

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMAL FINLEY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 MA 0035

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 17CR768

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed

Atty. Paul Gains, Prosecutor, *Atty. Ralph Rivers*, Assistant Prosecutor, Mahoning County Prosecutor's Office, 21 West Boardman, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee, and

Atty. Joseph Gardner, 19 East Front Street, Youngstown, Ohio 44503, for Defendant-Appellant.

Dated:
June 21, 2019

Donofrio, J.

{¶1} Defendant-appellant, Jamal Finley, appeals his conviction in the Mahoning County Common Pleas Court for one count of possession of cocaine, a second-degree felony; one count of illegal conveyance into a detention facility, a third-degree felony; and one count of falsification, a first-degree misdemeanor, following a no-contest plea.

{¶2} On July 5, 2017, Officer Sember of the Youngstown Police Department was on patrol in Youngstown, Ohio. While on patrol, Officer Sember observed a car traveling westbound on East Florida Avenue. When the car reached the intersection of East Florida and Southern Boulevard, the car came to a complete stop, began to make a right turn onto Southern, activated the turn signal mid-turn, and then completed the turn. Officer Sember then initiated a traffic stop of the car for failure to use a turn signal 100 feet prior to a change of course. Pamela Miller was the driver of the car and appellant was in the front passenger seat.

{¶3} Officer Sember approached the vehicle and asked for Miller's and appellant's identification information. Miller provided Officer Sember with her identification. Appellant did not have identification on him but informed Officer Sember that his name was James Smith and his date of birth was February 1, 1976. Appellant also provided Officer Sember with a Social Security number. Once another officer arrived at the scene to supervise Miller and appellant, Officer Sember returned to his cruiser to verify the identification information Miller and appellant provided.

{¶4} Officer Sember was able to verify Miller's information. But Officer Sember was not able to identify a James Smith with the Social Security number appellant provided. Officer Sember then returned to Miller's car and informed appellant that he could not verify appellant's identity. Appellant responded with the same name and date of birth but gave Officer Sember a different Social Security number. It was also at this point that Officer Sember noticed appellant exhibiting behavior such as: sweating from the forehead, trembling hands, and labored and rapid breathing.

{¶15} Officer Sember returned to his cruiser again to verify the second Social Security number appellant provided. This Social Security number belonged to a woman. Noting that appellant was a man, Officer Sember detained appellant on suspicion for falsification.

{¶16} Appellant was ordered out of Miller's car and escorted by Officer Sember to the police cruiser. Upon escorting appellant, Officer Sember detected a heavy odor of raw marijuana. Officer Sember asked appellant if he had anything illegal on him to which appellant responded no. Officer Sember testified that he received permission by appellant to conduct a pat down. Appellant testified that he did not give Officer Sember permission to conduct a search or a pat down.

{¶17} The pat down did not reveal any contraband. But Officer Sember testified that he felt a slight bulge near appellant's buttocks. Officer Sember placed appellant in the back of the cruiser and informed him that he was being detained on suspicion for providing false information. Appellant then provided Officer Sember with his real name and a third Social Security number. Officer Sember managed to confirm appellant's identity with the third Social Security number. When verifying appellant's identity, Officer Sember discovered, and subsequently confirmed, that appellant had outstanding federal warrants for his arrest in West Virginia for possession with intent to distribute cocaine, heroin, and marijuana. Officer Sember informed appellant that he was going to be taken to the Mahoning County Justice Center due to the outstanding warrants and also informed him that, if he had drugs on him, appellant would be charged with illegal conveyance into a detention center. Appellant claimed he had no drugs on him.

{¶18} At the Mahoning County Justice Center, Officer Sember informed appellant again that, if he had drugs on him, he would be charged with illegal conveyance into a detention center. Appellant restated that he had no drugs on him. A search of appellant at the Justice Center revealed a large amount of crack cocaine, powder cocaine, and a small bag of marijuana.

{¶19} A Mahoning County Grand Jury indicted appellant on the following charges: count one for possession of cocaine in violation of R.C. 2923.11(A)(C)(4)(e), a first-degree felony, count two for illegal conveyance into a detention facility in violation of R.C. 2921.26(A)(2), a third-degree felony, and count three for falsification in violation of

R.C. 2921.12(A)(3), a misdemeanor of the first degree. Appellant also faced a major drug offender specification on count one.

{¶10} Appellant filed a motion to suppress all evidence obtained from the searches. He argued that, because he was only a passenger in a stopped vehicle, Officer Sember lacked probable cause to question and search him.

{¶11} At the subsequent suppression hearing, Officer Sember testified to the above facts. On cross-examination, Officer Sember testified that, other than appellant's apparent nervous behavior, appellant exhibited no signs that he was involved in criminal activity. He testified that a person can sweat, have labored breathing, and have shaky hands for a variety of reasons. Officer Sember also testified that if appellant attempted to leave during the traffic stop, he would have been stopped and detained.

{¶12} Appellant also testified at the suppression hearing. On direct-examination, appellant testified he did not give Officer Sember permission to conduct a pat down or a search. On cross-examination, appellant testified that he provided Officer Sember with two separate false Social Security numbers and a false date of birth.

