *State v. Robinette*, 73 Ohio St.3d 650 (1995), paragraph one of the syllabus. Applying *Whren* to these facts, however, the United States Supreme Court reversed, concluding that "the subjective intentions of the officer [do] not make the continued detention of

[the driver] illegal under the Fourth Amendment” when, under *Mimms*, an officer orders the driver to exit the vehicle. *Robinette*, 519 U.S. at 38. Upon remand, the Ohio Supreme Court observed that under *Whren* and *Mimms*, “the officers’ subjective motivation for continuing the detention is irrelevant.” *State v. Robinette*, 80 Ohio St.3d 234, 239 (1997) (“*Robinette II*”).

{¶12} In this case, as in *Robinette*, the deputy obtained Mr. Holler’s driver’s license and returned to his cruiser. When the deputy approached for a second time, without having prepared a citation in the meantime, he asked Mr. Holler to step from the vehicle for the purpose of determining why he appeared to be more nervous than a driver might usually be. The deputy’s subjective rationale in asking Mr. Holler to step from the vehicle was “irrelevant” for purposes of the Fourth Amendment. *Robinette II* at 239. *See also Whren* at 813. Mr. Holler’s contention that “*Pennsylvania v. Mimms* does not apply” is, therefore, incorrect, and the trial court did not err by denying his motion to suppress. Mr. Holler’s assignment of error is overruled.

III.

{¶13} Mr. Holler’s assignment of error is overruled. The judgment of the Wayne County Court of Common Pleas is affirmed.

Judgment affirmed.

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 Wayne, 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 Appellant.

JENNIFER HENSAL
FOR THE COURT

SUTTON, J.
CONCURS.

CARR, J.
DISSENTING.

{¶14} I respectfully dissent as I do not believe that there was a lawful basis for Holler's continued detention in this case.

{¶15} The deputy initiated a traffic stop of Holler's vehicle for a marked lanes violation and for having an inoperable license plate light. After obtaining Holler's license and registration, the deputy returned to his cruiser to check for outstanding warrants. While Holler exhibited some signs of nervousness, the record does not indicate that there was a concern for officer safety at that time. The deputy did not process a citation while in his cruiser. Instead, the deputy approached Holler's vehicle a second time, shined his flashlight into the backseat, and inquired as to whether Holler was in possession of any contraband. Holler responded in the negative. A review of the body camera footage suggests that Holler did not exhibit signs of nervousness beyond what would

be reasonably expected for someone who was in the midst of a traffic stop. Nevertheless, the deputy continued his inquiry on the basis that Holler appeared to be nervous. It was at that point that Holler admitted to drinking one beer and acknowledged that he was worried about receiving a citation. The deputy then asked Holler to exit the vehicle.

{¶16} The majority correctly notes that the United States Supreme Court in *Mimms* held that ordering a driver out of his or her vehicle in the midst of a lawful traffic stop is “[an] additional intrusion [that] can only be described as *de minimis*.” (Emphasis sic.) *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977). In reaching this conclusion, the Supreme Court observed that “[w]hat is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer’s safety.” *Id.* The majority further points to *Robinette II* in support of the proposition that an officer’s subjective rationale in asking a defendant to exit his vehicle is irrelevant for the purposes of the Fourth Amendment. *State v. Robinette*, 80 Ohio St.3d 234, 239 (1997). In *Robinette II*, the Ohio Supreme Court contemplated a scenario where a driver, after being removed from his vehicle, was informed by the officer that he would be issued a warning. *Robinette II* at 243. Without a break in the conversation, the officer inquired about contraband in the vehicle and asked for permission to search. *Id.* Notably, the Supreme Court determined that the continued detention was unlawful. *Id.* at 241. “Once [the officer] administered the warning for speeding to Robinette, the reason for the stop ended.” *Id.* at 239. The high court’s conclusion was predicated in part on the following holding:

When a police officer’s objective justification to continue detention of a person stopped for a traffic violation for the purpose of searching the person’s vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure.

Id. at paragraph one of the syllabus.

{¶17} In this case, I do not believe that the deputy's continued detention of Holler was related to the purpose of the traffic stop. "[An] officer may not continue [a] detention for reasons unrelated to the initial purpose of the stop, unless he discovers additional specific and articulable facts that give rise to a reasonable suspicion of criminal activity." *State v. Rackow*, 9th Dist. Wayne No. 06CA0066, 2008-Ohio-507, ¶ 8, citing *Robinette II* at paragraph one of the syllabus. Holler's demeanor coupled with his admission to drinking a single beer did not give rise to a reasonable suspicion of criminal activity. Furthermore, although the deputy had yet to process a citation, the deputy's request that Holler exit his vehicle could not reasonably be justified by officer safety concerns given the way the stop had unfolded to that point. Under these circumstances, I would hold that the trial court erred in denying Holler's motion to suppress.

APPEARANCES:

PATRICK L. BROWN, Attorney at Law, for Appellant.

ANGELA WYPASEK, Prosecuting Attorney, and DAVID FOLK, Assistant Prosecuting Attorney, for Appellee.