

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 2024-CA-4
	:	
v.	:	Trial Court Case No. 23CR164
	:	
DERRICK E. TOMLIN	:	(Criminal Appeal from Common Pleas
	:	Court)
Appellant	:	
	:	

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OPINION

Rendered on September 27, 2024

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CATHY J. WEITHMAN, Attorney for Appellant

BRANDON S. MYERS, Attorney for Appellee

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WELBAUM, J.

{¶ 1} Appellant Derrick E. Tomlin appeals from his conviction in the Miami County Court of Common Pleas after pleading no contest to one count of possession of cocaine.

In support of his appeal, Tomlin contends that the trial court erred by failing to grant his motion to suppress the cocaine that was found on his person following a traffic stop and pat-down search for weapons. For the reasons outlined below, the judgment of the trial court will be affirmed.

### **Facts and Course of Proceedings**

{¶ 2} On April 19, 2023, a Miami County grand jury returned an indictment charging Tomlin with one fifth-degree-felony count of possession of cocaine in violation of R.C. 2925.11(A)/(C)(4)(a). The charge arose after a state trooper discovered cocaine on Tomlin's person following a traffic stop and pat-down search for weapons. Tomlin initially pled not guilty to the charge and then filed a motion to suppress the drug evidence on grounds that the traffic stop and pat-down search had violated his constitutional right to be free from unreasonable searches and seizures.

{¶ 3} On October 26, 2023, the trial court held a hearing on Tomlin's motion to suppress. At the hearing, the State presented testimony from the state trooper who conducted the traffic stop in question. The State also presented videos of the traffic stop that were taken from the trooper's body camera and cruiser camera. The following is a summary of the information that was presented at the hearing.

{¶ 4} Around 2:00 a.m. on January 25, 2023, Trooper Jacob Lawson of the Ohio State Highway Patrol, Piqua Post, was on duty in a marked police cruiser driving southbound on Interstate 75 ("I-75") for the purpose of responding to a call of a disabled vehicle near Tipp City. While traveling just north of U.S. Route 36 around mile marker

83, Tpr. Lawson observed a white vehicle use the left lane of travel to pass a salt truck that was laying salt in preparation for an impending winter storm. After the white vehicle passed the salt truck, Tpr. Lawson followed the vehicle for approximately one and a half miles. During that time, Tpr. Lawson determined that the vehicle was traveling 46 to 50 miles per hour in a 70-mile-per-hour zone, and he observed that the white vehicle continued to travel in the left lane as opposed to moving back over to the right. There was no minimum speed limit posted, but Tpr. Lawson testified that the white vehicle was traveling too slowly in the left lane, in violation of R.C. 4511.25(B). Tpr. Lawson did not observe any other traffic violations. Although a winter storm was approaching, it had not yet started to snow and the road conditions were clear.

{¶ 5} While following the white vehicle, Tpr. Lawson also ran the vehicle's license plate information through his computer system. Tpr. Lawson learned that the registered owner of the white vehicle was a female named Dominique Briggs and that Briggs had a suspended operator's license. Given that it was dark outside, and given the position of the white vehicle on I-75, Tpr. Lawson was unable to determine whether the driver of the vehicle matched the description of Briggs. Because of this, and because the vehicle was traveling too slowly in the left lane, Tpr. Lawson decided to conduct a traffic stop.

{¶ 6} When Tpr. Lawson activated the overhead lights on his police cruiser, the driver of the white vehicle, later identified as Tomlin, pulled over on the shoulder of I-75. Tpr. Lawson then approached the passenger's side of the vehicle and immediately observed that the driver, Tomlin, was a male and thus not the registered owner. When he reached the vehicle, Tpr. Lawson asked Tomlin to roll down the passenger's side

window, and he detected the strong odor of raw marijuana inside the vehicle. Thereafter, Tpr. Lawson identified himself and advised Tomlin that he had stopped him because the registered owner of the vehicle had a suspended operator's license and because Tomlin had been traveling "46 miles an hour in the fast lane." State's Exhibit 1. In response, Tomlin explained that he had been driving slowly because he was sliding on the salt from the salt truck. Tpr. Lawson asked Tomlin for his operator's license, but Tomlin told Tpr. Lawson that he did not have his license with him. Tpr. Lawson then asked Tomlin's sole passenger whether he had an identification card, and the passenger indicated he did not. Thereafter, Tpr. Lawson advised that he was going to come around to the driver's side of the vehicle and have Tomlin step outside.

