

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMES C. CRAIG, III,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 CO 0040

Criminal Appeal from the
East Liverpool Municipal Court of Columbiana County, Ohio
Case No. 18 TRC 00926

BEFORE:

Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Robert Herron, Columbiana County Prosecutor, *Atty. Ryan P. Weikart*, and *Atty. Katelyn D. Dickey*, Assistant Prosecuting Attorneys, 105 South Market Street, Lisbon, Ohio 44432, for Plaintiff-Appellee

Atty. Carl J. King, 115 W. Lincoln Way, Lisbon, Ohio 44432, for Defendant-Appellant.

Dated: November 21, 2019

WAITE, P.J.

{¶1} Appellant James C. Craig, III, appeals the denial of his motion to dismiss/suppress by the East Liverpool Municipal Court following his arrest in St. Clair Township. Appellant was arrested by a Liverpool Township police officer who was outside of his jurisdiction for OVI and driving left of center. The issue before us is whether the extraterritorial arrest violated Appellant’s rights under the U.S. and Ohio Constitutions. For the following reasons, the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} As there is no transcript of the trial court proceedings in this record, the following facts come from Appellee State of Ohio’s brief. On June 4, 2018, Officer Michael Boyd (“Officer Boyd”) of the Liverpool Township Police Department was traveling north on St. Clair Avenue in St. Clair Township. He observed Appellant driving down the center of the roadway with his left turn signal on, but failing to make a turn. Officer Boyd continued to follow Appellant for approximately one-half mile and then initiated a traffic stop. Officer Boyd approached the vehicle Appellant was operating and informed Appellant of the reason for his stop. Appellant lowered his window slightly to speak. Appellant appeared to Officer Boyd to be impaired, exhibiting slurred speech and slow, sluggish motor skills. Officer Boyd radioed the dispatcher and requested a St. Clair Township unit to assist him. Officer Justin McCoy (“Officer McCoy”) and Sergeant Glen Kendall (“Sgt. Kendall”), both from the St. Clair Township Police Department, responded to the scene.

{¶13} Officer Boyd asked Appellant if he had consumed alcohol. Appellant replied in the affirmative and was asked to step out of the vehicle. Officer Boyd noted Appellant had difficulty exiting the vehicle and could not keep his balance. When asked how much alcohol he had consumed, Appellant replied, “more than I should had.” (Appellee’s Brf., p. 1.)

{¶14} With all officers present, Officer Boyd conducted a number of field sobriety tests, which Appellant failed to complete successfully. At one point, Sgt. Kendall had to catch Appellant to break his fall. Appellant was placed under arrest for OVI in violation of R.C. 4511.19(A)(1), (H), a misdemeanor in the first degree, and for driving his vehicle left of center in violation of R.C. 4511.29, a misdemeanor. It was Appellant’s third OVI within a ten-year period.

{¶15} Appellant was transported to Liverpool Township Police Department where he was observed by Officer Boyd and Sgt. Kendall for twenty minutes. Appellant submitted to a blood alcohol content test, which returned a result of 0.279. Appellant was informed that his license was suspended and was given a court date before being transported to his residence by Sgt. Kendall.

{¶16} After requesting time to obtain private counsel at his first arraignment, a second arraignment was held on June 15, 2018. Appellant pleaded not guilty to the charges. On August 14, 2018, Appellant filed a combined motion to dismiss/motion to suppress/motion in limine. In it, he alleged the charges were void *ab initio* and should be dismissed because Office Boyd lacked jurisdiction to make the arrest. He also sought to have the charges dismissed, or any evidence obtained prior to his arrest suppressed, alleging that the extraterritorial arrest violated his constitutional right against unlawful

arrest. A nonoral hearing was held on September 4, 2018. Both parties were asked to submit memorandums to the court on the issue. In Appellant's memorandum he claimed: (1) that there was no lawful cause to stop and detain him and no probable cause for the arrest, in violation of the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Sections 14 and 16 of the Ohio Constitution; (2) the field sobriety tests were improperly administered; (3) the administration of field sobriety tests did not substantially comply with National Highway Traffic Safety Administration standards; (4) the tests were not conducted in a timely fashion; (5) the breathalyzer was not tested to ensure there was no radio frequency interference; (6) the instrument analyzing his blood alcohol level was not properly calibrated nor was the solution used to calibrate the machine proper; (7) the operator of the instrument measuring blood alcohol content was not licensed or observed by a licensed operator when the test was administered; (8) the portable breath test results cannot be considered at trial for probable cause purposes; (9) his statements were obtained in violation of his Fifth Amendment right against self-incrimination and his right to counsel under the Fourteenth Amendment.

