

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. Patricia A. Delaney, P.J.
Plaintiff - Appellee	:	Hon. Craig R. Baldwin, J.
	:	Hon. Andrew J. King, J.
-vs-	:	
	:	
ANTHONY Q. JUSTICE,	:	Case No. 2024CA00008
	:	
Defendant - Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of Common Pleas, Case No. 2023 TRC 3194

JUDGMENT: Affirmed

DATE OF JUDGMENT: October 8, 2024

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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*Baldwin, J.*

{¶1} The appellant, Anthony Q. Justice, appeals the trial court's denial of his motion to suppress, arguing the officer lacked reasonable suspicion to detain the appellant to investigate for Operating a Vehicle Under the Influence (OVI). Appellee is the State of Ohio.

### **STATEMENT OF THE FACTS AND THE CASE**

{¶2} On May 25, 2023, the appellant was charged with OVI in violation of R.C. §4511.19, Driving under Financial Responsibility Law Suspension in violation of R.C. §4510.16, and an Equipment Violation of Tail Lights/Rear License Plate Lights in violation of R.C. §4513.05.

{¶3} On September 6, 2023, the appellant filed a Motion to Suppress.

{¶4} On October 18, 2023, the trial court held a Suppression Hearing.

{¶5} At the hearing, Officer Myers testified he was working on May 23, 2023. He observed a vehicle driving in Jackson Township in Stark County but could not see a license plate. Officer Myers initiated a traffic stop; then approached the vehicle and shone his spotlight in the tinted window. Officer Myers saw a temporary tag. He noted that he could not see the tag until he shone his spotlight in the tinted window. Officer Myers approached the driver's door, asked for the driver's license, ran the license, and discovered the driver was suspended. Officer Myers noted an odor of alcohol coming from the vehicle and empty beer cans everywhere. The officer said he could not read the temporary tag while still in his vehicle. He testified he had to be closer than fifty feet to read the temporary tag.

{¶6} The appellant filed a timely notice of appeal and raised the following Assignment of Error:

{¶7} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN DENYING APPELLANT’S MOTION TO SUPPRESS.”

I.

{¶8} In the appellant’s first Assignment of Error, the appellant argues after Officer Myers saw the temporary tag in the back window, he lost reasonable suspicion of criminal activity to continue to detain the appellant. We disagree.

**STANDARD OF REVIEW**

{¶9} 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 (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*, 1996-Ohio-134. 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 (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 (4th Dist.1993), overruled on other grounds.

{¶10} 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 (1982); *State v. Klein*, 73 Ohio App.3d 486 (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 (8th Dist.1994).

### ANALYSIS

{¶11} The appellant argues that the officer lacked reasonable suspicion of criminal activity once the officer was able to see the temporary tag on the appellant's vehicle.

{¶12} Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts, that an occupant is or has been engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.E.2d 889 (1968). Reasonable suspicion constitutes something less than probable cause. *State v. Carlson*, 102 Ohio App.3d 585, 590 (9<sup>th</sup> Dist.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 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*, 2015-Ohio-3786 (5<sup>th</sup> Dist.), ¶23,

quoting *State v. Mays*, 2008-Ohio-4539, ¶8. Any traffic violation, even a *de minimis* violation, may form a sufficient basis upon which to stop a vehicle. *State v. Bangoura*, 2009-Ohio-3339 (5<sup>th</sup> Dist.), ¶14; *State v. Woods*, 2013-Ohio-1136 (5<sup>th</sup> Dist.), ¶60.

{¶13} “Once an officer lawfully stops an individual, the officer must carefully tailor the scope of the stop ‘to its underlying justification.’ ” *State v. Matheny*, 2022-Ohio-3447 (5<sup>th</sup> Dist.), ¶33, quoting *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). The length of the stop must “last no longer than is necessary to effectuate the purpose of the stop.” *Royer*, 460 U.S. at 500, 103 S.Ct. 1319, 75 L.Ed.2d 229. Law enforcement is not permitted to detain an individual when no reasonable suspicion that the individual is engaged or had been engaged in criminal activity exists. *State v. Tyler*, 2024-Ohio-2589, ¶21.

{¶14} R.C. §4503.21(A) states, in pertinent part:

(1) No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the rear of the motor vehicle a license plate that displays the distinctive number and registration mark assigned to the motor vehicle by the director of public safety, including any county identification sticker and any validation sticker when required by and issued under sections 4503.19 and 4503.191 of the Revised Code. However, a commercial tractor shall display the license plate on the front of the commercial tractor.

\* \*

(3) No person to whom a temporary motor vehicle license registration has been issued for the use of a motor vehicle under section 4503.182 of

the Revised Code, and no operator of that motor vehicle, shall fail to display the temporary motor vehicle license registration in plain view from the rear of the vehicle either in the rear window or on an external surface of the motor vehicle.

(4) No person shall cover a temporary motor vehicle license registration by any material that obstructs its visibility.

{¶15} In the case *sub judice*, the appellant argues that Officer Myers impermissibly detained the appellant when he noticed the temporary tag in the back window of his vehicle. However, according to R.C. §4503.21(A)(3), a temporary tag must be in plain view from the rear of the vehicle. The officer testified that he could not identify or read the temporary tag until he illuminated the back window with his spotlight. In *State v. Waldron*, we found that a temporary tag was not in plain view because the tag was not legible or visible before the traffic stop was initiated. Similarly, in this case, Officer Myers could not read the temporary tag or even identify it as a temporary tag until he had stopped the appellant, illuminated the vehicle with a spotlight, and approached the vehicle. R.C. §4503.21(A)(3) forms a sufficient basis for detaining the appellant. Accordingly, Officer Myers never lost justification for the traffic stop.

{¶16} The appellant's sole Assignment of Error is overruled.

**CONCLUSION**

{¶17} For the foregoing reasons, the judgment of the Massillon Municipal Court, Stark County, Ohio, is affirmed.

By: Baldwin, J.

Delaney, P.J. and

King, J. concur.