{¶13} The trial court denied appellant's motion to suppress holding: Officer Sember initiated a valid traffic stop, Officer Sember was permitted to ask appellant for his identification, and appellant providing false identification information justified the prolonging of the stop and the subsequent search.

{¶14} On February 26, 2018, plaintiff-appellee, the State of Ohio, amended count one (possession of cocaine) from a first-degree felony to a second-degree felony and dismissed the major drug offender specification. Appellant entered a no-contest plea to amended count one (possession of cocaine), count two (illegal conveyance into a detention center), and count three (falsification). The trial court sentenced appellant to four years of incarceration on amended count one and one year of incarceration on count two to run concurrently. The trial court also sentenced appellant to a suspended sentence of 180 days of incarceration on count three.

{¶15} Appellant's sentence was memorialized in a judgment entry dated March 16, 2018. Appellant timely filed this appeal on March 20, 2018. Appellant now raises one assignment of error.

{¶16} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION TO SUPPRESS. LAW ENFORCEMENT'S CONTINUED DETENTION OF THE PASSENGER (DEFENDANT-APPELLANT) AFTER THE TIME NECESSARY TO COMPLETE THE PURPOSE OF THE TRAFFIC STOP, IS A VIOLATION OF THE FOURTH AMENDMENT.

{¶17} Appellant argues that because he was only a passenger in a car stopped for a minor traffic violation, Officer Sember had no probable cause to detain and question him. Because Officer Sember had no probable cause, appellant argues that his motion to suppress should have been granted.

{¶18} Our standard of review with respect to a motion to suppress is first limited to determining whether the trial court's findings are supported by competent, credible evidence. *State v. Winand*, 116 Ohio App.3d 286, 288, 688 N.E.2d 9 (7th Dist.1996) citing *Tallmadge v. McCoy*, 96 Ohio App.3d 604, 608, 645 N.E.2d 802 (9th Dist.1994). Such a standard of review is appropriate as, "[i]n a hearing on a motion to suppress evidence, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Venham*, 96 Ohio App.3d 649, 653, 645 N.E. 2d 831 (4th Dist.1994). An appellate court accepts the trial court's factual findings and relies upon the trial court's ability to assess the witness's credibility, but independently determines, without deference to the trial court, whether the trial court applied the appropriate legal standard. *State v. Rice*, 129 Ohio App.3d 91, 94, 717 N.E.2d 351 (7th Dist.1998). A trial court's decision on a motion to suppress will not be disturbed when it is supported by substantial credible evidence. *Id.*

{¶19} After the suppression hearing, the trial court ordered appellant and the state to submit proposed findings of fact. Both appellant and the state submitted proposed findings of fact that were similar but not identical. But their proposed findings of fact were not in conflict and, when taken as a whole, established the facts that were previously set forth. The trial court adopted both findings of fact. Moreover, appellant does not argue that the trial court's findings of fact are inaccurate. Because the trial court's findings of fact are based on competent and credible evidence from the suppression hearing, we accept the trial court's findings of fact.

{¶20} We now turn to whether suppression was warranted in this case. Appellant’s overall argument is that Officer Sember was not permitted to ask appellant his identity because he was not suspected of any criminal activity. Appellant also argues that there were numerous non-criminal explanations for the nervous behavior that appellant exhibited.

{¶21} In support of this argument, appellant cites *Brendlin v. California*, 551 U.S. 249, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007). In *Brendlin*, Brendlin was a passenger in a vehicle that was pulled over for a potential vehicle registration issue. *Id.* at 252. During the proceedings, California conceded that there was no real basis for the vehicle Brendlin was in to be pulled over. *Id.* at 253. Upon being pulled over, police recognized Brendlin as “one of the Brendlin brothers” and noted that one of the brothers violated parole. *Id.* at 252. Police asked Brendlin to identify himself. *Id.* Police verified that Brendlin was a parole violator and that a warrant was issued for his arrest. *Id.* Police then ordered Brendlin and the driver out of the car. *Id.* A search of Brendlin, the driver, and the car yielded numerous items used in the production of methamphetamine. *Id.*

{¶22} Brendlin was charged with possession and manufacture of methamphetamine. *Id.* at 253. Brendlin moved to suppress the evidence obtained during the searches arguing that the traffic stop amounted to an unconstitutional seizure of his person. *Id.* The California trial court denied the motion holding that Brendlin was not seized until he was ordered out of the vehicle. *Id.* The California Court of Appeals reversed the trial court holding that Brendlin was unlawfully seized by the traffic stop. *Id.* In a split decision, the California Supreme Court reversed the California Court of Appeals holding that Brendlin, as a passenger, was not seized because he was not the target of the stop and would have felt free to leave once the car was pulled over. *Id.* at 253-254.