{¶17} The state's response asserted that Officer Boyd had probable cause to stop and detain Appellant because the officer observed Appellant driving down the center of the road, left of center. Citing *State v. Weideman*, 94 Ohio St.3d 501, 506, the state contended that an officer's stop and detention of a motorist outside of the officer's jurisdiction after observing a traffic violation is not unreasonable *per se* under the Fourth Amendment. *Id.* The state also argued that once Officer Boyd made contact with Appellant, Boyd noted slurred speech and sluggish motor skills. Boyd waited for officers from St. Clair Township to arrive before questioning Appellant about alcohol consumption,

and Appellant admitted he had been drinking “more than [h]e should had”. Based on these observations and Appellant’s statement, Officer Boyd had a reasonable articulable suspicion to believe Appellant was under the influence. The field sobriety tests were conducted with both St. Clair Township officers present, and these officers also observed Appellant’s inability to walk and keep his balance. Following these tests, Appellant requested that he be arrested. Once Appellant was arrested, he was taken to the Liverpool station by both Officer Boyd and Sgt. Kendall of the St. Clair Township Police Department. The state conceded that Officer Boyd made an extraterritorial stop, but argued that no violation of Appellant’s constitutional rights occurred. Hence, the exclusionary rule did not apply to suppress the evidence.

{¶18} On October 4, 2018, the trial court issued a judgment entry stating: “The Court adopts the State’s Response Brief as the Court’s finding of facts and conclusions of law.” (10/4/18 J.E.)

{¶19} On October 31, 2018, Appellant entered into a written plea agreement. He agreed to plead no contest to the charges and the state recommended a sentence of 90 days in jail, a fine of \$1,500, \$50 in court costs and a three-year license suspension. Appellant also executed a waiver of explanation of circumstances and stipulated to a finding of guilt, based on the facts in the complaint, to the charges of OVI and driving left of center. The trial court found Appellant guilty on both charges and sentenced him to 180 days in jail with 90 days suspended, \$1,550 in fines and 3 years of supervised probation. Execution of sentence was delayed pending this timely appeal.

ASSIGNMENT OF ERROR

THE TRIAL COURT IMPROPERLY DENIED DEFENDANT'S MOTION TO
DISMISS FOR LACK OF TERRITORIAL JURISDICTION.

{¶10} Appellant contends that because his arrest by Officer Boyd was made outside of the jurisdiction of Liverpool Township and pursuant to R.C. 2935.03(A)(1) Officer Boyd lacked the authority to make the arrest, the arrest was invalid. Appellant concedes that Officer Boyd was permitted to stop and detain him after observing a traffic offense committed outside of Officer Boyd's jurisdiction. However, he argues that only a St. Clair Township officer had the authority to actually make the arrest. The state concedes that Officer Boyd's arrest of Appellant did not comply with R.C. 2935.03(A)(1), but contends that Appellant suffered no violation of his rights under either the Ohio or U.S. Constitutions, and so the arrest is valid.

{¶11} "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, ¶ 8. At a suppression hearing, "the trial court is best able to decide facts and evaluate the credibility of witnesses." *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216, ¶ 41. The trial court's findings of fact, if supported by competent, credible evidence, are to be accepted and a reviewing court must make an independent determination as to whether they satisfy the relevant legal standard. *Id.* Appellant did not file any transcripts of any of the trial court proceedings. In the absence of any transcript, we must presume regularity in the proceedings below. *Walley v. Iannizzaro*, 2018-Ohio-3939, 119 N.E.3d 974, ¶ 16 (7th Dist.), citing *Grenga v. Ohio Edison Co.*, 7th Dist. Mahoning No. 03 MA 41, 2004-Ohio-822, ¶ 14.

{¶12} Appellant challenges his arrest as violative of both the Ohio and United States Constitutions. Specifically, he argues the officer's extraterritorial arrest, in violation of state statute, also violated his constitutional rights. The General Assembly codified the common law authority regarding a peace officer's power of arrest within the officer's jurisdiction in R.C. 2935.03(A)(1), which provides in part:

A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, [or] police officer of a township or joint police district, * * * shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision * * * in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

{¶13} R.C. 2935.03(D) enumerates those circumstances which grant a police officer the authority to make an extraterritorial arrest:

If a * * * police officer of a township * * * is authorized * * * to arrest and detain, within the limits of the political subdivision, * * * a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

{¶14} Thus, a police officer possesses the power of arrest outside of that officer's jurisdiction only if all three provisions of R.C. 2935.03(D) apply: (1) the extraterritorial arrest occurs without delay after the offense is committed; (2) the pursuit begins within the officer's own jurisdiction; and (3) the offense at issue is a felony, a first degree misdemeanor or an equivalent local ordinance. Without all three of these elements, an extraterritorial arrest violates the statute.