{¶ 7} When Tpr. Lawson reached the driver's side of the vehicle, Tomlin did not get out of the vehicle right away; he stayed in the driver's seat, fidgeted for a few moments, and asked why he "was getting pulled out." State's Exhibit 1. Tpr. Lawson told Tomlin that he would explain himself in a minute and continued to ask Tomlin to step out of the vehicle. Tpr. Lawson then asked Tomlin if he had any weapons, and Tomlin said no. Tpr. Lawson once again asked Tomlin to step out of the vehicle, and Tomlin continued to fidget in the driver's seat. Thereafter, Tpr. Lawson asked Tomlin: "What is in your hand? What is in your pocket?" and ordered him to get his hands out of his pockets. *Id.* When Tomlin started to exit the vehicle, he still had his left hand in his front sweatshirt pocket. Tpr. Lawson once again told him to get his hand out of his pocket, and Tomlin complied. However, when Tomlin stood up from the vehicle, he turned around and put his left hand back in his sweatshirt pocket. While doing so, Tomlin told

Tpr. Lawson that he was getting his keys. In response, Tpr. Lawson told Tomlin to lay his keys down, grab his wallet, and walk over to the front of the police cruiser. After hesitating slightly, Tomlin walked over to the police cruiser. During that time, Tpr. Lawson asked Tomlin: "Do you mind if I pat you down real quick?" *Id.* In response, Tomlin verbally agreed, and Tpr. Lawson conducted a pat-down search for weapons.

**{¶ 8}** During the pat-down search, Tpr. Lawson placed Tomlin's hands behind his back and told him to "open up his fingers" and to "open up [his] hands." State's Exhibit 1. Tomlin, however, would not open his closed fist. In response, Tpr. Lawson said: "Put your hands together like you are praying. Put your hands together. Open up your palms." *Id.* Tpr. Lawson testified that he was concerned Tomlin may have been holding a weapon, such as a knife, or something else that could have compromised his safety, such as fentanyl. Tpr. Lawson then saw a clear, plastic baggie sticking out from the top of Tomlin's fingers. Tpr. Lawson secured the baggie and asked what it was; Tomlin told Tpr. Lawson that the baggie contained cocaine. Thereafter, Tpr. Lawson detained Tomlin and his passenger and searched the vehicle. The search yielded a small amount of marijuana. Tomlin was later arrested and charged with possession of cocaine.

**{¶ 9}** At the time of the suppression hearing, Tpr. Lawson had been a state trooper for five years. During his testimony, Tpr. Lawson stated that he went through the Ohio State Highway Patrol Academy, where he received training on the detection of raw and burnt marijuana odors. He also testified that, while in the field, he had encountered marijuana on over 200 occasions.

**{¶ 10}** After considering the testimony and video evidence presented at the

suppression hearing, the trial court overruled Tomlin's motion to suppress. Tomlin thereafter pled no contest to the single count of possession of cocaine. The trial court accepted Tomlin's no contest plea and found him guilty as charged. The trial court then sentenced Tomlin to three years of community control sanctions.

{¶ 11} Tomlin now appeals from his conviction, raising two assignments of error for review. Because Tomlin's assignments of error are interrelated, we will address them together.

### **First and Second Assignments of Error**

{¶ 12} Under his first and second assignments of error, Tomlin challenges the trial court's judgment overruling his motion to suppress. Specifically, Tomlin claims that the trial court should have suppressed the drug evidence found on his person because the initial traffic stop was unlawful. Alternatively, Tomlin claims that even if this court disagrees and finds that the traffic stop was lawful, the drug evidence should have been suppressed because his continued detainment following the traffic stop was unlawful. We disagree with Tomlin's claims.

### *Standard of Review*

{¶ 13} "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 therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id.*, citing

*State v. Mills*, 62 Ohio St.3d 357, 366 (1992). “Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). “Accepting these facts as true, the appellate court 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 (4th Dist. 1997).

{¶ 14} Upon review, we find that the trial court’s findings of fact were supported by competent, credible evidence in the record and were consistent with the findings of fact recited in this opinion. Using those facts, we will independently apply the relevant law to determine whether the trial court correctly overruled Tomlin’s motion to suppress.