{¶23} The U.S. Supreme Court reversed the California Supreme Court holding that “[a] traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver, diverting both from the stream of traffic to the side of the road, and the police activity that normally amounts to intrusion on ‘privacy and personal security’ does not normally (and did not here) distinguish between passenger and driver.” *Id.* at 257. The Court held that the California courts’ ruling that Brendlin was not seized until he was arrested was error. *Id.* at 263.

{¶24} Appellant argues that, under *Brendlin*, he was unconstitutionally seized as the passenger in a stopped motor vehicle. Officer Sember testified that when he encountered appellant, other than apparent nervous behavior, appellant did not initiate any conduct that caused him to believe appellant was engaged in criminal activity. (Tr. 23). He argues that Miller committed a minor traffic offense, Miller's identity was verifiable, Miller had proper registration for the car, but appellant was not permitted to leave the traffic stop.

{¶25} Appellant argues that this is further evidenced by the two other facts. First, Officer Sember waited at Miller's vehicle, armed and in full uniform, until a backup officer arrived, also armed and in full uniform, to supervise Miller and appellant while Officer Sember checked their identities. (Tr. 9). Second, Officer Sember testified that if appellant attempted to get out of the car and leave, appellant would have been detained. (Tr. 29-31). This argument does not have merit.

{¶26} First, *Brendlin* is inapplicable as the police in that case admitted that there was no basis to stop the car *Brendlin* was in. In this case, Officer Sember witnessed Miller committing a traffic violation. Therefore, the car appellant was in was validly stopped.

{¶27} Second, in *Maryland v. Wilson*, 519 U.S. 408, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997), the U.S. Supreme Court held that when a car is pulled over for a suspected traffic violation, police may order passengers to exit the car without any probable cause that they are engaged in criminal activity. *Id.* at 410-411, 414-415. If police may order passengers in a stopped car to exit the car without individualized suspicion that they are engaged in criminal activity, it stands to reason that police may ask passengers in a stopped car for identification information without individualized suspicion that they are engaged in criminal activity.

{¶28} Third, the argument that appellant would have been detained if he left the car is moot. There is no evidence in the record that appellant attempted to leave Miller's car during Officer Sember's traffic stop.

{¶29} Moreover, the state cites *State v. Emmons*, 1st Dist. Hamilton No. C-150636, 2016-Ohio-5384. In *Emmons*, Emmons was the passenger in a car that was stopped for a minor traffic violation. *Id.* at ¶ 2. Police asked the driver, Barrett, for identification which Barrett did not have. *Id.* at ¶ 3. Police also asked Emmons for her

identification. *Id.* at ¶ 4. While Emmons was retrieving her license, police noticed what appeared to be track marks consistent with drug usage on Barrett’s hands. *Id.* Police then ordered Barrett out of the vehicle and moved him to the police cruiser to verify his identity. *Id.* at ¶ 5. At this point, Barrett volunteered that there was an open *capias* for his arrest. *Id.* Before issuing Barrett a citation, police returned to the car where Emmons was still seated and noticed dried blood on her sleeve. *Id.* at ¶ 7. Emmons admitted to using heroin four days prior to the stop. *Id.* Emmons denied having anything illegal in the car but a consensual search of her purse yielded a hypodermic needle. *Id.* Emmons was placed under arrest and a search of the car yielded cocaine. *Id.* The trial court suppressed the evidence of the search with regard to Emmons on the basis that there was no reasonable suspicion to ask Emmons her name. *Id.*

{¶30} The First District held that an officer may request identifying information from a passenger in a stopped vehicle without particularized suspicion that the passenger poses a safety risk or is engaged in wrongdoing. *Id.* at ¶ 15 citing *United States v. Alexander*, 467 Fed.Appx. 355 (6th Cir. 2012). The First District reversed the suppression decision holding that police asking Emmons her name “added no appreciable additional time to the detention” and that police had reasonable and articulable suspicion to prolong the stop under the totality of the circumstances. *Id.* at ¶ 17, 19.

{¶31} “To justify a particular intrusion, the officer must demonstrate ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 12 quoting *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. “The ‘reasonable and articulable suspicion’ analysis is based on the collection of factors, not on the individual factors themselves.” *Id.*

{¶32} Analyzing Miller’s traffic stop as a whole, Miller was stopped for failing to signal a turn 100 feet prior to making the turn in violation of R.C. 4511.39(A). Therefore, Officer Sember’s stop of Miller’s vehicle was reasonable.

{¶33} Officer Sember then requested Miller’s and appellant’s identification. In lieu of a driver’s license, appellant provided Officer Sember with: a name, date of birth, and a Social Security number. When Officer Sember checked the information appellant

provided, the Social Security number was not returning a match. This justified Officer Sember's prolonging of the stop in order to ascertain appellant's identity.

{¶34} When appellant provided Officer Sember with a second Social Security number, this number belonged to a person who was not appellant. At this point, Officer Sember had probable cause to detain appellant for falsification in violation of R.C. 2921.12(A)(3). After a review of the record, the trial court's denial of appellant's motion to suppress was proper.

{¶35} Accordingly, appellant's sole assignment of error lacks merit and is overruled.

{¶36} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, P. J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be waived.

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.