

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case Nos. 09CA3108
	:	09CA3109
vs.	:	Released: March 29, 2010
	:	
CHRISTOPHER LUCKETT,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
Defendant-Appellant.	:	

APPEARANCES:

Jay A. Adams, Dayton, Ohio, for Defendant-Appellant.

Michael M. Ater, Ross County Prosecuting Attorney, and Jeffrey C. Marks, Ross County Assistant Prosecuting Attorney, for Plaintiff-Appellee.

McFarland, P.J.:

{¶1} Defendant-Appellant, Christopher Lockett, appeals the decision of the Ross County Court of Common Pleas. Lockett was convicted on one count of possession of cocaine and, in a separate incident, on two counts of forgery. Regarding his possession conviction, Lockett states the trial court erred in denying his motion to suppress because the arresting officer had no legal authority to make the traffic stop at issue. We disagree. Because the arresting officer knew the owner of the vehicle had a suspended license, there was reasonable suspicion to justify the investigative

stop. As to Lockett's forgery convictions, because Appellant's counsel states he can find no meritorious claim for appeal, he has filed an *Anders* brief. After conducting an independent review of the record below, we agree that there is no basis for such appeal. Accordingly, the trial court's decision is affirmed.

I. Facts

{¶2} While on patrol, Officer Terry Brown saw a car make an improper lane change. As a result, he called dispatch for a license plate check. Before Brown received the results of that check, the car pulled into a gas station. By the time dispatch informed Brown that the owner's license was suspended, the vehicle was out of sight. Brown returned to the gas station to make a traffic stop, but the vehicle had already left. Brown then radioed the situation to other officers on patrol, giving the license plate number and vehicle description.

{¶3} Soon afterward, another officer, Tim Gay, alerted by Brown's report, encountered the vehicle. Gay stopped the vehicle both on the basis of Brown's information that the owner had a suspended license and because he believed the car may have been speeding. After determining the driver was Christopher Lockett, and that Lockett was the owner of the vehicle, Gay arrested Lockett for operating a vehicle with a suspended license. Gay then

placed Luckett in the backseat of his cruiser and took him in for booking. After Luckett was removed from the cruiser, a search of the backseat revealed the presence of crack cocaine. As a result, Luckett was also arrested for possession.

{¶4} Luckett pleaded not guilty to possession of cocaine. He then filed a motion to suppress, stating Officer Gay lacked reasonable suspicion to make the traffic stop and “overall lacked probable cause” for the arrest. After holding a full hearing on the matter and being briefed by both parties, the trial court overruled Luckett’s motion.

{¶5} Luckett, while out on bond and awaiting trial on the possession charge, was involved in another traffic stop. On this occasion, when the officer asked for identification, Luckett gave his brother’s name, Jonathan Luckett. The officer asked Luckett to sign the resulting traffic ticket and BMV form and Luckett did so, but instead of using his own name, he signed as Jonathan Luckett. As a result, Luckett was subsequently charged with two counts of forgery.

{¶6} Under a plea agreement, Luckett agreed to plead guilty to the forgery counts and no contest to the cocaine possession charge. The trial court sentenced him to four years imprisonment for possession and, pursuant to the plea agreement, six months for each forgery count – the forgery

sentences to run concurrently with each other and concurrently with the sentence for possession. After sentencing, Lockett appealed both his conviction for cocaine possession and his forgery convictions. We consolidated the appeals sua sponte and now address them together.

II. Assignment of Error

THE TRIAL COURT ERRED BY OVERRULING MR. LUCKETT'S MOTION TO SUPPRESS.

III. Legal Analysis

{¶7} Lockett presents a single assignment of error regarding his conviction for cocaine possession, that the trial court erred in overruling his motion to suppress. Regarding his convictions for forgery, his counsel, believing there is no basis for an appeal, has filed an *Anders* brief. We consider both the motion to suppress and the *Anders* brief below.

A. Motion to Suppress

{¶8} Initially, we note that appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8. 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. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. Accordingly, in our review,

we are bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594, 621 N.E.2d 726. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. *State v. Klein* (1991), 73 Ohio App.3d 486, 488, 597 N.E.2d 1141.

{¶9} In the case at hand, Lockett's motion to suppress is premised upon the argument that Officer Gay, who made the traffic stop, lacked the legal authority to do so. When a police officer has probable cause to believe that a traffic offense has been committed, a traffic stop is reasonable. *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12, 1996-Ohio-431, 665 N.E.2d 1091. Probable cause has been defined as “facts and circumstances within [an officer's] knowledge * * * sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.” *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142.