#### *Law and Analysis*

{¶ 15} The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution prohibit unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 8 (1968); *State v. Orr*, 91 Ohio St.3d 389, 391 (2001). “Warrantless searches and seizures violate this prohibition unless conducted pursuant to one of the ‘few specifically established and well-delineated exceptions.’” *State v. Mee*, 2017-Ohio-7343, ¶ 12 (2d Dist.), quoting *Katz v. United States*, 389 U.S. 347, 357 (1967). “One of these exceptions ‘is commonly known as an investigative or *Terry* stop,’ which includes the temporary detention of motorists for the enforcement of traffic laws.” *Id.*, quoting *State v. Dorsey*, 2005-Ohio-2334, ¶ 17 (10th Dist.), citing *Terry*. Under that exception “police officers may briefly stop and/or temporarily detain individuals to investigate

possible criminal activity if the officers have a reasonable, articulable suspicion that criminal activity may be afoot, including a minor traffic violation.” *State v. Keister*, 2022-Ohio-856, ¶ 28 (2d Dist.), citing *Terry* and *State v. Mays*, 2008-Ohio-4539, ¶ 7-8. It is well established that “[a] traffic violation gives an officer a reasonable articulable suspicion justifying a traffic stop[.]” *State v. Wilson*, 2017-Ohio-9317, ¶ 16 (2d Dist.), citing *Mays* at ¶ 22; *State v. Fickert*, 2018-Ohio-4349, ¶ 20 (2d Dist.).

{¶ 16} In this case, Tpr. Lawson testified that he initiated the traffic stop in question because: (1) his computer system indicated that the registered owner of the vehicle, Briggs, had a suspended operator’s license; and (2) the vehicle was traveling unreasonably slowly in the left lane of the highway in violation of R.C. 4511.25(B).

{¶ 17} R.C. 4511.25(B)(1) provides that:

Upon all roadways *any vehicle . . . proceeding at less than the prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic*, and far enough to the right to allow passing by faster vehicles if such passing is safe and reasonable, except under any of the following circumstances:

- (a) When overtaking and passing another vehicle or trackless trolley proceeding in the same direction;
- (b) When preparing for a left turn;
- (c) When the driver must necessarily drive in a lane other than the right-hand lane to continue on the driver’s intended route.



(Emphasis added.)

**{¶ 18}** Although not referenced by Tpr. Lawson, R.C. 4511.21(A) also precludes motorists from “operat[ing] a motor vehicle . . . at a speed greater *or less* than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions[.]” (Emphasis added.) Generally speaking, violations of R.C. 4511.21(A) and R.C. 4511.25(B) are minor misdemeanors. See R.C. 4511.21(P)(1)(a) and R.C. 4511.25(D).

**{¶ 19}** As previously discussed, Tpr. Lawson testified that he observed Tomlin pass a salt truck using the left lane of travel and then continue to drive in the left lane for approximately a mile and a half “at an unreasonably slow speed[.]” i.e., 46 to 50 miles per hour in a 70-mile-per-hour zone. Suppression Hearing Tr. (Oct. 26, 2023), p. 7 and 15. Lawson also testified, and the video evidence confirmed, that there were no road or weather conditions that necessitated traveling at such a slow speed. Therefore, we find that Tpr. Lawson’s observations of the vehicle’s slow speed provided him with a reasonable, articulable suspicion of criminal activity in the nature of a traffic violation that justified his stopping the vehicle.

**{¶ 20}** Tpr. Lawson also had a reasonable, articulable suspicion of criminal activity based on his knowledge that the registered owner of the vehicle, Briggs, had a suspended operator’s license. To justify an investigatory stop on that basis, “a logical link or reasonable inference is needed that connects the unlicensed person to the driver being observed by the officer.” *State v. Leveck*, 2011-Ohio-1135, ¶ 15 (2d Dist.). This court has found that “[i]t is reasonable to assume that the driver of a vehicle is most often the

owner of the vehicle.” *State v. Owens*, 75 Ohio App.3d 523, 525 (2d Dist. 1991); accord *Greenville v. Fortkamp*, 1998 WL 310743 (2d Dist. May 13, 1998) and *Leveck* at ¶ 15. Here, Tpr. Lawson testified that he could not see the driver of the vehicle due to darkness and the vehicle’s position on the road. In the absence of other information, it was reasonable for Tpr. Lawson to assume that the driver of the vehicle was the registered owner, Briggs. Since Tpr. Lawson was aware that Briggs had a suspended operator’s license, he was justified in stopping the vehicle on that basis. Therefore, Tomlin’s claim that the traffic stop was unlawful lacks merit; Tpr. Lawson had reasonable, articulable suspicion to initiate the traffic stop based on the slow-speed traffic violation and the registered owner’s suspended status.

