



NAILAH K. BYRD
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Cleveland, Ohio 44113

Court of Appeals

APPELLANT'S BRIEF FILED
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By: AARON T. BAKER 0082994

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STATE OF OHIO

CA 22 111330

vs.

TYRA BYRD

Judge:

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IN THE COURT OF APPEALS
EIGHTH JUDICIAL DISTRICT
CUYAHOGA COUNTY, OHIO

CA 111330

STATE OF OHIO :

Plaintiff-Appellee :

:

vs. :

TYRA BYRD :

Defendant-Appellant :

APPELLANT'S BRIEF AND ASSIGNMENT OF ERROR

COUNSEL FOR APPELLEE

MICHAEL C. O'MALLEY
Cuyahoga County Prosecutor
Justice Center 9th Floor
1200 Ontario Street
Cleveland, OH 44113
216-443-7800

COUNSEL FOR APPELLANT

CULLEN SWEENEY
Chief Public Defender
BY: AARON T. BAKER
0082994
310 Lakeside Avenue, Suite 200
Cleveland, OH 44113
216-443-7583
Fax: 216-443-6911
abaker@cuyahogacounty.us

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ASSIGNMENT OF ERROR

ASSIGNMENT OF ERROR I:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION
TO SUPPRESS

ISSUE PRESENTED

ISSUE NO. I:

Whether the trial court erred in denying Appellant's Motion to Suppress the stop, when in fact there was no traffic violation, and whether the trial court erred in denying Appellant's Motion to Suppress on the basis of the improper and unnecessary expansion of the traffic stop.

STATEMENT OF THE CASE AND FACTS

On a typically cloudy but daylight Northeast Ohio day, December 17, 2020 at approximately 11:04 A.M., Trooper Ashenfelter of the Ohio State Highway Patrol stopped the white Chevrolet car driven by the Appellant, Tyra Byrd, as it traveled northbound on I-71 and exited at Bagley Road, its tires touching but not crossing the white fog line near the right edge of the roadway (Tr. at 15-16, State's Exhibit 1 – dashcam video¹). Once Trooper Ashenfelter stopped Ms. Byrd, he was not satisfied with the mere investigation into what he claimed to be a traffic violation, but which in fact was not. Instead, he proceeded to ask Ms. Byrd a lengthy series of unnecessary questions related to where she was going and where she was coming from, and when her compliant answers to his unnecessary questions did not satisfy him, eventually ordered her out of the vehicle and into his vehicle while a canine unit was deployed, later “alerting” despite a complete lack of narcotics inside the vehicle.

Following the purported marked lanes violation at 11:04 A.M. (times cited herein per the dashcam), Trooper Ashenfelter followed Ms. Byrd until approximately 11:05:40 A.M. when the traffic stop commenced. Trooper Ashenfelter's first verbal contact with Ms. Byrd occurred at 11:05:55 A.M. This initial verbal contact concludes at approximately 11:08:24 A.M. when Trooper Ashenfelter returns to his vehicle. After Trooper Ashenfelter radioed to determine Ms. Byrd's license was valid, he resumed

¹ The trial court indicated difficulty with playing State's Exhibit 1, Trooper Ashenfelter's dashcam. Undersigned counsel found success playing the .mp4 file located on State's Exhibit 1 using VLC Media Player, a free piece of PC software easily found using Google. Further, the “timestamp” as to the date and time of day is displayed on the screen when viewing the video using this software.

verbal contact with her at approximately 11:10:20 when he returned to her driver-side window, questioning her further. He then ordered Ms. Byrd from her vehicle at approximately 11:11:00 A.M., with which she complied.

