

[Cite as *State v. Freeman*, 2015-Ohio-2501.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27617

Appellant

v.

ROBERT A. FREEMAN

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 14 10 2986

Appellee

DECISION AND JOURNAL ENTRY

Dated: June 24, 2015

HENSAL, Presiding Judge.

{¶1} Appellant, the State of Ohio, appeals from the judgment of the Summit County Court of Common Pleas, granting Appellee, Robert Freeman’s, motion to suppress. This Court reverses.

I.

{¶2} On September 26, 2014, members of the Akron Police Department’s Street Narcotics Uniform Detail (“SNUD”) were conducting surveillance at a house on Gridley Street. The SNUD unit had received several complaints about drug activity occurring there, and its undercover officers were monitoring the house for suspicious activity. Meanwhile, other uniformed officers were on standby to assist with any stops that might need to be made. Officer Troy Meech and his partner were two of the officers assigned to assist the SNUD unit that day.

{¶3} While patrolling elsewhere, Officer Meech received a radio transmission from Detective Sinsley, one of the undercover officers monitoring the house. Detective Sinsley

reported having observed a burgundy Oldsmobile pull up to the house. He further reported having observed the front seat passenger of the vehicle go inside the house, come back outside within a short timeframe, and reenter the vehicle before it pulled away. Detective Sinsley began following the vehicle and requested assistance with the pursuit.

{¶4} As Officer Meech and his partner made their way to the area, Detective Sinsley called out the license plate number of the Oldsmobile he was following. He also kept Officer Meech apprised of the vehicle's location and the fact that he was observing the vehicle commit several traffic violations, including turn signal violations and lane change violations. When Officer Meech and his partner finally caught up to the vehicle, it had exited Route 8 north at Tallmadge Avenue. They quickly stopped the vehicle and approached.

{¶5} According to Officer Meech, there were three individuals inside the vehicle: a driver, a front seat passenger, and a back seat passenger. It was his recollection that Mr. Freeman was the front seat passenger. Because Officer Meech believed that he had observed Mr. Freeman and the others making furtive movements as he approached, he and his partner had them exit the vehicle and performed pat downs. While patting down Mr. Freeman, Officer Meech found crack cocaine in his pants pocket.

{¶6} A grand jury indicted Mr. Freeman on one count of possession. Mr. Freeman filed a motion to suppress the evidence against him on several bases, one of which was that he had been subjected to an illegal traffic stop. Following a hearing at which Officer Meech was the sole witness, the trial court granted Mr. Freeman's motion to suppress. The court found that Officer Meech had conducted an unlawful traffic stop, so it ordered the suppression of all of the evidence flowing from the traffic stop.

{¶7} The State now appeals and raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN GRANTING THE MOTION TO SUPPRESS.

{¶8} In its sole assignment of error, the State argues that the trial court erred by granting Mr. Freeman’s motion to suppress. Specifically, it argues that Officer Meech lawfully stopped Mr. Freeman as a result of the traffic violations that Detective Sinsley observed and relayed via the radio. We agree.

{¶9} The Ohio Supreme Court has held that:

[a]ppellate review of a motion to suppress presents a mixed question of law and fact. When considering 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. Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. 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.

(Citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶10} The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, prohibits unreasonable searches and seizures. *Accord* Ohio Constitution, Article I, Section 14. “A traffic stop constitutes a seizure within the meaning of the Fourth Amendment.” *State v. Harper*, 9th Dist. Medina No. 12CA0076-M, 2014-Ohio-347, ¶ 9. Nevertheless, the seizure is a reasonable one if executed “to investigate a suspected violation of a traffic law.” *State v. Slates*, 9th Dist. Summit No. 25019, 2011-Ohio-295, ¶ 23, quoting *Akron v. Tomko*, 9th Dist. Summit No. 19253, 1999 WL 1037762, *2 (Nov. 3, 1999). In evaluating the facts and inferences supporting the investigatory stop, a court must consider the totality of the circumstances as “viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.” *State v. Bobo*, 37 Ohio St.3d 177, 179 (1988),

quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C.Cir.1976). “Where an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid[.]” (Internal quotations, citations, and emphasis omitted.) *State v. Campbell*, 9th Dist. Medina No. 05CA0032-M, 2005-Ohio-4361, ¶ 11.

{¶11} Officer Meech was the only witness to testify at the suppression hearing. He testified that he and his partner were in their marked cruiser when they received a radio transmission from Detective Sinsley, one of the members of the SNUD unit. Officer Meech was aware that Detective Sinsley might require assistance that day in conjunction with surveillance that he was conducting at a possible drug house on Gridley Street. In his radio transmission, Detective Sinsley requested assistance in the pursuit of a burgundy Oldsmobile whose front seat passenger had briefly gone inside the house under surveillance.

