[Cite as *State v. Moreland*, 2017-Ohio-9383.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	
	)	
PLAINTIFF-APPELLEE	)	
	)	CASE NO. 16 MA 0099
VS.	)	
	)	OPINION
SHUN MORELAND	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from the Court of Common Pleas, of Mahoning County, Ohio Case No. 15 CR 725
JUDGMENT:	Affirmed.
APPEARANCES: For Plaintiff-Appellee	Attorney Paul Gains Mahoning County Prosecutor Attorney Ralph Rivera Assistant Prosecutor 21 West Boardman Street, 6th Floor Youngstown, Ohio 44503-1426
For Defendant-Appellant	Attorney Cynthia Henry P.O. Box 4332 Youngstown, Ohio 44515
JUDGES: Hon. Mary DeGenaro Hon. Gene Donofrio Hon. Carol Ann Robb	

Dated: December 29, 2017

[Cite as *State v. Moreland*, 2017-Ohio-9383.]
DeGENARO, J.

{¶1} Defendant-Appellant, Shun Moreland, appeals the trial court's judgment convicting him of possession of cocaine and sentencing him accordingly. On appeal, Moreland argues that the trial court erred in denying his motion to suppress and failing to give curative instructions after a prejudicial statement. For the following reasons, his assignments of error are meritless and the judgment is affirmed.

Facts and Procedural History

{¶2} Moreland was indicted on charges of possession of cocaine, permitting drug abuse, and illegal use or possession of drug paraphernalia. The following testimony was given at a hearing on Moreland's motion to suppress.

{¶3} Austintown Township Sergeant Chris Collins, testified that around 2:30 a.m. he stopped Moreland for speeding; radar detected his speed at 38 m.p.h in a 25 m.p.h zone. Moreland produced an identification card as opposed to a driver's license and when told by Austintown dispatch that Moreland's license was under two suspensions, Collins decided to arrest Moreland. A passenger, Dana Lawson, was making furtive movements and attempting to conceal something on her left hip area, which prompted Collins to call for assistance. Once assisting officer Brad McFadden arrived, he removed Moreland from the vehicle, and Collins removed Lawson.

{¶4} Prior to removal, McFadden saw Moreland reach with his left hand into the front left pocket of his sweatshirt. McFadden drew his sidearm for officer safety. McFadden had Moreland exit and place his hands on the vehicle. He asked Moreland if he had any “guns, weapons, drugs, narcotics of any kind, any syringes, anything that would poke me, stab me, cut me." McFadden regularly asked this question "[f]or officer safety purposes. I didn't want to get stabbed or poked or cut myself." In response, McFadden testified that Moreland "stated that he had cocaine in his pocket." McFadden retrieved a plastic baggie containing cocaine and 82 empty plastic jewel bags from Moreland’s left sweatshirt pocket.

{¶5} The trial court denied the motion to suppress, and prior to trial the State filed a Nolle Prosequi for the permitting drug abuse and drug paraphernalia charges.

{¶6} At a jury trial Collins, McFadden, and BCI Forensic Scientist Zach

Dawson testified for the State. After the State rested, Moreland made a Criminal Rule 29 motion which was denied. The jury found Moreland guilty of possession of cocaine. Moreland was sentenced to 18 months in prison.

Motion to Suppress Evidence

{¶7} In his first of two assignments of error, Moreland asserts:

> The Mahoning County trial court erred in denying the Appellant's Motion to Suppress.

{¶8} There are three basis to challenge a trial court's suppression ruling: 1) the trial court's findings of fact; 2) the trial court's failure to apply the correct law; and 3) assuming the facts are not against the manifest weight of the evidence and the law was properly applied, the trial court incorrectly decided the issue(s) raised in the motion to suppress. *State v. Hall*, 2016-Ohio-5787, 70 N.E.3d 1154, ¶ 13 (5th Dist.) We review determinations of reasonable suspicion and probable cause de novo. *Id*.

{¶9} Moreland argues that Collins lacked reasonable suspicion to make the traffic stop and further that McFadden lacked the authority to ask Moreland if he was in possession of any drugs. The Fourth Amendment to the United States Constitution provides, "The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizes, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularity describing the place to be searched, and the persons or things to be seized." Fourth Amendment to the U.S. Constitution; *accord* Ohio Constitution, Article I, Section 14.

