[Cite as *State v. Box*, 2017-Ohio-1138.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 16AP-371
v.	:	(C.P.C. No. 15CR-456)
Carl L. Box, Jr.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 14, 2017

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

On brief: *Yeura R. Venters*, Public Defender, and *John W. Keeling*, for appellant. **Argued:** *John W. Keeling*.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Carl L. Box, Jr., appeals the April 27, 2016 judgment of the Franklin County Court of Common Pleas convicting appellant, pursuant to a plea of no contest, and sentencing him. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} On January 29, 2015, a Franklin County Grand Jury filed an indictment charging appellant with a single criminal count of improperly handling firearms in a motor vehicle, in violation of R.C. 2923.16, a felony of the fourth degree.

{¶ 3} On May 1, 2015, appellant filed a motion to suppress evidence. On May 14, 2015, plaintiff-appellee, State of Ohio, filed a memorandum contra appellant's motion to suppress evidence. On November 12, 2015, the trial court held a hearing on appellant's

motion. At the suppression hearing, Officer Christopher Farrington of the Columbus Division of Police provided unopposed testimony as the sole witness called by the state.

{¶ 4} Officer Farrington testified that on October 4, 2014, he and his partner, Officer Jonathan Sterling, were patrolling an apartment complex in a high crime area. Around 2:30 a.m., Officer Farrington noticed a man sitting in the driver's seat of a parked vehicle that appeared to be off except for lights coming from the radio inside the vehicle. The officers parked their cruiser and illuminated the parked vehicle with a spotlight. Officer Sterling approached the driver's side of the vehicle while Officer Farrington approached the passenger's side of the vehicle.

{¶ 5} According to Officer Farrington, Officer Sterling approached the man in the vehicle, identified as appellant, and asked him "why he was sitting in his vehicle this time of night, especially in that area." (Nov. 12, 2015 Tr. at 8-9.) Appellant replied that he was working on his vehicle's radio, but Officer Farrington did not observe any parts or tools in the vehicle. Officer Farrington observed appellant's keys in the ignition. Officer Sterling asked appellant if he had his driver's license on his person. Appellant replied that he did not but provided an Ohio identification card. Officer Sterling took appellant's identification back to the cruiser in order to check for warrants.

{¶ 6} After Officer Sterling began the warrant check, Officer Farrington moved from the passenger's side to the driver's side of the vehicle and asked appellant whether he had any weapons in the vehicle. Appellant did not respond. Officer Farrington again asked whether he had any weapons in the vehicle. Appellant admitted that he had a gun in the vehicle. Officer Farrington drew his weapon, ordered appellant out of the vehicle, and arrested him. After appellant was arrested, officers recovered a firearm from the vehicle.

{¶ 7} Officer Farrington testified that Officer Sterling noticed signs of possible intoxication when he approached appellant. Furthermore, Officer Farrington also noticed signs of intoxication when he approached the driver's side of the vehicle and began speaking with appellant. Officer Farrington testified that if appellant was intoxicated while his keys were in the ignition, he could have been charged with physical control, a misdemeanor violation of the Columbus traffic code.

{¶ 8} Following the hearing, on November 13, 2015, the state filed a supplemental memorandum contra appellant's motion to suppress evidence. On December 7, 2015, appellant filed a supplemental memorandum in support of his motion to suppress evidence. On January 27, 2016, the trial court filed a decision and entry denying appellant's motion to suppress.

{¶ 9} On January 28, 2016, the trial court held a hearing at which appellant entered a plea of no contest to the single count of the indictment. The trial court accepted appellant's plea and found him guilty of the count of improperly handling firearms in a motor vehicle in violation of R.C. 2923.16.

{¶ 10} On April 25, 2016, the trial court held a sentencing hearing at which it sentenced appellant to community control for a period of three years. On April 26, 2016, the trial court filed a judgment entry. On April 27, 2016, the trial court filed an amended judgment entry reflecting appellant's conviction and sentence.