At 11:11:30 A.M., Trooper Ashenfelter patted Ms. Byrd down for weapons outside his vehicle, finding none. He then instructed her to remove her fanny pack and place it on the hood of his vehicle, further telling her, “as long as you check out, I’m going to probably just write you a warning.” Instead of merely writing her the warning, he continued the irrelevant questioning. Once inside his vehicle at 11:11:50 A.M., Trooper Ashenfelter questioned Ms. Byrd even further. At 11:12:50 A.M., Trooper Ashenfelter removed the fanny pack from the hood of his vehicle and placed it back inside Ms. Byrd’s vehicle, and then resumed questioning Ms. Byrd even more on subjects wholly unrelated to the traffic stop. He once again resumed questioning Ms. Byrd at approximately 11:15:40 on subjects unrelated to the initial traffic stop. This period of unnecessary questioning lasted approximately two and one half minutes.

The canine unit did not arrive and commence its sniff until approximately 11:19:30 A.M., a full 14 minutes after Trooper Ashenfelter stopped Ms. Byrd, and approximately eight minutes after Trooper Ashenfelter told Ms. Byrd he would only write her a warning. The sniff lasted until approximately 11:20:30 A.M., when the canine sat down outside the driver’s side window of the vehicle. At 11:20:40 A.M., Ms. Byrd can be heard muttering to herself, “there’s nothing in that car.” At 11:21:00 A.M., Trooper Ashenfelter advised Ms. Byrd of her rights. At the conclusion of that rendition, Ms. Byrd professed correctly that there are no drugs in the car, but admitted that there was a gun in the car. Trooper Ashenfelter immediately handcuffed her.

Following all of this, Trooper Ashenfelter discovered a loaded firearm inside the

fanny pack worn around Ms. Byrd's waist at the beginning of the encounter, resulting in the two-count Indictment against Ms. Byrd for Improperly Handling Firearms in a Motor Vehicle, a felony of the fourth degree, in violation of R.C. §2941.1417(A), as well as Carrying a Concealed Weapon, a felony of the fourth degree, in violation of R.C. 2923.12(A)(2) (see Indictment). Ms. Byrd initially entered a plea of "not guilty" at her Arraignment on March 16, 2021. After a series of pretrials, a motion to suppress was filed by the defense, and the trial court conducted a suppression hearing on December 14, 2021, later denying the defense motion on December 16, 2021. On February 10, 2022, Ms. Byrd entered a plea of "no contest" to both counts of the Indictment as indicted, and the trial court found her guilty. The trial court proceeded directly to sentencing, placing Ms. Byrd on community control sanctions. Her compliance continues to be monitored by the probation department as of the date of this filing.

Trooper Ashenfelter issued Ms. Byrd a warning, formally titled a Traffic Safety Reminder, citing R.C. §4511.33 as the purported violation (see Defendant's Exhibit 'A'). This is the purported violation (an image from the dashcam):



LAW AND ARGUMENT

ASSIGNMENT OF ERROR I:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS

Before the trial court, counsel for Ms. Byrd argued both that the initial stop was invalid, as there was no traffic violation, and the expansion of the stop, unnecessarily prolonging the stop, was unconstitutional. Both of those arguments are properly preserved for argument before this Court.

A. *There was no marked lanes violation pursuant to R.C. 4511.33, and therefore, the initial stop was invalid.*

Appellate review of a ruling on 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. An appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. See *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). But the appellate court must decide the legal questions de novo. *Burnside* at ¶8.

Notable, therefore, is that the trial court credited Trooper Ashenfelter merely with a **belief** that Ms. Byrd's right side tires completely crossed the white fog line, and that part of the roadway could be seen between the line and the tires (Tr. at 84). Also notable is that the dashcam video at the moment displayed above, as well as the moments surrounding that screenshot, contradicts this, as the tire does not fully cross the line, but instead only touches it. Even the trial court recognized this, saying:

The video is a little unclear whether or not you could actually see any roadway, bare roadway, between the tire and the line, outside of the line. However, it does show that the tire, defendant's tire, definitely the majority of the portion of tire was over the line. And because of the officer's testimony that he did **believe** it crossed the line, that was sufficient reason for him to make the stop.