{¶10} "The security of one's privacy against arbitrary intrusion by the police-which is at the core of the Fourth Amendment-is basic to a free society." *Wolf v. Colorado*, 338 U.S. 25, 27, 69 S.Ct. 1359 (1949). Generally, "for a search or seizure to be reasonable under the Fourth Amendment, it must be based upon probable cause and executed pursuant to a warrant." *State v. Moore*, 90 Ohio St.3d 47, 49, 2000–Ohio–10, 734 N.E.2d 804, citing *Katz v. United States*, 389 U.S. 347, 357, 88

S.Ct. 507 (1967), and *State v. Brown*, 63 Ohio St.3d 349, 350, 588 N.E.2d 113 (1992), *overruled on other grounds*.

{¶11} The Fourth Amendment protections apply also to unreasonable automobile stops. *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006–Ohio–3563, 850 N.E.2d 698, ¶ 11, citing *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), and *Dayton v. Erickson*, 76 Ohio St.3d 3, 11, 1996–Ohio–431, 665 N.E.2d 1091. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Godwin*, 110 Ohio St.3d 58 at ¶ 11, quoting *Whren* at 810.

{¶12} The Ohio Supreme Court has ruled that probable cause is not required to make a traffic stop, the standard is reasonable and articulable suspicion. *State v. Mays*, 119 Ohio St.3d 406, 2008–Ohio–4539, 894 N.E.2d 1204, ¶ 23, and has expressly held that "[w]here a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution." *Godwin*, 110 Ohio St.3d 58 at 61, quoting *Erickson*, at syllabus (holding "where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity.")

{¶13} Collins had reasonable suspicion to stop Moreland as he was traveling 13 mph over the speed limit. It is well settled that "any traffic violation, even a minor traffic violation, witnessed by a police officer is, standing alone, sufficient grounds to stop the vehicle observed violating the ordinance*." City of Warren v. Smith,* 11th Dist. No. 2002-T-0063, 2003–Ohio–2113, ¶ 7, citing *State v. Molk*, 11th Dist. No.2001-L-146, 2002–Ohio–6926.

{¶14} We turn next to Moreland's contention that McFadden improperly asked him if he was in possession of any drugs. The record demonstrates that officers

made the decision to place Moreland under arrest for driving under suspension. As such, Moreland was subject to a search incident to that arrest.

> The search incident to arrest exception to the warrant requirement "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." *Arizona v. Gant*, 556 U.S. 332, 338, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). Thus, an officer making a lawful arrest may conduct a warrantless search of the arrestee's person and of the area within his immediate control. *Chimel* [*v. California* (1969), 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685], at 763, 89 S.Ct. 2034, which includes "the area from within which he might gain possession of a weapon or destructible evidence." *Id.*

State v. Johnson, 7th Dist. No. 15 JE 0020, 2017-Ohio-5708, --- N.E.3d ----, ¶ 27.

{¶15} Pursuant to *Johnson,* McFadden's question was permitted. Further, the officer testified that he inquired about narcotics as well as syringes and other paraphernalia to ensure officer safety, as permitted by the Supreme Court precedent relied on in *Johnson*. For these reasons, Moreland's first assignment of error is meritless.

Plain Error

{¶16} In his second assignment of error, Moreland asserts:

> The Mahoning County trial court errored in not inquiring of the panel and giving curative instructions after the prejudicial statements of potential jurors

{¶17} "'Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Manley*, 71 Ohio St.3d 342, 347, 1994-Ohio-440, 643 N.E.2d 1107, quoting *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph

three of the syllabus. "'Plain error does not exist unless it can be said that but for the error, the outcome of the trial would clearly have been otherwise.'" *Manley* at 347, quoting *State v. Moreland*, 50 Ohio St.3d 58, 62, 552 N.E.2d 894 (1990).

{¶18} During voir dire G.H. was called as a potential juror. He stated that he was employed as a special agent of the FBI assigned to the violent crimes task force in Youngstown and was familiar with three of the four witnesses as he worked with them. He also noted that he was "familiar with the defendant." Agent G.H. was later dismissed on a challenge for cause. It is undisputed that trial counsel for Moreland did not object or request a curative instruction.

{¶19} Moreland argues that Agent G.H.'s comments were "potentially prejudicial." This argument is speculative at best. A review of the transcript demonstrates that both the assistant prosecuting attorney and trial counsel for Moreland recognized the potential issue and chose to resolve it by dismissing G.H. for cause. Moreland has failed to demonstrate any error, let alone plain error. Accordingly, Moreland's second assignment of error is meritless.

{¶20} As the court did not err regarding the motion to suppress or commit plain error regarding juror G.H., the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P. J., concurs.