{¶12} Officer Meech testified that he and his partner were “pretty far away” when they received Detective Sinsley’s call, but immediately began to drive in Detective Sinsley’s direction. As they drove, Detective Sinsley followed the burgundy Oldsmobile and updated them on its whereabouts. He provided Officer Meech and his partner with the license plate number of the vehicle and followed it onto Route 8 north. Once on the highway, Detective Sinsley notified Officer Meech and his partner that he was observing the vehicle commit several traffic violations, including turn signal violations and lane change violations. Officer Meech did not personally observe any of the traffic violations, as he and his partner reached the Oldsmobile after it exited the highway at Tallmadge Avenue. There is no dispute that Officer Meech and his partner stopped the vehicle shortly thereafter.

{¶13} The trial court acknowledged that misdemeanor traffic offenses give rise to probable cause for a traffic stop. The court found, however, that Officer Meech “did not witness any traffic violations and was unable to specifically state what they were.” While the court acknowledged Officer Meech’s testimony that Detective Sinsley had “‘called out’ [] numerous traffic violations,” it emphasized that Officer Meech never personally observed any of the violations and “had no knowledge of what the [traffic] offenses were when the car was stopped.” The court concluded that Officer Meech lacked probable cause and that the State failed to establish the validity of the traffic stop.

{¶14} The State first argues that the trial court made a factual finding that was not based on competent, credible evidence. Specifically, it argues that the court erred when it found that, at the time he executed the traffic stop here, Officer Meech had no knowledge of the nature of the traffic violations that Detective Sinsley had observed. We agree that the trial court erred in its factual determination.

{¶15} “This Court must only accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *State v. Figueroa*, 9th Dist. Lorain No. 09CA009612, 2010-Ohio-189, ¶ 20. Officer Meech specifically testified that the traffic violations Detective Sinsley observed included turn signal violations and lane change violations. He testified that those violations took place on Route 8 north, prior to his executing the traffic stop. Thus, the record reflects that Officer Meech identified two specific traffic violations and that he was aware of those specific violations at the time that he executed his traffic stop. The trial court’s findings that Officer Meech was unable to specifically state what the traffic offenses at issue were and that he had no knowledge of the nature of those offenses at the time he executed his traffic stop are not based on competent, credible evidence.

{¶16} So long as Officer Meech had reasonable suspicion that the vehicle he stopped had committed one or more traffic violations, the traffic stop he conducted was lawful. *See Campbell*, 2005-Ohio-4361, at ¶ 11. “A policeman’s reasonable suspicion need not be based solely upon the officer’s personal knowledge. Reasonable suspicion may exist on the collective knowledge of the police when there is reliable communication between the officer supplying the information and the officer acting on that information.” (Internal citations and quotations omitted.) *State v. Mook*, 9th Dist. Wayne No. 97CA0069, 1998 WL 417461, *3 (July 15, 1998). When a fellow officer transmits reliable information that a vehicle has committed a specific traffic violation, an officer “ha[s] the requisite reasonable suspicion to stop [the vehicle] despite the fact that [he or] she did not personally observe [the traffic violation].” *Id. Accord State v. Gartrell*, 3d Dist. Marion No. 9-14-02, 2014-Ohio-5203, ¶53-55; *State v. Clark*, 6th Dist. Sandusky No. S-03-039, 2004-Ohio-2774.

{¶17} There was testimony that Detective Sinsley told Officer Meech and his partner that he saw the vehicle here commit several traffic violations, including turn signal violations and lane change violations. Detective Sinsley’s observations were made in real time over the radio as he was observing the subject vehicle. Mr. Freeman never suggested that turn signal and lane change violations do not, in fact, constitute minor traffic violations. Instead, he argued that the State could not rely upon the alleged traffic violations that Detective Sinsley observed without having Detective Sinsley testify. Even assuming that Detective Sinsley’s statements constituted hearsay, however, “judicial officials at suppression hearings ‘may rely on hearsay and other evidence, even though that evidence would not be admissible at trial.’” *State v. Edwards*, 107 Ohio St.3d 169, 2005-Ohio-6180, ¶ 14, quoting *Maumee v. Weisner*, 87 Ohio St.3d 295, 298 (1999), quoting *United States v. Raddatz*, 447 U.S. 667, 679 (1980).

{¶18} The trial court never questioned Officer Meech's credibility or otherwise indicated that it found his testimony unreliable. Its ruling was premised on its understanding that Officer Meech had not personally observed the traffic violations here and did not know the nature of those violations at the time he executed his traffic stop. As we have already noted, however, the record supports the conclusion that Detective Sinsley made Officer Meech aware of at least two specific traffic violations before Officer Meech executed the stop. Officer Meech could rely on a reliable communication from his fellow officer. *See Campbell* at ¶ 11; *Mook* at *3. Based on the totality of the circumstances, we must conclude that the State presented evidence that Officer Meech had at least reasonable suspicion of criminal activity at the time he conducted his stop. Accordingly, the trial court erred by granting Mr. Freeman's motion to suppress. The State's sole assignment of error is sustained.

III.

{¶19} The State's sole assignment of error is sustained. The judgment of the Summit County Court of Common Pleas is reversed, and the cause is remanded for further proceedings consistent with the foregoing opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

JENNIFER HENSAL
FOR THE COURT

MOORE, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

NICHOLAS JACK MARINO, Attorney at Law, for Appellee.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellant.