[Cite as *State v. Rahman*, 2024-Ohio-4768.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	Case No. 24CA00025
	:	
MOHAMMAD RAHMAN	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking Municipal Court, Case Nos. 23TRC05303 and 2023CRB01569
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	September 30, 2024

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
MICHAEL S. COX ASST. LAW DIRECTOR NEWARK LAW DEPARTMENT 40 West Main St., Fourth Floor Newark, 43055	SIERRA L. SEE 73 N. Sixth St. Newark, OH 43055

Delaney, P.J.

{¶1} Appellant Mohammad Rahman appeals from the February 8, 2024 "O.V.I. Sentencing Entry" of the Licking Municipal Court. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case arose on June 24, 2023, when Trooper Taylor of the Ohio State Highway Patrol was on routine patrol in the city of Pataskala. Taylor noticed a dark-colored sedan traveling at a very high rate of speed and visually estimated the sedan's speed at 85 miles per hour in a 50-mile-per-hour zone. Taylor activated his radar unit and clocked the vehicle's speed at up to 100 miles per hour.

{¶3} Taylor activated his overhead lights and the sedan began to brake, decelerating to around 40 miles per hour. Taylor testified erratic speed may be an indicator of impairment pursuant to the NHTSA manual. Despite Taylor's signal, the sedan proceeded for approximately two miles, failing to signal when it changed lanes and weaving within its lane of travel. Using his loudspeaker, Taylor commanded the vehicle to stop, but the vehicle continued on until it reached Reynolds Crossing Drive in Franklin County.

{¶4} When the vehicle stopped, Taylor ordered the driver to show his hands and the driver, identified at trial as appellant, complied. Taylor cuffed and Mirandized appellant to prevent him from fleeing the scene. Taylor asked appellant why he didn't stop on his command and appellant responded that he wanted to return the car to his mother.

{¶5} Taylor noted appellant's eyes were bloodshot and glassy; his face was flushed; and he smelled strongly of the odor of an alcoholic beverage. Taylor also noted

a strong odor of burnt marijuana. Appellant's speech was slurred; he claimed he was coming from a friend's house and denied consuming any alcoholic beverages.

{¶6} Taylor suspected appellant was impaired based upon his erratic driving and the indicators of impairment he observed about appellant's person; he decided to administer standardized field sobriety tests (SFSTs). Taylor has two years' experience as a trooper and has investigated approximately two hundred suspected impaired drivers. He described his training and experience for the jury, including his familiarity with the NHTSA manual and its directions for administering SFSTs. Taylor is trained to administer SFSTs and Advanced Roadside Drug Impairment Training (ARIDE).

{¶7} The first test was the horizontal gaze nystagmus; Taylor observed six out of a possible six indicators of impairment. When asked to recite the alphabet from "D" to "Q," appellant struggled to do so. Taylor also administered the Modified Romberg test due to suspected use of marijuana; the trooper noted eyelid tremors, a potential indicator of marijuana use. Taylor concluded appellant was under the influence of both alcohol and marijuana.

{¶8} Based upon the totality of the circumstances, including his observation of appellant, his erratic driving, demeanor, and performance on the SFSTs, Taylor arrested appellant for O.V.I.

{¶9} After the arrest, appellant became belligerent, threatening Taylor and cursing at him. Footage from Taylor's cruiser cam was played at trial to demonstrate appellant's demeanor. Appellant at first declined to identify himself. Taylor found appellant's identification and ran it through his in-car computer; he discovered appellant

was driving under an O.V.I. suspension and had three prior O.V.I. convictions within the past twenty years.

{¶10} After the arrest, appellant's vehicle was inventoried and a green, leafy substance believed to be marijuana was found, along with a glass pipe. When confronted with the items, appellant refused to answer questions.

{¶11} Appellant was brought to the Licking County Justice Center. Taylor read the BMV 2255 form to him, advising of the consequences for refusing to provide a chemical test or testing about the legal limits. After the advisement, appellant refused to submit to testing.

{¶12} Appellant was charged with O.V.I. pursuant to R.C. 4511.19(A)(1)(a); O.V.I. – Refusal pursuant to R.C. 4511.19(A)(2); driving under an O.V.I. suspension pursuant to R.C. 4510.14; and reckless operation pursuant to R.C. 4511.20.[1] Appellant was also cited with possession of marijuana pursuant to R.C. 2925.11(C)(3) and possession of drug paraphernalia pursuant to R.C. 2925.141.

{¶13} The trial court appointed counsel at appellant's request and counsel filed a motion to suppress.

{¶14} Appellee filed an additional charge of failure to comply pursuant to R.C. 2921.331. The three cases were consolidated upon motion of appellee.

{¶15} On the scheduled suppression hearing date, counsel moved to withdraw.

[1] Appellant has three prior uncounseled O.V.I. convictions within the past ten years and appellee declined to pursue felony prosecution due to the uncounseled nature of the priors. The instant offenses therefore were charged and prosecuted as O.V.I. – third within ten years.

{¶16} The suppression hearing was continued to December 19, 2023. Appellant appeared without counsel and indicated his intention to proceed pro se. The parties agreed the premises for the motion to suppress were the traffic stop, SFSTs, probable cause to arrest, and potential *Miranda* violations.

{¶17} Before the hearing commenced, the trial court engaged appellant in a colloquy to determine whether he understood his right to court-appointed counsel and knowingly, intelligently, and voluntarily waived same. The trial court advised appellant of the perils of self-representation. Appellant executed a waiver of his right to counsel.

{¶18} Appellee's sole witness was Taylor; appellant testified on his own behalf as the only defense witness. Appellee admitted exhibits including video of the stop and arrest from Taylor's bodycam and in-cruiser camera. In addition to the facts noted supra, at the suppression hearing, Taylor testified appellant failed to respond to his lights, siren, and loudspeaker while operating the sedan. The bodycam video showed appellant arguing with Taylor and refusing to answer questions about alcohol consumption.

{¶19} Appellant testified he didn't see the trooper until he passed a United Dairy Farmers store and failed to stop due to safety concerns. He believed the trooper was "aggressive" and asked the same questions repeatedly. Although he argued the HGN test was not properly administered, he offered no instances of claimed errors. Appellant denied drinking alcohol and smoking marijuana on the night of the stop.

{¶20} The trial court overruled the motion to suppress by written judgment entry filed December 29, 2023.

{¶21} The matter proceeded to trial by jury on February 8, 2024, and appellant again appeared without counsel. The trial court engaged appellant in a colloquy

regarding his choice to appear without counsel; the trial court explained appellant's constitutional right to counsel, the perils of proceeding pro se, the benefits of counsel including pursuing a defense or making motions favorable to appellant, and the potential penalties appellant faced if convicted.

{¶22} Appellant waived his right to counsel orally and in writing, again executing a written waiver.

{¶23} The matter proceeded to trial by jury. Appellant declined to testify and did not present evidence. Appellant was found guilty as charged. The trial court sentenced appellant to statutory O.V.I. penalties, including a jail term of 365 days to be served consecutively to a jail term of 3 days on the offense of driving under O.V.I. suspension. The O.V.I – Refusal charge merged for purposes of sentencing. Appellant was ordered to pay fines and court costs on the minor misdemeanor offenses of marijuana possession and possession of drug paraphernalia, and upon the first-degree misdemeanor offense of failure to comply.

{¶24} Appellant now appeals from the trial court's entries of conviction and sentence, incorporating the trial court's decision overruling his motion to suppress.

{¶25} Appellant raises three assignments of error:

ASSIGNMENTS OF ERROR

{¶26} "I. THE DEFENDANT-APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL."

{¶27} "II. THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS EVIDENCE."

{¶28} "III. THE TRIAL COURT COMMITTED HARMFUL ERROR IN IMPROPERLY JOINING THE PROCEEDINGS BELOW."

ANALYSIS

I.

{¶29} In his first assignment of error, appellant argues he received ineffective assistance of counsel in representing himself at trial. We disagree.

{¶30} To succeed on a claim of ineffectiveness, a defendant must satisfy a two-prong test. Initially, a defendant must show that trial counsel acted incompetently. *See*, *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). In assessing such claims, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* at 689, citing *Michel v. Louisiana*, 350 U.S. 91, 101, 76 S.Ct. 158 (1955).

{¶31} "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland,* 466 U.S. at 689. The question is whether counsel acted "outside the wide range of professionally competent assistance." *Id.* at 690.

{¶32} Even if a defendant shows that counsel was incompetent, the defendant must then satisfy the second prong of the *Strickland* test. Under this "actual prejudice" prong, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland,* 466 U.S. at 694.