II. Assignment of Error

{¶ 11} Appellant appeals and assigns the following single assignment of error for our review:

> THE TRIAL COURT ERRED WHEN IT OVERRULED THE DEFENDANT'S MOTION TO SUPPRESS THE EVIDENCE OBTAINED FOLLOWING THE UNLAWFUL DETENTION OF THE DEFENDANT.

III. Discussion

{¶ 12} Appellant asserts the trial court erred in denying his motion to suppress. In support of his assignment of error, appellant contends that: (1) he was unlawfully detained when his identification was taken, (2) even if the officers had a reasonable suspicion to detain him, they exceeded the scope of their authority by expanding their investigation into unrelated matters, and (3) the officers lacked probable cause to arrest appellant based solely on his admission that there was a firearm in the vehicle. To begin, we note that appellant has waived his second and third arguments as he did not raise the same at the suppression hearing in the trial court. The transcript from the suppression hearing reads:

> THE COURT: Okay. I have a general motion. Is there a particular issue, or are we trying all issues?

[DEFENSE COUNSEL]: Your Honor, there is a particular issue here.

THE COURT: Which issue do you wish to address here today?

[DEFENSE COUNSEL]: There was an admission by my client, Your Honor, but before that admission, we believe that there was an illegal seizure.

THE COURT: Okay.

[DEFENSE COUNSEL]: The illegal seizure was because of all the surrounding circumstances, and because of that illegal seizure, that consent was not valid, thus, making anything else the fruits of an illegal seizure.
THE COURT: So it's not probable cause then?

[DEFENSE COUNSEL]: It's an illegal seizure.

THE COURT: Okay. So you're not arguing probable cause to initiate contact?

[DEFENSE COUNSEL]: Well, let's wait and see what the evidence is going to bring out.

THE COURT: I just want to make sure I understand what we're arguing.

[DEFENSE COUNSEL]: Yes.

THE COURT: Fair enough.

* * *

[DEFENSE COUNSEL]: Your Honor, this was not a consensual encounter. That is based on the fact of the totality of circumstances. There was an illegal seizure here. What we have is an individual who is sitting in his car in front of his own home.

* * *

Now, the officer -- in an encounter, an officer is granted much leeway, but in this situation here, it was an investigatory stop. So was there any articulable fact that my client -- that there was any criminal activity afoot here? What was going on there?

> We have a threatening presence of officers. We have the tone that the officers used. We have constant questioning.
>
> But the most important thing here -- to go to the meat of the situation here and the case law as it stands in Ohio -- they took his ID. They took it to the car, and they never gave it back to him. That is a seizure.
>
> * * *
>
> The issue is: Was there a seizure in this situation, and did my client feel that he was free to leave?
>
> * * *
>
> I'm talking specifically about the seizure. Was my client seized before they said -- before he said, "Do you have a gun in the car?" Because you're not allowed to do that.

(Nov. 12, 2015 Tr. at 3-4; 27-29; 32.)

{¶ 13} "[A] motion to suppress must 'state with particularity the legal and factual issues to be resolved,' thereby placing the prosecutor and court 'on notice of those issues to be heard and decided by the court and, by omission, those issues which are otherwise being waived.' " *Columbus v. Ridley*, 10th Dist. No. 15AP-84, 2015-Ohio-4968, ¶ 23, quoting *State v. Shindler*, 70 Ohio St.3d 54, 58 (1994). We note that in his motion to suppress, appellant did not raise the issue of probable cause. He also did not raise the issue that the detention was unlawfully prolonged by conducting the warrant search. In his motion to suppress, appellant did argue that he did not voluntarily consent to answering the officer's question regarding whether he had a weapon. The state, however, at the suppression hearing, conceded that once the officers were in possession of appellant's identification, "for Fourth Amendment purposes, it would be classified as a detention since he couldn't leave." (Nov. 12, 2015 Tr. at 26.) Thereafter, appellant focused his argument on the initial detention arguing the initial detention was illegal. He did not argue further that should the court determine the initial detention was legal the officers exceeded the scope of the detention by asking the question regarding weapons. Therefore, at the motion hearing, appellant narrowed his motion to the single issue of whether the initial detention and seizure of appellant's identification was legal. Appellant's failure to address the additional arguments relating to the scope of the

detention and the search of the vehicle constitutes a waiver of such issues for purposes of appeal. *State v. Neal*, 10th Dist. No. 15AP-771, 2016-Ohio-1406, ¶ 29. Because appellant narrowed his argument at the trial level in particular to the question of whether his initial detention and seizure of his identification was lawful, we only address the same.[1]

