

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

DAVID L. WILLIAMS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 HA 0002

Criminal Appeal from the
County Court of Harrison County, Ohio
Case No. TRC 1801544

BEFORE:

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

JUDGMENT:

Reversed and Remanded.
Conviction Vacated.

Atty. Lauren E. Knight, Harrison County Prosecutor and *Atty. Jack Felgenhaur*, Assistant Prosecuting Attorney, 111 W. Warren Street, P.O. Box 248, Cadiz, Ohio 43907, for Plaintiff-Appellee.

Atty. James J. Ong, 201 North Main Street, Uhrichsville, Ohio 44683, for Defendant-Appellant.

Dated: December 27, 2021

WAITE, J.

{¶1} Appellant David L. Williams appeals a January 20, 2021 Harrison County Court judgment entry convicting him of one count of operating a vehicle under the influence (“OVI”). This matter was previously before this Court in *State v. Williams*, 7th Dist. Harrison No. 19 HA 0005, 2019-Ohio-5064 (“*Williams I*”). Appellant argues that, on the remand ordered by this Court, the trial court allowed witness testimony based on evidence that was ordered to be suppressed in *Williams I*. He argues that without this evidence, insufficient evidence exists to support his conviction. For the reasons provided, Appellant’s arguments have merit and the judgment of the trial court is reversed and Appellant’s conviction is vacated. The matter is remanded to allow the state to determine if sufficient evidence remains to retry the case.

Factual and Procedural History

{¶2} On July 18, 2018, the Harrison County Sheriff’s Department received a call from a woman who believed that Appellant had held her friend in his vehicle against her will, but she had managed to escape. The woman provided a description of Appellant’s vehicle. Shortly thereafter, the office received a call from a truck driver who claimed that he saw a vehicle matching the description given by the woman, driving erratically. The following facts are largely taken from three body camera videos which captured the subsequent events.

{¶3} Dep. James Chaney found the vehicle parked along the side of a road. Dep. Jason Saylor arrived shortly thereafter. When Dep. Chaney approached the vehicle, he

saw Appellant behind the wheel, apparently passed out, and a female passenger in the backseat who also appeared to have passed out. He radioed this information to dispatch. He knocked on Appellant's window, opened the driver's door, and forcefully removed Appellant from the vehicle and immediately placed him in handcuffs. Despite Appellant's lack of resistance, Dep. Chaney used some force when he handcuffed Appellant. As he was handcuffed, Appellant laughed, and one of the deputies commented on his state of intoxication. Dep. Saylor testified that the handcuffs were used "based on the circumstances and the information that we were given it was pretty pertinent that he be detained at least for our safety and for all we knew, the dead girl in the back." (Trial Tr., p. 47.)

{¶4} Shortly after the deputies handcuffed Appellant, Dep. Thomas Smith arrived. One deputy, who appears to be Dep. Chaney, conducted a "patdown" of Appellant's person and found marijuana. Dep. Chaney stated that he did not believe the search required a warrant, but did not explain what exception to the warrant requirement he relied on in reaching that conclusion. We note that the "patdown" was not typical. Instead, the deputy reached for and squeezed Appellant's back right pants pocket and removed a wallet. He then performed the same action on Appellant's front right pocket. Apparently encountering some object, the deputy asked Appellant what it was, but failed to understand Appellant's response. Despite failing to receive a coherent answer, the deputy immediately removed the item, which was a small baggie of marijuana. It does not appear from the body camera footage that any other area of Appellant was patted down or searched aside from the two pockets. The deputies then walked Appellant to one of the cruisers and placed him in the backseat.

{¶15} Dep. Chaney walked back to Appellant's vehicle and opened the back passenger door. He shouted at the female passenger, ordering her to wake up. He informed her that he would remove her from the vehicle if she did not exit on her own. One of the deputies, who appears to be Dep. Saylor, handcuffed the passenger, but assured her that she was not under arrest. He explained that she was merely being detained in the cruiser for her safety because they were roadside. He did, however, inform her that Appellant was facing an OVI charge. He explained to her that they were investigating whether a third woman, the woman the 911 caller described, had been detained inside the vehicle and managed to escape. The female passenger replied that she and Appellant met at a bar called "Plain Jane's" in Steubenville. The second woman, apparently the woman described in the 911 call, drank at the bar with them but did not leave with them. The female passenger believed the woman was still at the bar.

{¶16} While Dep Saylor spoke to the female passenger, another deputy, who appears to be Dep. Chaney, spoke with Appellant. Dep. Chaney mostly asked Appellant about whether he had been drinking and why he had passed out behind the wheel. Dep. Chaney also informed Appellant about the 911 call and asked why someone would have made that call.

{¶17} The deputies then searched the entire vehicle, including the trunk and underneath the hood. One of the deputies located a large white opaque bag underneath the front passenger seat. The top of the bag had been tightly tied in a knot. The deputy untied the bag and removed a large plastic baggie of marijuana. Dep. Chaney informed another deputy that the bag appeared to be gallon sized. The record reveals that the vehicle did not belong to Appellant and may have been owned by a car dealership. The

deputies joked among themselves about Appellant’s impaired state and discussed possible OVI and drug possession charges.