{¶15} It is undisputed that Appellant's pursuit, stop and arrest all occurred outside of Officer Boyd's jurisdiction. Therefore, the state concedes that the arrest failed to comport with R.C. 2935.03(D). However, that determination does not end our inquiry. A

violation of R.C. 2935.03(D) does not automatically implicate any of the rights Appellant possesses under the U.S. and Ohio Constitutions. We must next determine whether the arrest violated Appellant’s constitutional rights.

{¶16} The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, guarantees that “[t]he right of the people to be secure in their persons, houses, papers, and effect, against unreasonable searches and seizures, shall not be violated[.]”

{¶17} In *Weideman, supra*, the police officer observed Ms. Weideman traveling left of center, running off the road, and once again swerving left of center. The Ohio Supreme Court held that, “[w]here a law enforcement officer, acting outside the officer’s statutorily territorial jurisdiction, stops and detains a motorist for an offense committed and observed outside the officer’s jurisdiction, the seizure of the motorist by the officer is not unreasonable *per se* under the Fourth Amendment.” *Id.* at 506. The *Weideman* Court reaffirmed the balancing test set forth in the first of two *Jones* cases on this issue, *State v. Jones*, 88 Ohio St.3d 430, 727 N.E.2d 886 (2000) (“*Jones I*”). *Jones I* required that in order to determine whether a search or seizure is reasonable, a court must weigh the competing interests involved and consider the extent of the officer’s intrusion on an individual’s liberty and privacy rights against the need to promote a legitimate government interest. Applying this test, the *Weideman* Court concluded the government interest in ensuring public safety and detaining Ms. Weideman outweighed her right against restraint. *Weideman* at 504.

{¶18} In *State v. Jones*, 121 Ohio St.3d 103, 2009-Ohio-316, 902 N.E.2d 464 (“*Jones II*”), the Ohio Supreme Court held that an officer’s extraterritorial traffic stop

violated R.C. 2935.03, but that the officer had probable cause to initiate the stop because he personally observed a traffic violation. Therefore, the Fourth Amendment of the United States Constitution was not implicated. In *Jones II*, the defendants were convicted of carrying concealed weapons and unlawful possession of a dangerous ordnance after being stopped for a traffic violation by an officer outside of the officer's jurisdiction. The Supreme Court held that, pursuant to the United States Supreme Court's holding in *Virginia v. Moore*, 553 U.S.164, 128 S.Ct. 1598, 170 L.Ed. 559 (2008) and *Weideman, supra*, an officer who personally observes a traffic violation while outside of that officer's jurisdiction has probable cause to make a traffic stop, and the ensuing stop is not unreasonable under the Fourth Amendment to the United States Constitution. *Jones II* at ¶ 11.

{¶19} The Court reasoned that when an officer has probable cause to believe that a person has committed even a minor crime in the officer's presence, the balancing of individual privacy interests and public interests set forth in *Jones I* and reaffirmed in *Weideman* is not in doubt and the arrest is constitutionally reasonable. The Court also held that the fact that the stop was extraterritorial "is irrelevant to the Fourth Amendment analysis. The sole focus of the inquiry [should be] on the stop itself because the violation of R.C. 2935.03 does not rise to the level of a constitutional violation for the reasons expressed in *Moore*." *Jones II* at ¶ 20. The Court noted that the general assembly could have provided a remedy for violations of R.C. 2935.03(A)(1) and did not. The Court determined that it was not the Court's role to elevate a violation of the statute into a Fourth Amendment violation so as to exclude otherwise validly-gathered evidence.

{¶20} Applying these cases to the current matter, Officer Boyd had probable cause to stop and detain Appellant when he personally observed Appellant's traffic violation. Further, after stopping and detaining Appellant, Officer Boyd personally observed Appellant's slurred speech and sluggish motor skills. Appellant admitted to Officer Boyd that he had been drinking too much alcohol. At the time of the stop, only Officer Boyd had probable cause because only he had witnessed Appellant's erratic driving. After observing Appellant's behavior indicating intoxication, only Officer Boyd possessed a reasonable, articulable suspicion that Appellant was under the influence. Hence, it appears from the record that only Officer Boyd could appropriately make the arrest. The interest in protecting the public from Appellant's erratic driving while under the influence far outweighed any possible restraint there may be on Appellant's liberty interest. Under the facts of this case, Appellant's arrest did not rise to a violation of his rights under the Fourth Amendment of the U.S. Constitution.