A. Standard of Review

{¶ 14} "The review of a motion to suppress is a mixed question of law and fact." *State v. Castagnola*, 145 Ohio St.3d 1, 2015-Ohio-1565, ¶ 32, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In evaluating the motion to suppress, the trial court acts as the finder of fact and, therefore, is in the best position to resolve factual questions and evaluate the credibility of witnesses. *Burnside* at ¶ 8. Therefore, we must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.* "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." *Id. See also State v. Johnson*, 10th Dist. No. 13AP-637, 2014-Ohio-671, ¶ 6 ("We apply a de novo standard in determining whether the trial court properly denied appellant's motion to suppress.").

{¶ 15} The trial court made the following factual findings, which we must accept as true if they are supported by competent, credible evidence:

> Upon approaching the vehicle, they spoke to the Defendant and he had [1] a strong odor of alcohol about his person, [2] blood shot eyes and [3] slurred speech, and [4] the keys were in the ignition. He was asked for his driver['s] license and the Defendant [5] produced an Ohio ID which the officer took back to the cruiser to check for warrants on Defendant.

(Jan. 27, 2016 Decision and Entry at 1.)

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[1] We also note that, in its entry, after determining the initial detention was lawful, the trial court did not address the question of whether the conducting of the warrants check unlawfully prolonged the initial detention. Furthermore, although the trial court made a general conclusion that it "fails to see any violation of Defendant's rights" when the officer asked appellant if he had a gun and when the gun was seized, the trial court conducted no analysis of the same and made no factual findings regarding the same. (Jan. 27, 2016 Decision and Entry at 1.) We will not make these factual findings and address these arguments in the first instance. *See State v. Limoli*, 10th Dist. No. 11AP-924, 2012-Ohio-4502, ¶ 38-49. Crim.R. 12(F) provides: "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record."

B. Applicable Law

1. Constitutional Protections

{¶ 16} The Fourth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or other things to be seized." Article I, Section 14 of the Ohio Constitution contains a nearly identical provision:

> The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

See also R.C. 2933.22(A) and Crim.R. 41(C).

{¶ 17} Historically, the protections afforded by Article I, Section 14 of the Ohio Constitution have been construed as coextensive with the protections of the Fourth Amendment of the United States Constitution. *State v. Geraldo*, 68 Ohio St.2d 120, 125-26 (1981) ("We are disinclined to impose greater restrictions in the absence of explicit state constitutional guarantees protecting against invasions of privacy that clearly transcend the Fourth Amendment. * * * It is our opinion that the reach of Section 14, Article I, of the Ohio Constitution * * * is coextensive with that of the Fourth Amendment."); *State v. Robinette*, 80 Ohio St.3d 234, 239 (1997) (stating that courts "should harmonize * * * interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise"); *State v. Jones*, 88 Ohio St.3d 430, 434 (2000), *modified in State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, syllabus. However, it is well-recognized that states may "rely on their own constitutions to provide broader protection for individual rights, independent of protections afforded by the United States Constitution." *Robinette* at 238. *See Arnold v. Cleveland*, 67 Ohio St.3d 35, 38 (1993), paragraph one of the syllabus ("In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall."). Thus, in certain

circumstances, the Supreme Court of Ohio has construed Article I, Section 14 of the Ohio Constitution as providing greater protection than the Fourth Amendment to the United States Constitution. *Brown* at ¶ 22; *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, ¶ 23 ("Article I, Section 14 of the Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest."). *See Robinette* at 238 (noting that a "state may impose greater restrictions on police activity pursuant to its own state constitution than is required by federal constitutional standards").

