

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-09-020
- vs -	:	<u>OPINION</u> 8/13/2012
JEFFREY L. COLEMAN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 10CRI00174

Jess Weade, Fayette County Prosecuting Attorney, Fayette County Courthouse, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

Joseph R. Landusky, II, 901 South High Street, Columbus, Ohio 43206, for defendant-appellant

HUTZEL, J.

{¶ 1} Defendant-appellant, Jeffrey L. Coleman, appeals his drug possession conviction from the Fayette County Court of Common Pleas. Coleman argues the trial court erred in overruling his motion to suppress evidence that police seized from him and his vehicle after stopping him for a minor traffic violation. For the reasons that follow, we disagree with Coleman's argument and thus affirm the judgment of the trial court.

{¶ 2} On August 17, 2010, Patrolman Jeff Heinz of the Washington Court House Police Department was watching an apartment complex known for its high drug activity. Patrolman Heinz saw a vehicle enter the apartment complex. The vehicle's driver went into one of the apartments for a brief time, exited and then drove away. When the driver drove past him, Patrolman Heinz noticed the driver had "a tinted license plate cover on his rear license plate," which prevented the patrolman from being able to read the lettering on the plate. Patrolman Heinz began following the vehicle, but even when he drove up immediately behind it, he was still unable to read its license plate. Patrolman Heinz activated his cruiser's overhead "takedown" lights and spotlights to bring the vehicle to a stop, at which time Heinz, with the aid of the takedown lights and spotlights, was finally able to read the license plate.

{¶ 3} Patrolman Heinz asked the driver for his license. When Patrolman Heinz learned that the driver's name was Coleman, the patrolman realized he was familiar with him. Patrolman Heinz knew Coleman as someone who had been involved in drug activity, at least with drug possession. As a result, Patrolman Heinz called for a canine unit to come to the scene. He then returned to his cruiser to fill out a warning slip for Coleman. As Patrolman Heinz was returning to Coleman's vehicle to issue the warning slip, the canine unit arrived, approximately 12 minutes after Heinz had called for it.

{¶ 4} The canine unit's handler walked the dog around Coleman's vehicle, and the dog alerted twice to the vehicle's side door. Patrolman Heinz ordered Coleman to exit the vehicle and then conducted a pat-down search of him. During the pat-down, Patrolman Heinz felt a hard lump in Coleman's right-side pants pocket, which Heinz, as a result of his past experience as a police officer, believed to be crack cocaine. When Patrolman Heinz asked Coleman what the substance was, Coleman replied that he did not know. Patrolman Heinz removed the item from Coleman's pocket, and the substance was later determined to be crack cocaine. A search of Coleman's vehicle led to the recovery of additional narcotics.

Patrolman Heinz placed Coleman in his cruiser, and shortly thereafter, Coleman told him that there was "some powder" in a Marlboro pack in the vehicle's center console.

{¶ 5} Coleman was indicted on three counts of possession of drugs, which are felonies of the third, fourth and fifth degrees. Each count was accompanied by a vehicle forfeiture specification. Coleman filed a motion to suppress the evidence obtained from him as a result of the traffic stop, and the trial court overruled it. Coleman then pled no contest to the charges, and the trial court found Coleman guilty as charged. The trial court sentenced Coleman to an aggregate two-year prison term plus an additional year of imprisonment for violating his post-release control. The trial court also ordered forfeiture of Coleman's vehicle, which had been seized at the time of his arrest.

{¶ 6} Coleman now appeals, assigning the following as error:

{¶ 7} THE TRIAL COURT ERRED WHEN IT FOUND THAT THERE WAS PROBABLE CAUSE TO STOP THE DEFENDANT FOR DRIVING WITH AN OBSTRUCTED LICENSE PLATE WHEN THE PHYSICAL EVIDENCE SHOWED THAT THE LICENSE PLATE COVER DID NOT OBSTRUCT THE LICENSE PLATE AND THE PHYSICAL EVIDENCE WAS IN DIRECT CONFLICT WITH THE POLICE TESTIMONY IN THIS REGARD.

{¶ 8} Coleman argues in his sole assignment of error that the trial court erred in finding that the police had probable cause to stop him for driving with an obstructed license plate because "there is absolutely no indication from the photographs [admitted into evidence at the suppression hearing] that the plastic cover [on the license plate] obstructed the view of the license plate in any possible way." We disagree with this argument.