{¶21} Turning to Appellant's rights under the Ohio Constitution, the Ohio Supreme Court has interpreted Article I, Section 14 of the Ohio Constitution in two cases. First, in *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175 ("*Brown I*"), Brown, a suspected drug dealer, was arrested for jaywalking in violation of R.C. 2935.26, and the search incident to his arrest revealed that he possessed crack cocaine. Noting that Brown could have been merely issued a citation for his crime, the trial court suppressed the evidence, finding the officers lacked the statutory authority to arrest Brown for a minor misdemeanor. Therefore, the court ruled that the search incident to his arrest was unreasonable under Article I, Section 14 of the Ohio Constitution. *Brown I*, at ¶ 3. The Ohio Supreme Court recognized that Brown's arrest for a minor misdemeanor did not

violate the Fourth Amendment of the U.S. Constitution, but that “Section 14, Article I of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors.” *Id.* at ¶ 22.

{¶22} The Ohio Supreme Court reiterated that the Ohio Constitution provides greater protections than the Fourth Amendment to the United States Constitution in *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496 (“*Brown II*”). The Court in *Brown II* held, “[a] traffic stop for a minor misdemeanor made outside a police officer’s statutory jurisdiction or authority violates the guarantee against unreasonable searches and seizures established by Article I, Section 14 of the Ohio Constitution.” *Id.* at ¶ 26. In *Brown II* the officer observed Brown crossing over the berm of the road for approximately 100 feet. The road was a state interstate and outside of the municipal officer’s jurisdiction pursuant to R.C. 4513.39. The record was unclear whether the officer knew that Brown had a suspended license and an active warrant in Michigan when the officer walked her drug dog around Brown’s vehicle and discovered a bag of oxycodone tablets and marijuana. The Sixth District had concluded the stop was unreasonable because the minor traffic violation occurred outside the officer’s jurisdiction and there were no extenuating circumstances warranting the extraterritorial stop. The Supreme Court in *Brown II* made clear that the extraterritorial traffic stop for a minor misdemeanor does not run afoul of the Fourth Amendment under the U.S. Constitution. However, while the stop itself was appropriate, under the greater protections against unreasonable searches and seizures provided by the Ohio Constitution, the government’s interest in permitting the officer to then make an arrest outside of that officer’s jurisdiction must outweigh the

individual's privacy rights, or will be found to violate the defendant's rights under the Ohio Constitution. *Id.* at ¶ 21, 25.

{¶23} Applying the *Brown II* balancing test in this case, the balance clearly weighs in favor of the state. As noted above, it was Officer Boyd who had probable cause to stop and detain Appellant based on his erratic driving. After observing Appellant, Officer Boyd had a reasonable articulable suspicion that Appellant was intoxicated and was driving while under the influence. Clearly, this poses a danger to the community. Had Officer Boyd made the arrest without the requisite probable cause for the stop or had Appellant shown no signs of impairment, further restraint on Appellant's liberty interests would prevail. Under the facts of this case, however, even though he was outside of his territorial jurisdiction, Officer Boyd had a duty to protect the public at large from the dangers of Appellant's intoxicated driving. In this case, the government's interest outweighs the restraints on Appellant's privacy rights. Appellant admitted to Officer Boyd that he had too much to drink. While only Boyd had probable cause to stop Appellant and only Boyd had a reasonable, articulable suspicion that he was impaired, two St. Clair Township officers were present to witness Appellant's admission to having consumed alcohol, his failed field sobriety tests, and his request to be arrested. The fact that Officer Boyd was outside of his jurisdiction does not eradicate the need to ensure public safety under these circumstances. While in both *Brown I* and *Brown II* the defendants' rights were found to outweigh state interests, the Court explained that was because in both of those cases the officers observed no conduct that necessitated an immediate detainment of the individuals; the officers had stopped these defendants for minor misdemeanors. See *City of Maumee v. Curran*, 6th Dist. Lucas No. L-16-1172, 2017-Ohio-7008, 95 N.E.3d 708.

Here, Appellant's erratic driving through St. Clair Township warranted immediate action by Officer Boyd, who took steps to ensure public safety due to Appellant's erratic driving. This far outweighs the restraint on Appellant's liberty, at issue here. Therefore, Appellant's detainment and eventual arrest, even though made by an officer outside of his jurisdiction did not violate his rights under the Ohio Constitution.

{¶24} Based on the foregoing, Appellant's assignment of error is without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the East Liverpool Municipal Court of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.