{¶8} After completing the search, one deputy removed Appellant from the cruiser and loosened his handcuffs. The deputy patted Appellant down again, more thoroughly, and then asked him to get back into the cruiser. The cruiser left shortly thereafter. At no point did any of the deputies inform Appellant whether he had been arrested.

{¶9} On the same date, a complaint and summons was filed charging Appellant with one count of OVI, a misdemeanor of the first degree in violation of R.C. 4511.19(A)(1)(a), and one count of possession of marijuana, a minor misdemeanor in violation of R.C. 2925.11.

{¶10} Appellant filed a motion to suppress: “(1) chemical tests of his blood alcohol level, (2) observations and opinion of the law enforcement officers who arrested and/or tested appellant regarding his coordination and/or sobriety and/or alcohol level, and (3) any statements taken from or made by appellant.” (Footnote deleted.) *Williams I* at ¶ 5. The state did not address the merits of the motion but merely responded that it was not “properly supported by law or affidavit of facts resulting in a confusing list of contradicting allegations of constitutional violations.” *Id.* at ¶ 5. The trial court held a hearing, but neither side presented evidence. On March 4, 2019, the trial court denied the motion and Appellant changed his plea from not guilty to no contest.

{¶11} On appeal, we reversed the trial court, holding that “Appellant’s motion to suppress the evidence is sustained.” *Id.* at ¶ 22. We determined Appellant’s motion sufficiently placed the state on notice as to what evidence Appellant sought to suppress, shifting the burden to the state, which failed to present any argument in response. The

state did not appeal our decision, but filed a motion to certify a conflict which we denied in *State v. Williams*, 7th Dist. Harrison No. 19 HA 0005, 2020-Ohio-330.

{¶12} On remand, the trial court asked the parties to brief whether the holding in *Williams I* resulted in the suppression of all evidence acquired during the stop or merely all evidence after the point Appellant had been arrested. The court determined that the latter applied and allowed witness testimony regarding this evidence. The court held a bench trial and found Appellant guilty of OVI but not guilty of possession of marijuana. On January 20, 2021, the trial court sentenced Appellant to 180 days in jail with 160 days suspended. The court suspended his driver’s license for two years and ordered him to pay costs. It is from this entry that Appellant timely appeals. The court granted Appellant’s motion for stay of execution of sentence pending appeal.

ASSIGNMENT OF ERROR NO. 1

The Trial Court erred as a matter of law by permitting the introduction of evidence that had been previously suppressed (by this Court).

ASSIGNMENT OF ERROR NO. 2

The Trial Court erred as a matter of law by holding that the State presented sufficient evidence to demonstrate that the Appellant violated Ohio Revised Code Section 4511.19(A)(1)(a).

{¶13} Appellant argues that the trial court improperly relied on evidence pertaining to the observations and opinions of the deputies who arrested him. As our Court had suppressed this evidence, Appellant argues that the trial court violated the holding of

Williams I. Without this evidence, Appellant urges that there is no admissible evidence to support his OVI conviction.

{¶14} In response, the state argues that this Court suppressed only the evidence seized after Appellant had been arrested. The state opines that this Court remanded the matter and afforded the trial court discretion to choose at which point Appellant was placed under arrest. The state appears to argue that Appellant is prohibited from raising any argument regarding reasonable and articulable suspicion. The state contends that Appellant did not include the transcripts or body camera footage in the appellate record, however, these items are clearly part of the record and have been reviewed.

{¶15} It appears that on remand, the trial court was confused regarding the scope of the suppression. Prior to trial, the trial court stated:

Just so I can be clear here, I think we discussed this before and I want to make sure we're in agreement, that anything that the officers may have observed prior to the time your client is was placed in custody is still -- is not prohibited by the ruling of the Court of Appeals on the motion to suppress. The Court of Appeals' order applies only to those observations and testimony about observations that occurred after your client -- at the point at which he was taken into custody that's the end of the testimony. Is that correct?

(Trial Tr., p. 6.)

{¶16} The parties debated this issue, prompting the following statement by the court: “[b]ut that’s what we’re going to be determining today is did the officers observe

something prior to the time the cuffs were placed on your client that gave them probable cause to [sic] him in custody. Is that right, everybody?” (Trial Tr., p. 8.)

{¶17} We begin our analysis by reviewing *Williams I*. When Appellant filed a motion to suppress, the trial court held a hearing where neither party presented evidence. The trial court denied the motion based on its belief that Appellant had not met his initial burden. On appeal, we reversed the trial court and held that Appellant had met his burden to place the state on notice as to what evidence was sought to be suppressed, and the state failed to present any evidence in response. We held: “Appellant’s motion to suppress is sustained. The matter is remanded to the trial court for further proceedings pursuant to law and consistent with this opinion.” *Id.* at ¶ 22.