{¶ 9} A trial court's ruling on a motion to suppress presents an appellate court with a mixed question of law and fact. *State v. Cochran*, 12th Dist. No. CA2006-10-023, 2007-Ohio-3353, ¶ 12. When considering a motion to suppress, the trial court assumes the role of trier

of fact. *Id.* Because the trial court can personally observe the witnesses, the trial court is in the best position to evaluate their credibility and thus to resolve any disputed factual issues. *Id.* A reviewing court will accept the trial court's findings of fact so long as they are supported by competent, credible evidence. *Id.* However, a reviewing court "independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Id.*

{¶ 10} Generally, a police officer's decision to stop an automobile is reasonable for Fourth Amendment purposes where the officer has probable cause to believe that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769 (1996); *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12 (1996). When a police officer has probable cause to believe that a traffic violation is occurring, the officer may, consistent with the Fourth Amendment, stop the vehicle even if the officer had some "ulterior motive" for making the stop. *Whren* at 813; *Erickson* at 11.

{¶ 11} When detaining a motorist for a traffic violation, a police officer may detain the motorist for a time period sufficient to allow the officer to issue a ticket or a warning, or to run a computer check on the driver's license, registration and vehicle plates. *State v. Batchili*, 113 Ohio St. 3d 403, 2007-Ohio-2204, ¶ 12. "In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation." *Batchili*, quoting *State v. Carlson*, 102 Ohio App.3d 585, 598-599 (9th Dist. 1995).

{¶ 12} A "lawfully detained vehicle may be subject to a canine sniff even without the presence of reasonable suspicion of drug related activity," and a "canine sniff of [such] a vehicle may be conducted during the time period necessary to effectuate the original purpose

of the stop." *State v. Cochran*, 2007-Ohio-3353 at ¶ 25. "[T]he use of a well-trained narcotics-detection dog—one that 'does not expose noncontraband items that otherwise would remain hidden from public view,' [*United States v.*] *Place*, 462 U.S. [696] at 707, 103 S.Ct. 2637—during a lawful traffic stop, generally does not implicate legitimate privacy interests." *Illinois v. Caballes*, 543 U.S. 405, 409, 125 S.Ct. 834, 838 (2005). Nevertheless, the duration of the stop must be limited to that which is necessary to satisfy the purpose of the stop. *State v. Chatton*, 11 Ohio St.3d 59, 62-63 (1984).

{¶ 13} In this case, the trial court did not err in finding that Patrolman Heinz had probable cause to stop Coleman for driving with an obstructed license plate. R.C. 4503.21(A) provides that license plates "shall not be covered by any material that obstructs their visibility."¹ Patrolman Heinz testified that Coleman's license plate was obstructed as a result of the plastic cover on it and that he was unable to read the license plate until he activated his cruiser's takedown lights and spotlights. Patrolman Heinz' testimony was largely corroborated by Patrolman Derek Pfeifer who was at the scene on the night in question. Patrolman Pfeifer testified that he could not read Coleman's license plate because he was at least two car lengths behind Coleman's vehicle *and* because there was a cover on Coleman's license plate that had a glare on it, which prevented him from being able to read the license plate.

{¶ 14} Coleman argues Patrolman Heinz lacked probable cause to stop him for driving with an obstructed license plate because photographs admitted into evidence at the suppression hearing showed that contrary to Heinz' testimony, the clear plastic cover on the license plate could not have obstructed anyone's view of the license plate. In support of his argument, Coleman relies on the so-called "physical facts rule" discussed in *McDonald v.*

1. Washington Court House Codified Ordinance 71.09 tracks the language of R.C. 4503.21(A) although it is unclear from the record which traffic code formed the basis of the stop.

Ford Motor Co., 42 Ohio St.2d 8, 13-14 (1975), which considers "whether circumstantial evidence of the physical facts is so conclusive as to wholly rebut oral testimony presenting a different version." Coleman asserts that Patrolman Heinz' testimony that the clear plastic covering obstructed the view of the license plate was contradicted by "the actual physical fact that the clear license plate cover did not obstruct the view of the plate." We disagree with this assertion.

{¶ 15} A review of the photographs admitted into evidence at the suppression hearing shows that the license plate is legible and that the plastic covering on it cannot be seen in the photographs. However, the "physical facts rule" is inapplicable here because the photographs that Coleman relies on are not "so conclusive as to wholly rebut" Patrolman Heinz' testimony, since they were taken under markedly different circumstances than those that existed on the night in question.