{¶33} Appellant's appointed counsel withdrew and after colloquies with the trial court, appellant represented himself at both the suppression hearing and at jury trial. Appellant cannot assert his own ineffectiveness as counsel on appeal. See, *State v. Dinger*, 5th Dist. Stark No. 2020CA00177, 2022-Ohio-608, ¶ 18, *motion for delayed appeal granted,* 167 Ohio St.3d 1457, 2022-Ohio-2446, 190 N.E.3d 634, and *appeal not allowed,* 168 Ohio St.3d 1406, 2022-Ohio-3546, 195 N.E.3d 1045. It is well-established that one may not choose self-representation and then assert a claim of ineffective assistance of counsel. *State v. Roberts*, 9th Dist. Summit No. 30201, 2022-Ohio-3717, ¶ 6, citing *State v. Gales*, 9th Dist. Summit No. 29316, 2022-Ohio-776, ¶ 17; *State v. Taylor*, 98 Ohio St.3d 27, 2002-Ohio-7017, ¶ 82 ("The general rule is that '[t]he law pertaining to effective assistance of counsel does not apply when the defendant exercises his right to self-representation.'").

{¶34} Appellant does not argue, and we do not discern, any error in the trial court's colloquies with appellant when he asserted his choice to represent himself. Instead, appellant now points to arguments that could have been raised on his behalf and has assigned the error as ineffective assistance of counsel. His arguments are not well-taken.

{¶35} Appellant's first assignment of error is overruled.

II.

{¶36} In his second assignment of error, appellant argues the trial court erred in overruling his motion to suppress. We disagree.

{¶37} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role

of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶38} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See, *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See*, Williams*, supra. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 96,620 N.E.2d 906 (8th Dist.1994).

{¶39} In a motion to suppress, the trial court assumes the role of trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate witness credibility. *State v. Fain*, 5th Dist. Delaware No. 06CAA120094, 2007-Ohio-4854, ¶ 21, citation omitted. Accordingly, an appellate court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.*.

{¶40} In the instant case, appellant first argues Trooper Taylor lacked reasonable, articulable suspicion to effectuate the traffic stop. The Ohio Supreme Court has emphasized that probable cause is not required to make a traffic stop; rather, the standard is reasonable and articulable suspicion. *State v. Mays,* 119 Ohio St.3d 406, 2008–Ohio–4358, 894 N.E.2d 1204, ¶ 23. Reasonable suspicion constitutes something less than probable cause. *State v. Elkins*, 5th Dist. Stark No. 2016 CA 00191, 2017-Ohio-5554, ¶ 21, citing *State v. Carlson*, 102 Ohio App.3d 585, 590 (1995). The propriety of an investigative stop must be viewed in light of the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177 (1988), paragraph one of the syllabus. In a situation where the officer has observed a traffic violation, the stop is constitutionally valid. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 9, 665 N.E.2d 1091. In sum, " ' * * * if an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid.' " *State v. Adams,* 5th Dist. Licking No. 15 CA 6, 2015–Ohio–3786, ¶ 23, quoting *State v. Mays,* 119 Ohio St.3d 406, 894 N.E.2d 1204, 2008–Ohio–4539, ¶ 8.

{¶41} In the instant case, Taylor testified he observed appellant operating the vehicle at speeds of up to 100 miles per hour in a 50-mile per hour zone; failing to signal

lane changes and weaving within his lane; and failing to comply with Taylor's orders to stop. We have previously found that where an officer's attention is drawn to a vehicle by its high rate of speed, and the officer observes the vehicle weaving in its lane, the officer has reasonable suspicion to stop the vehicle based upon the totality of the circumstances. *State v. Fain*, supra, 5th Dist. Delaware No. 06CAA120094, 2007-Ohio-4854, ¶ 25, *appeal not allowed*, 117 Ohio St.3d 1406, 2008-Ohio-565, 881 N.E.2d 274. "Because an officer's testimony of a vehicle's speed can, if believed, satisfy the standard of proof beyond a reasonable doubt for a conviction, such may also be sufficient to create a reasonable suspicion the offense of speeding has been or is being committed." *Id.*

{¶42} Having found Taylor had reasonable, articulable suspicion to make the stop, we turn to appellant's argument that Taylor lacked probable cause to arrest him.

{¶43} A police officer has probable cause for an arrest if the facts and circumstances within his knowledge are sufficient to cause a reasonably prudent person to believe that the defendant has committed the offense. *State v. Cummings,* 5th Dist.No.2005–CA–00295, 2006–Ohio–2431, ¶ 15, citing *State v. Heston,* 29 Ohio St.2d 152, 280 N.E.2d 376 (1972). In making this determination, the trial court must examine the totality of facts and circumstances surrounding the arrest. See *State v. Miller,* 117 Ohio App.3d 750, 761, 691 N.E.2d 703 (11th Dist.1997); *State v. Brandenburg,* 41 Ohio App.3d 109, 111, 534 N.E.2d 906 (2nd Dist.1987).