{¶ 18} "The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991), citing *Katz v. United States*, 389 U.S. 347, 360 (1967). "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Id.* In keeping with this principle, both the Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I, Section 14 of the Ohio Constitution prohibit the government from conducting warrantless searches and seizures, subject to certain exceptions. *Arizona v. Gant*, 556 U.S. 332, 338 (2009), quoting *Katz* at 357 (" '[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' "); *State v. Limoli*, 10th Dist. No. 11AP-924, 2012-Ohio-4502, ¶ 20, citing *State v. Fowler*, 10th Dist. No. 10AP-658, 2011-Ohio-3156, ¶ 11-12. Common exceptions to the warrant requirement include a consensual encounter with a police officer and an investigative detention, commonly referred to as a *Terry* stop.[2]

2. Consensual Encounter

{¶ 19} An encounter between a police officer and a member of the public is consensual if a reasonable person would feel free to disregard the officer's questions or terminate the encounter and go about his or her business. *Florida v. Bostick*, 501 U.S. 429, 434 (1991), citing *California v. Hodari D.*, 499 U.S. 621, 628 (1991). Because a consensual encounter does not involve a restraint on a person's liberty or privacy, such encounter does not constitute a seizure for purposes of the Fourth Amendment. *Terry v.*

[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

Ohio, 392 U.S. 1, 19 (1968), fn. 16 ("[N]ot all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."). Thus, consensual encounters between police officers and members of the public do not implicate Fourth Amendment protections. *Florida v. Royer*, 460 U.S. 491, 498 (1983) (plurality opinion) ("If there is no detention—no seizure within the meaning of the Fourth Amendment—then no constitutional rights have been infringed."); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.); *State v. Jones*, 188 Ohio App.3d 628, 2010-Ohio-2854, ¶ 20 (10th Dist.); *State v. Moyer*, 10th Dist. No. 09AP-434, 2009-Ohio-6777, ¶ 13.

{¶ 20} "A police officer may lawfully initiate a consensual encounter without probable cause or a reasonable, articulable suspicion that an individual is currently engaged in criminal activity or is about to engage in such conduct." *State v. Westover*, 10th Dist. No. 13AP-555, 2014-Ohio-1959, ¶ 15, citing *Mendenhall* at 556. "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual, ask to examine identification, and request consent to search luggage, provided they do not convey a message that compliance with their requests is required." (Citations omitted.) *Bostick* at 434-35. "Generally, when a police officer merely approaches and questions persons seated within parked vehicles, a consensual encounter occurs that does not constitute a seizure so as to require reasonable suspicion supported by specific and articulable facts." *Jones*, 2010-Ohio-2854, ¶ 20, citing *State v. McClendon*, 10th Dist. No. 09AP-554, 2009-Ohio-6421, ¶ 8.

3. Investigative Detention

{¶ 21} An investigative detention, unlike a consensual encounter, constitutes a seizure for purposes of the Fourth Amendment. *Jones*, 2010-Ohio-2854, at ¶ 16. *See Delaware v. Prouse*, 440 U.S. 648, 653 (1979) (finding that a traffic stop entails a seizure "even though the purpose of the stop is limited and the resulting detention quite brief"). Under *Terry*, an investigative detention may be conducted without violating the Fourth Amendment if the investigating officer "reasonably suspects that the person apprehended is committing or has committed a criminal offense." *Arizona v. Johnson*, 555 U.S. 323, 326 (2009). *See Terry* at 21; *State v. Fisher*, 10th Dist. No. 10AP-746, 2011-Ohio-2488,

¶ 18, citing *State v. Williams*, 51 Ohio St.3d 58, 60-61 (1990) ("To justify a brief investigative stop or detention of an individual pursuant to *Terry*, a police officer must be able to cite specific and articulable facts which, taken together with rational inferences derived from those facts, give rise to a reasonable suspicion that the individual is engaged or about to be engaged in criminal activity."). Although the standard for finding reasonable suspicion is less stringent than for a finding of probable cause, it cannot be met by an officer's mere "inchoate and unparticularized suspicion or 'hunch.' " *Terry* at 27. *See State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 35, citing *Alabama v. White*, 496 U.S. 325, 330 (1990) ("Reasonable suspicion can arise from information that is less reliable than that required to show probable cause."); *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (finding that although a reasonable suspicion "requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop").