{¶ 21} Tomlin argues, however, that once Tpr. Lawson approached the vehicle and saw that he (Tomlin) was male, and thus not the registered owner, the purpose for the traffic stop had “evaporated” and thus necessitated his release from detainment. We disagree. Tomlin’s argument overlooks the fact that he was also stopped due to the slow-speed traffic violation. “ ‘ “When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a computer check on the motorist’s driver’s license, registration and vehicle plates.” ’ ” *State v. Matheney*, 2016-Ohio-7690, ¶ 22 (2d Dist.), quoting *State v. Ramos*, 2003-Ohio-6535, ¶ 11 (2d Dist.), quoting *State v. Aguirre*, 2003-Ohio-4909, ¶ 36 (4th Dist.). Furthermore, “a police officer may order a motorist to get out of a car, which has been properly stopped for a traffic violation, even without suspicion of criminal activity.” *State v. Evans*, 67 Ohio St.3d 405,

407 (1993), citing *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); accord *State v. Core*, 2023-Ohio-4061, ¶ 23 (2d Dist.). Therefore, Tomlin’s claim that he should have been immediately released upon Tpr. Lawson’s seeing that he was not the registered owner of the vehicle lacks merit.

**{¶ 22}** Tomlin next argues that Tpr. Lawson did not have a reasonable, articulable suspicion of criminal activity to warrant detaining him beyond the original purpose of the traffic stop. We once again disagree. “An officer may extend a traffic stop upon discovering additional facts that create reasonable suspicion of criminal activity beyond the original basis for the stop.” (Citation omitted.) *State v. Bell*, 2023-Ohio-1588, ¶ 16 (2d Dist.). “The existence of reasonable articulable suspicion is determined by evaluating the totality of the circumstances, which must be considered ‘through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.’” *State v. Wood*, 2023-Ohio-2973, ¶ 26 (2d Dist.), quoting *State v. Andrews*, 57 Ohio St.3d 86, 87-88 (1991), citing *United States v. Hall*, 525 F.2d 857, 859 (D.C.Cir. 1976) and *State v. Freeman*, 64 Ohio St.2d 291, 295 (1980).

**{¶ 23}** Here, Tpr. Lawson testified that Tomlin did not provide his operator’s license upon request, which was a misdemeanor offense. See R.C. 4507.35(B). Therefore, Tpr. Lawson was entitled to detain Tomlin for the purpose of completing the investigation into his failure to produce an operator’s license, as Tpr. Lawson had to confirm Tomlin’s identity and determine whether Tomlin was licensed to drive. See *State v. Martina*, 2001 WL 1658157, \*3 (2d Dist. Dec. 28, 2001) (finding an officer was “authorized to detain Defendant for investigation of whether he was licensed to drive when Defendant was

unable to produce a license or satisfactory proof that he had a license upon the officer's request").

{¶ 24} Tpr. Lawson also testified that he had detected the odor of raw marijuana inside the vehicle when Tomlin rolled down the passenger's side window. In *Moore*, 90 Ohio St.3d 47, the Supreme Court of Ohio held that "the smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to search a motor vehicle, pursuant to the automobile exception to the warrant requirement." *Id.* at 48; accord *Bell* at ¶ 12. Although it is currently legal for adults 21 years of age and older to possess and use marijuana in Ohio, at the time of Tomlin's traffic stop, it was illegal to possess and use marijuana other than for medical purposes.<sup>1</sup> Courts have found that, under circumstances where there are still some forms of illegal marijuana, "*Moore* remains good law and any detection of the odor would give probable cause to search." *State v. Withrow*, 2022-Ohio-2850, ¶ 19 (7th Dist.) ("The fact that illegal marijuana and legal forms of hemp have the same odor is irrelevant so long as some forms of marijuana remain illegal"); accord *State v. Tillman*, 2022-Ohio-4341, ¶ 19 (5th Dist.); *State v. Johnson*, 2022-Ohio-2773, ¶¶ 33-35 (8th Dist.); *State v. Wright*, 2024-Ohio-1763, ¶ 22-26 (1st Dist.).

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<sup>1</sup>Effective September 8, 2016, Ohio House Bill 523 legalized medical marijuana in Ohio and created the Ohio Medical Marijuana Control Program, which allows people with certain medical conditions, upon the recommendation of an Ohio-licensed physician, to purchase and use medical marijuana. See 2016 Sub.H.B. No. 523; R.C. Chapter 3796; Ohio Adm.Code 3796:7-2-05. On November 7, 2023, a majority of the voters in Ohio voted in favor of State Issue 2, a ballot initiative to legalize the possession and recreational use of marijuana by adults at least 21 years of age; that law went into effect on December 7, 2023. Tomlin's traffic stop occurred almost a year earlier, on January 25, 2023.