{¶44} In the instant case, Taylor observed appellant's erratic driving, his failure to respond to the command to stop, and his belligerence throughout their contact. A defendant's belligerence and combativeness may be a sign of impairment. *State v. Hall*, 1st Dist. No. C-150317, 2016-Ohio-783, 60 N.E.3d 675, ¶ 29, citing *State v. Furguson,*

1st Dist. Hamilton Nos. C–130173, C–130174 and C–130175, 2013-Ohio-5388, ¶ 15; *State v. Heitzenrater,* 12th Dist. Butler No. CA98–06–119, 1998 WL 842770 (Dec. 7, 1998) [defendant's belligerent conduct contributed to a determination that his OVI arrest was supported by probable cause]; *Kirtland Hills v. Deir,* 11th Dist. Lake No. 2004–L–005, 2005-Ohio-1563, 2005 WL 737411, ¶ 20 [defendant's moods swings and uncooperative behavior, including swearing, could be used to establish probable cause to arrest for OVI].

{¶45} In addition to appellant's reckless operation of the vehicle, failure to comply, and belligerence during the investigation, Taylor cited other factors in his probable-cause determination, including a strong odor of an alcoholic beverage emanating from appellant's person and his poor performance on the field sobriety tests. "The standard for determining whether the police have probable cause to arrest an individual for OVI is whether, at the moment of arrest, the police had sufficient information, derived from a reasonable trustworthy source of facts and circumstances to cause a prudent person to believe that the suspect was driving under the influence." *State v. Rudder*, 5th Dist. Fairfield No. 2022CA00027, 2023-Ohio-993, ¶ 19, citing *State v. Swope*, 5th Dist. Fairfield No. 08 CA 50, 2009-Ohio-3849, ¶ 22. In the instant case, the trial court did not err in finding Taylor had probable cause to arrest appellant for O.V.I.

{¶46} The trial court properly overruled the motion to suppress and the second assignment of error is overruled.

III.

{¶47} In his third assignment of error, appellant argues the trial court improperly joined the traffic offenses and criminal offenses for trial. We disagree.

{¶48} Appellant was initially charged with two counts of O.V.I., driving under an O.V.I. suspension, reckless operation, possession of marijuana, and possession of drug paraphernalia. Appellee later added a count of failure to comply. On appeal, appellant argues the trial court erred in trying all of the charges in a single trial, but did not object to allegedly-prejudicial joinder before the trial court.

{¶49} Joinder is governed generally by Crim.R. 8(A), which provides in relevant part as follows:

> Two or more offenses may be charged in the same * * * complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct.

{¶50} Crim.R. 13 further provides that "[t]he court may order two or more indictments * * * to be tried together, if the offenses or the defendants could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment." Accordingly, Crim.R. 8 and Crim.R. 13 permit joinder of misdemeanor offenses of the same or similar character. The Tenth District Court of Appeals has explained that "[j]oinder is liberally permitted to conserve judicial resources, reduce the chance of * * * incongruous results and excessive trials, and diminish inconvenience to witnesses." *Dublin v. Starr*, 10th Dist. Franklin No. 21AP-173, 2022-Ohio-2298, ¶ 23, citing *State v. Armengau*, 10th Dist. No. 14AP-679, 93 N.E.3d

284, 2017-Ohio-4452, ¶ 99, *discretionary appeal denied*, 151 Ohio St.3d 1511, 2018-Ohio-365, 90 N.E.3d 950; *State v. Schaim*, 65 Ohio St.3d 51, 600 N.E.2d 661 (1992); *State v. Torres*, 66 Ohio St.2d 340, 343, 421 N.E.2d 1288 (1981).

{¶51} Appellant did not request relief from what he claims to be prejudicial joinder at the trial level. Therefore, he has forfeited this argument on appeal. See, *State v. Allen*, 9th Dist. Summit No. 25349, 2012-Ohio-249, ¶ 29, citing *State v. Gunner,* 9th Dist. No. 07CA0074–M, 2008–Ohio–4942, at ¶ 22, internal citation omitted. Nor has appellant argued plain error or presented any reason why this argument should be addressed for the first time on appeal. *Id.*

{¶52} Moreover, the offenses are properly joined as constituting parts of a course of criminal conduct. We find no error in the trial court's election to try all of the misdemeanor counts together and appellant's third assignment of error is overruled.

CONCLUSION

{¶53} Appellant's three assignments of error are overruled and the judgment of the Licking Municipal Court is affirmed.

By: Delaney, P.J.,

Wise, J. and

Baldwin, J., concur.