{¶18} In reaching our decision, we first reviewed what Appellant sought to suppress in his motion: “(1) chemical tests of his blood alcohol level, (2) observations and opinion of the law enforcement officers who arrested and/or tested appellant regarding his coordination and/or sobriety and/or alcohol level, and (3) any statements taken from or made by appellant.” (Footnote deleted.) *Williams I* at ¶ 5.

{¶19} We also looked to the grounds for the motion, which asserted:

(1) there was no lawful cause to detain him and there was no probable cause to arrest him; (2) the deputy lacked probable cause to approach appellant’s stopped vehicle because the vehicle had two working headlights; (3) the deputy failed to conduct any field sobriety tests; (4) the deputy obtained a statement from him in violation of his right against self-incrimination and his right to counsel; (5) the deputy lacked sufficient basis to determine that appellant operated his vehicle while impaired; and (6) the

deputy lacked a sufficient basis to establish a chronology of events that appellant was under the influence while operating his vehicle.

Id. at ¶ 16. We acknowledged the motion was based on the argument “that the deputy did not have cause to stop and detain him.” *Williams I* at ¶ 17. Based on these factors, we concluded “there was no mistaking the basis for appellant’s motion to suppress.” *Id.* at ¶ 18.

{¶20} We note that Appellant’s request was general, and broadly sought to suppress any evidence pertaining to chemical tests, observations and opinions of law enforcement, and statements made by Appellant during his encounter with the law enforcement officers. While there undoubtedly were valid arguments based on the evidence the state could have raised to defeat, in whole or part, Appellant’s broad request, the state chose not to. Because the state failed to provide any appropriate response to Appellant’s motion when it was clearly put on notice as to the evidence that Appellant sought to suppress and so, failed in meeting its reciprocal burden, this Court granted Appellant’s motion to suppress as a whole. Despite the trial court’s apparent confusion, the earlier opinion of this Court is very clearly not limited to evidence obtained post-arrest. Instead, the Court granted Appellant’s motion in full: to suppress all evidence relating to chemical testing, observations and opinions of law enforcements, and statements made by Appellant, regardless of when they occurred during this encounter. We also note that it unclear from the record as it stands as to what point Appellant was actually placed under arrest, but this fact is not crucial to the implementation of the opinion following remand.

{¶21} Pursuant to the law-of-the-case doctrine, a trial court lacks the authority to extend or vary the mandate issued by a reviewing court. As this issue presents a question

of law, we apply a de novo review standard. *Arnott v. Arnott*, 132 Ohio St.3d 401, 2012-Ohio-3208, 972 N.E.2d 586, ¶ 17.

{¶22} “The law-of-the-case doctrine has long existed in Ohio jurisprudence and provides that, ‘the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.’ ” *Manshadi v. Bleggi*, 7th Dist. Mahoning No. 20 MA 0066, 2021-Ohio-3593, ¶ 10, citing *Hopkins v. Dyer*, 104 Ohio St.3d 461, 2004-Ohio-6769, 820 N.E.2d 329, ¶ 15; *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 432 N.E.2d 410 (1984). “The purpose of the doctrine is to ensure the consistency of results in a case, to avoid endless litigation by settling issues and also to preserve the integrity of superior and inferior courts set forth in the Ohio Constitution.” *Manshadi* at ¶ 10.

{¶23} The Ohio Constitution “does not grant to a court of common pleas jurisdiction to review a prior mandate of a court of appeals.” *State ex rel. Potain v. Mathews*, 59 Ohio St.2d 29, 32, 391 N.E.2d 343 (1979). “Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case.” *Nolan* at syllabus. Because of this, a trial court lacks authority to extend or vary a mandate issued by a reviewing court. *Id.* at 4. Consequently, “where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court’s determination of the applicable law.” *Id.* at 3.

{¶24} This record demonstrates that the trial testimony on remand in this matter is replete with references to evidence that was suppressed per the holding of *Williams I.*

As this testimony clearly oversteps the parameters of the remand in this matter, Appellant’s first assignment of error has merit and is sustained. Because Appellant’s first assignment of error has merit, his second assignment of error is moot.

Conclusion

{¶25} Appellant argues that the trial court allowed witness testimony regarding evidence that was suppressed in *Williams I*. He argues that without this evidence, insufficient evidence exists to support his conviction. For the reasons provided, it appears that Appellant’s arguments have merit and the judgment of the trial court is reversed and Appellant’s conviction is vacated. The matter is remanded to allow the state to determine if sufficient evidence remains to retry the case without chemical tests of Appellant’s blood alcohol level, any observations or opinions of the officers involved in the encounter with Appellant as to his “coordination and/or sobriety and/or alcohol level,” and without any of Appellant’s statements made during the encounter.

Robb, J., concurs.

D’Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant’s first assignment of error is sustained and his second assignment is moot. It is the final judgment and order of this Court that the judgment of the County Court of Harrison County, Ohio, is reversed and Appellant’s conviction is hereby vacated. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court’s Opinion. Costs to be taxed against the Appellee.

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.