{¶10} Absent probable cause, a police officer may stop a vehicle only if the officer observes facts which give rise to a reasonable suspicion of criminal activity. See, generally, *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; *State v. Andrews* (1991), 57 Ohio St.3d 86, 565 N.E.2d 1271. To justify reasonable suspicion, a police officer must be able

to articulate specific facts that would indicate to a person of reasonable caution that the person being stopped has committed, or is in the process of committing, a crime. *Terry* at 21-22. “Reasonable suspicion cannot be justified by mere intuition, but instead must be based upon specific, articulable facts and such rational inferences as may be drawn from those facts.” *State v. Boggs*, 4th Dist. No. 04CA2803, 04CA2804, 2005-Ohio-2758, at ¶15, citing *Terry* at 21-22.

{¶11} In the case sub judice, Luckett argues that because it was Officer Brown, not Officer Gay, who observed the illegal lane change, Gay had no reasonable suspicion to make the traffic stop. Countering that argument, the State asserts that Gay was entitled to make the stop because he could rely upon Brown's prior observations, and also because Gay testified that Luckett may have been speeding at the time of the traffic stop. But because we have previously upheld investigative stops when the vehicle's owner's license is suspended, we do not find it necessary to address either argument.

{¶12} It is undisputed that before Officer Gay made the traffic stop he first confirmed with dispatch that the vehicle's owner had a suspended license. In *State v. Yeager* (Sept. 24, 1999), 4th Dist. No. 99CA2492, we held the following:

{¶13} “Having disposed of the state's main argument, we must address whether the information about the vehicle owner's invalid license, standing alone, created the requisite reasonable suspicion necessary to justify the traffic stop. Applying the Second District's reasoning in *Erickson*, the trial court decided it did not. We disagree with the trial court and hold that reliable information that a vehicle's owner lacks a valid operator's license, coupled with the rational inference that the owner is likely to be the driver, may create reasonable suspicion of criminal activity to support a traffic stop.” *Yeager* at *4.

{¶14} In the present case, before stopping the vehicle, Officer Gay had definite, specific information that the vehicle's owner had a suspended license. Further, there was no evidence to indicate that the driver of the vehicle was anyone other than the owner. Under *Yeager*, such information in itself creates sufficient reasonable suspicion of criminal activity to justify an investigative stop. See, also, *Boggs* at ¶17. Accordingly, the trial court correctly denied Lockett's motion to suppress and his assignment of error is unwarranted.

B. *Anders* Brief

{¶15} Finding no basis for Lockett's other appeal, regarding his conviction on two counts of forgery, his counsel has filed an *Anders* brief.

{¶16} Under *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, counsel may ask permission to withdraw from a case when he or she has conscientiously examined the record, can discern no meritorious claims for appeal and has determined the case to be wholly frivolous. *Anders* at 744; *State v. Adkins*, 4th Dist. No. 03CA27, 2004-Ohio-3627, at ¶8. Counsel's request to withdraw must be accompanied with a brief identifying anything in the record that could arguably support the client's appeal. *Anders* at 744; *Adkins* at ¶8. Further, counsel must provide the client with a copy of the brief and allow sufficient time for him or her to raise any other issues, if the client chooses to do so. *Id.* Once counsel has satisfied these requirements, the appellate court must conduct a full examination of the trial court proceedings to determine if meritorious issues exist. If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and address the merits of the case without affording the appellant the assistance of counsel. *Id.* If, however, the court finds the existence of meritorious issues, it must afford the appellant assistance of counsel before deciding the merits of the case. *Anders* at 744; *State v. Duran*, 4th Dist. No. 06CA2919, 2007-Ohio-2743, at ¶7.

{¶17} In the case sub judice, Lockett's counsel's proposed assignment of error is that Lockett was charged with the wrong offense. And, as such, Lockett pleaded guilty to a crime he did not commit. Lockett pleaded guilty to two counts of forgery under R.C. 2913.31. Under the proposed assignment of error, instead of forgery, Lockett should have been charged with falsification under R.C. 2921.13. But, after conducting a full examination of the proceedings below, we agree with Lockett's counsel and find there is no meritorious issue for an appeal.

{¶18} Essentially, all that is available for our review in the record below is the fact that Lockett pleaded guilty to two counts of forgery. “A plea of guilty is a complete admission of guilt.” *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, at ¶14, quoting *State v. Stumpf* (1987), 32 Ohio St.3d 95, 104, 512 N.E.2d 598. In pleading guilty, Lockett has admitted that he committed the two acts of forgery at issue. As such, he is precluded from raising substantive issues regarding the merits of those two charges.

IV. Conclusion

{¶19} In our view, Officer Gay had the reasonable suspicion necessary to initiate an investigatory stop. Accordingly, the trial court correctly denied Lockett's motion to suppress. Regarding his convictions

for forgery, after conducting a full and independent examination of the record below, we agree with Lockett's counsel that there are no meritorious issues upon which to base an appeal.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the **JUDGMENT BE AFFIRMED** and that the Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.
Exceptions.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Judge Matthew W. McFarland
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.