{¶ 25} Because non-medical marijuana was still illegal in Ohio at the time of the traffic stop in this case, we need not address whether the legalization of marijuana has invalidated the aforementioned principle in *Moore*. For purposes of this case, *Moore* remains valid and applicable. Applying *Moore*, we find that Tpr. Lawson’s testimony regarding his training and experience established that he was qualified to recognize the odor of marijuana. Therefore, when Tpr. Lawson detected the odor of marijuana in the vehicle, he had probable cause to search the vehicle and to detain Tomlin for that purpose. Accordingly, Tomlin’s continued detention was justified not only because he had failed to produce an operator’s license, but also because Tpr. Lawson had detected the odor of marijuana in the vehicle.

{¶ 26} Albeit indirectly, Tomlin also challenges Tpr. Lawson’s pat-down search for weapons. Tomlin cites *State v. Oliver*, 2023-Ohio-1550 (10th Dist.), for the proposition that “[a]n officer’s detection of the odor of marijuana in a car does not, alone, establish probable cause sufficient to search an occupant of that car without a warrant.” *Id.* at ¶ 80. Indeed, “[i]t is well-established that probable cause for a search of a person must be ‘particularized with respect to that person.’ ” *Id.*, quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). Therefore, “even in cases where probable cause for a vehicle search exists, law enforcement must independently justify a search of the vehicle operator[.]” *State v. Maddox*, 2021-Ohio-586, ¶ 21 (10th Dist.), citing *Moore*, 90 Ohio St.3d at 52. In other words, even if an investigatory detention is justified, as it was here, it does not necessarily follow that a pat-down search for weapons is warranted. *State v. Martin*, 2004-Ohio-2738, ¶ 14 (2d Dist.). For a pat-down search to be warranted, “[a]n officer

must have a reasonable, objective, and individualized suspicion that the particular suspect is armed and presently dangerous under the totality of the circumstances[.]” (Citations omitted.) *Oliver* at ¶ 85. “The officer need not be absolutely certain that the individual is armed; rather, the issue is whether a reasonably prudent man in those circumstances would be warranted in the belief that his safety or the safety of others was in danger.” *Martin* at ¶ 14, citing *Terry*, 392 U.S. 1.

**{¶ 27}** In this case, however, Tpr. Lawson testified, and the video evidence confirmed, that Tomlin voluntarily consented to Tpr. Lawson’s conducting a pat-down search on him. “Valid consent is one of the well[-]recognized exceptions to the Fourth Amendment warrant requirement.” *State v. Boling*, 2013-Ohio-4813, ¶ 16 (2d Dist.), citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). “ ‘The United States Supreme Court has frequently recognized that a warrantless search is constitutionally permissible where a valid consent to the search has been obtained. The consent operates as a waiver of the constitutional right against unreasonable searches and seizures, provided that it is voluntary.’ ” *Id.*, quoting *State v. Sisler*, 114 Ohio App.3d 337, 342 (2d Dist. 1995).

**{¶ 28}** Even if Tomlin had not consented to the pat-down search, the search would still have been lawful based on Tomlin’s behavior during the traffic stop. Tpr. Lawson testified, and the video evidence confirmed, that Tomlin did not immediately comply with Tpr. Lawson’s orders for him to exit the vehicle. Rather, Tomlin fidgeted in the driver’s seat for a few moments while Tpr. Lawson ordered him to keep his hands out of his pockets. Thereafter, Tomlin started to exit the vehicle with his left hand still in his front

sweatshirt pocket. In response, Tpr. Lawson once again ordered Tomlin to keep his hands out of his pockets. However, Tomlin reached into his pocket again while telling Tpr. Lawson that he was getting out his keys. In addition, Tomlin hesitated when Tpr. Lawson ordered him to go to the front of his police cruiser. Furthermore, Tpr. Lawson testified, and the video evidence confirmed, that Tomlin appeared to be nervous throughout the encounter. Tpr. Lawson also testified that Tomlin would not open his closed fist and that he was concerned that Tomlin may have had a weapon, such as a knife, or some other item that could have compromised his safety, such as fentanyl.

**{¶ 29}** When considering the totality of these circumstances through the eyes of a reasonable, prudent police officer, we find that Tpr. Lawson was warranted in believing that Tomlin may have been armed and dangerous. Accordingly, even without Tomlin’s consent, Tpr. Lawson’s pat-down search for weapons was lawful. Because the traffic stop and the subsequent investigatory detention and pat-down search of Tomlin were lawful, the trial court did not err by overruling Tomlin’s motion to suppress.

**{¶ 30}** Tomlin’s first and second assignments of error are overruled.

### **Conclusion**

**{¶ 31}** Having overruled both of Tomlin’s assignments of error, the judgment of the trial court is affirmed.

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TUCKER, J. and LEWIS, J., concur.