{¶ 16} Patrolman Heinz testified that the plastic covering on the license plate prevented him from being able to read it. Patrolman Pfeifer testified that one of the reasons he was not able to read the license plate was because the plastic cover on it created a "glare" that prevented him from making out any of the lettering on the plate. Patrolman Pfeifer's testimony was corroborated by defense exhibits one, two and three, which are three of the photographs that Coleman relies on in support of his argument. While the lettering on the license plate is legible in the photographs, those photographs nevertheless show how the plastic covering on the license plate could have created a glare that would have prevented Patrolman Heinz and Patrolman Pfeifer from being able to read the license plate prior to the stop on the night in question. Most importantly, at the time Patrolman Heinz stopped Coleman's vehicle, it was dark outside. By contrast, the photographs that Coleman relies on were taken in a well-lit area.

{¶ 17} Coleman also points out that Patrolman Pfeifer testified that before Patrolman

Heinz stopped Coleman for driving with an obstructed license plate, Heinz told Pfeifer in a police radio conversation between the two prior to the stop that he knew who Coleman was and knew about Coleman's drug history. Coleman asserts that if Patrolman Pfeifer is to be believed, Patrolman Heinz must have been able to view Coleman's license plate and run a check on it *before* he made the stop, which contradicts Heinz' testimony that he stopped Coleman's vehicle because his license plate was obstructed and could not be read. We find this argument unpersuasive.

{¶ 18} The trial court expressly stated in its entry overruling Coleman's motion to suppress that it found Patrolman Pfeifer's testimony regarding the radio conversation mentioned above *not* to be credible "in light of all the evidence" and found Patrolman Heinz's testimony on the matter "to be reasonable and credible in light of all the facts." While the trial court stated that it found Patrolman Heinz' testimony on this matter to be "credible" but found Patrolman Pfeifer's testimony not to be "credible," it appears likely that what the trial court meant to say was that it found Patrolman Heinz' *recollection* of the radio conversation to be more *accurate* than Patrolman Pfeifer's. We come to this conclusion because there is nothing in the record that calls Patrolman Pfeifer's credibility into question, but even a police officer's recollection of events can be erroneous.

{¶ 19} In any event, the trial court, acting in its role as trier of fact in ruling on Coleman's motion to suppress, was in the best position to evaluate the credibility of the witnesses and therefore to resolve any disputed factual matters. *Cochran*, 2007-Ohio-3353 at ¶ 12. As the trier of fact, the trial court was free to believe all, part or none of the testimony of each witness, and therefore the trial court was free to find any of the witnesses who testified at the suppression hearing to be credible, or reliable, on some issues, but not others. See *State v. Colquitt*, 188 Ohio App. 3d 509, 512, 2010-Ohio-2210, fn. 1. Moreover, for the reasons stated earlier, the "physical facts rule" is inapplicable to this case since the

photographs of the license plate with the plastic covering on it were not "so conclusive as to wholly rebut" Patrolman Heinz' testimony.

{¶ 20} Also, the duration of the stop of Coleman's vehicle was not unreasonable for Fourth Amendment purposes. This court has found that detaining a person for up to 30 minutes from the time of the original stop to the time the canine alerted on the contraband was not unreasonable. *Id.* at ¶ 26, citing *State v. Bolden*, 12th Dist. No. CA2003-03-007, 2004-Ohio-184, ¶ 19-25.

{¶ 21} Patrolman Heinz testified that the average traffic stop takes 10 to 15 minutes. In this case, the canine unit arrived approximately 12 minutes after Patrolman Heinz called for the unit to come to the scene. The trial court found that Coleman's detention from the time he was stopped to the time the canine unit arrived was 14 minutes, which the trial court determined to be reasonable. The dog alerted to the presence of narcotics in Coleman's vehicle on its first pass around the vehicle. Thus, the evidence shows that the canine sniff took place within the time period generally necessary to effectuate the purpose of the original stop, which was to investigate and issue a warning to Coleman for driving with an obstructed license plate. *Cochran*, 2007-Ohio-3353 at ¶ 25. Moreover, there was no evidence to suggest that Coleman's "detention for the traffic violation was of sufficient length to make it constitutionally dubious." *State v. Batchili*, 2007-Ohio-2204 at ¶ 14. *Compare State v. Ramos*, 155 Ohio App.3d 396, 2003-Ohio-6535, ¶ 17 (2nd Dist.2003) (detention of motorist while awaiting canine unit beyond the 25 to 30 minutes it takes to process a traffic citation was illegal without reasonable suspicion to justify the prolonged detention).

{¶ 22} In light of the foregoing, Coleman's sole assignment of error is overruled.

{¶ 23} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.