{¶ 22} An appellate court reviews the propriety of an investigative detention in light of the totality of the surrounding circumstances. *State v. Bobo*, 37 Ohio St.3d 177 (1988), paragraph one of the syllabus, approving and following *State v. Freeman*, 64 Ohio St.2d 291 (1980), paragraph one of the syllabus. "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Royer* at 500. "[A]n investigatory stop which is prolonged and extends beyond the scope of the initial detention must be supported by a reasonable suspicion the suspect is engaged in another criminal activity." *State v. Owens*, 10th Dist. No. 03AP-423, 2004-Ohio-5159, ¶ 18, citing *State v. Venham*, 96 Ohio App.3d 649, 656 (4th Dist.1994).

C. Analysis

{¶ 23} Here, the parties do not dispute that the initial encounter between appellant and the officers was consensual or that it evolved and appellant was detained when Officer Sterling took appellant's identification to check for warrants. Instead, appellant contends the detention was illegal because the officers lacked reasonable suspicion to take his identification. Appellant argues that, under *Jones*, 2010-Ohio-2854, any evidence obtained as a result of his unlawful detention must be suppressed, including the gun appellant admitted to having while he was detained. In support of his argument, appellant contends that "[t]here was no evidence that Farrington's partner, Officer

Sterling, observed any signs of alcohol because Officer Sterling never testified." (Appellant's Brief at 7.) Furthermore, appellant contends "the only evidence of such came from Officer Farrington and these observations were made after [appellant's identification] had been taken from him and [appellant] was being unlawfully detained." (Appellant's Brief at 7.)

{¶ 24} We first address appellant's argument that the trial court could not rely on Officer Farrington's testimony regarding Officer Sterling's observations. At the suppression hearing, the following dialogue occurred:

> [Assistant Prosecutor]: When you go and start talking and you're on the driver's side talking to [appellant], what else did you observe about [appellant] at that point?
>
> [Officer Farrington]: Myself and Officer Sterling both stood there talking to him, and he had very bloodshot eyes, and a smell of alcohol was emitting from his breath as we were speaking to him.
>
> [Assistant Prosecutor]: Any other indications of intoxication? Slurred speech? Stumbling? Anything like that?
>
> [Officer Farrington]: Yes, slurred speech.
>
> * * *
>
> [Assistant Prosecutor]: Were there any other indications - -
>
> [Officer Farrington]: Slurred speech. At the time I wouldn't have noticed or been able to tell if he was stumbling because he was sitting in the vehicle.
>
> * * *
>
> [Assistant Prosecutor]: How long did it take for you to observe the elements of the physical control violation?
>
> [Officer Farrington]: When I first approached the car from the passenger's side, I observed the keys in the ignition. Obviously, they were in the ignition because the radio was on.
>
> Then when I -- Officer Sterling noticed that the radio was on, the smell of alcohol emitting from his breath, the slurred

> speech, him being in control of the vehicle when he approached him.
>
> And then as I approached the driver's side to speak with him as he was running the warrant checks, that's when I noticed the slurred speech, the smell of alcohol, bloodshot eyes.
>
> [Assistant Prosecutor]: All right. So you noticed those indications during your first close face-to-face contact?
>
> [Officer Farrington]: Yes.
>
> [Assistant Prosecutor]: All right. Now, at that point, if there had been no admission of a firearm, would he have ended up being arrested or cited for physical control anyway?
>
> [Officer Farrington]: Yes.

(Nov. 12, 2015 Tr. at 12-13; 22-23.)

{¶ 25} Thus, Officer Farrington testified at the suppression hearing regarding both his own and Officer Sterling's observations in their encounter with appellant. "[T]he interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself." *United States v. Raddatz*, 447 U.S. 667, 679 (1980). *See State v. McKenzie*, 10th Dist. No. 11AP-250, 2011-Ohio-5851, ¶ 7. " '[A]t a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial.' " *Maumee v. Weisner*, 87 Ohio St.3d 295, 298 (1999), quoting *Raddatz* at 679. *See State v. Edwards*, 107 Ohio St.3d 169, 2005-Ohio-6180, ¶ 14; *McKenzie* at ¶ 7. Furthermore, the Rules of Evidence do not apply to suppression hearings. *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, ¶ 17.

{¶ 26} Appellant points to no authority for the proposition that, at a suppression hearing, the trial court could not rely on Officer Farrington's account of Officer Sterling's observations. Therefore, on the facts of this case, the trial court did not err when it relied on Officer Farrington's account of what Officer Sterling observed during the incident in question, particularly when, as here, Officer Farrington's testimony was that his observations were the same as Officer Sterling's.

{¶ 27} Next, we consider whether appellant was lawfully detained at the time Officer Sterling took and retained appellant's identification. In support of his argument

that the officers did not have a reasonable suspicion to detain him, appellant points to this court's decision in *Jones*, 2010-Ohio-2854.

{¶ 28} In *Jones*, police officers encountered the defendant at 1 a.m. in a high-crime area. Jones was sitting in the driver's seat of a parked vehicle which was running with its headlights off. The officers testified that Jones "was not committing any traffic offense, no odor of alcohol or marijuana was about [Jones's] person, the officers had no indication [Jones] was involved in narcotics or prostitution activity, and nothing suggested [Jones] was otherwise involved in or about to commit any kind of criminal activity." *Id.*, 2010-Ohio-2854, at ¶ 4. Although there was no indication that Jones was committing or was about to commit a crime, the officers "asked for [Jones's] driver's license to verify his identity and run a records check for warrants." *Id.* at ¶ 5. Jones handed his license to the officers and remained in the vehicle.

{¶ 29} After taking possession of Jones's driver's license, one of the officers asked him whether he had anything in the vehicle that could hurt them. Jones replied that he had a knife in the vehicle. The officers ordered Jones to keep his hands on the steering wheel, opened the driver's side door, and recovered a large knife from the vehicle. Jones was ultimately charged with carrying a concealed weapon.

{¶ 30} This court held that Jones was seized for purposes of the Fourth Amendment when officers asked for and retained Jones's driver's license. In so holding, we stated that "no reasonable person would believe that he or she is free to terminate the encounter and simply drive away when an officer retains his or her driver's license for the purpose of running a computer check for outstanding warrants." *Id.* at ¶ 25. Finding that the officers lacked a reasonable suspicion to detain Jones at the time they took his license, we concluded the trial court did not err in suppressing Jones's statement regarding the knife and any evidence obtained from the search of the vehicle.

{¶ 31} Here, unlike in *Jones*, Officer Sterling possessed a reasonable suspicion that appellant was, or was about to be, engaged in criminal activity. Specifically, Officer Farrington testified that when Officer Sterling approached appellant, he observed "the smell of alcohol emitting from his breath, the slurred speech, him being in control of the vehicle when [Officer Sterling] approached him." (Nov. 12, 2015 Tr. at 23.) He further testified that appellant had bloodshot eyes and that appellant gave Officer Sterling his

identification in response to the request for his driver's license. This is some competent, credible evidence which supports the trial court's findings. Considering the totality of the circumstances, based on this observation, Officer Sterling had reason to believe that appellant was committing a criminal offense, i.e. physical control.[3] Thus, because appellant was lawfully detained when Officer Sterling retained his identification, the evidence obtained as a result of appellant's detention was not in violation of the Fourth Amendment.

{¶ 32} Therefore, we find the trial court did not err in denying appellant's motion to suppress. Accordingly, we overrule appellant's single assignment of error.

IV. Conclusion

{¶ 33} Having overruled appellant's single assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER, J., concurs.
BRUNNER, J., concurs in judgment only.

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[3] R.C. 4511.194(A) states: "As used in this section: * * * (2) 'Physical control' means being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device. (B) No person shall be in physical control of a vehicle, streetcar, or trackless trolley if, at the time of the physical control, any of the following apply: (1) The person is under the influence of alcohol, a drug of abuse, or a combination of them. (2) The person's whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code. (3) Except as provided in division (E) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in division (A)(1)(j) of section 4511.19 of the Revised Code."