(Tr. at 84-85 – emphasis added). Therefore, the trial court was under the impression that the officer’s mere belief that a traffic violation occurred was sufficient to make the stop, when in fact no such standard exists, as even then, probable cause for that belief must be found to exist. *Whren v. United States*, 517 U.S. 806, 810 (1996). Here, this standard cannot be met, as there is no lack of clarity in the dashcam video. Ms. Byrd simply did not cross the line. The trial court’s findings were both legally flawed and not based on competent, credible evidence.

In 2020, the Supreme Court of Ohio answered the following question with a firm “no”: “Does an officer have reasonable and articulable suspicion to conduct a traffic stop of a motor vehicle for a marked lanes violation under R.C. 4511.33(A)(1) when the officer observes the tires of a vehicle driving on, but not across a marked lane line?” *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, ¶1-2.

Turner was preceded by a line of Court of Appeals decisions from various districts going back over 20 years, all holding that the touching or driving on a fog line does not constitute a violation of R.C. 4511.33(A)(1). See *State v. Williams*, 1st Dist. Hamilton No. C-960958, 1997 Ohio App. LEXIS 3467, *4-5 (Aug. 1, 1997) (officer did not have probable cause to believe that a marked lanes violation occurred when vehicle tires were directly on but not over the fog line); *State v. Smith*, 2017-Ohio-5845, 94 N.E.3d 1058, ¶25 (3d Dist.) (officer lacked reasonable, articulable suspicion to stop vehicle for driving on top of, but not crossing, the white line); *State v. Marcum*, 2013-Ohio-2652, 993 N.E.2d 1289, ¶17 (5th Dist.) (driving on the white fog line was not a marked-lanes violation); *State v. Parker*, 6th Dist. Ottawa No. OT-12-034, 2013-Ohio-3470, ¶7, 10 (motorist does not commit a parked-lanes violation by traveling on the fog line); *State v. Baker*, 6th Dist. Wood No. WD-13-074, 2014-Ohio-2564, ¶9 (officer lacked reasonable, articulable suspicion to stop vehicle

for touching the white fog line); and *State v. Kneier*, 11th Dist. Portage No. 2015-P-0006, 2015-Ohio-3419, ¶5, 17 (driving over the top of the fog line did not provide officer with probable cause for marked-lanes violation).

Here, the trial court credited Trooper Ashenfelter's mere belief that the tire crossed the line as sufficient to justify the stop, even when that belief is contradicted by the dashcam video. Therefore, the trial court's credit of this testimony is misplaced and constituted an abuse of discretion.

B. Trooper Ashenfelter prolonged the stop beyond the period reasonably needed to complete the original purpose of either issuing a traffic ticket or warning for a de minimis traffic violation.

To be clear, Ms. Byrd maintains that the initial stop was inappropriate, as there was no traffic violation. However, even assuming, *arguendo*, that this Court were to find that the traffic stop were appropriate, there is still the matter of the unreasonable prolonging of the traffic stop, well beyond its original purpose.

[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure is justified only by a police-observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.

Rodriguez v. United States, 575 U.S. 348, 350-351 (2015) (alterations and quotations omitted).

The burden of initially establishing whether a search or seizure was authorized by a warrant is on the party challenging the legality of the search or seizure. *Xenia v. Wallace*, 37 Ohio St.3d 216, 218 (1988). Once a warrantless search is established, as was the case here, the burden of persuasion is on the state to show the validity of the search. *State v. Kessler*, 53 Ohio St.2d 204, 207 (1978). Thus, the State had the burden below to establish

the reasonableness of the search.

There is no doubt that Trooper Ashenfelter's lengthy and repeated questioning of Ms. Byrd, coupled with the utilization of a canine unit, unnecessarily prolonged the mission of writing a mere warning for the purported marked lanes violation. The question, then, is whether the State established that Trooper Ashenfelter had reasonable suspicion of some other crime in order to justify this extension.

The State failed to do so. Trooper Ashenfelter's initial observation of Ms. Byrd's driving was while driving alongside of her northbound on I-71, when he said that she was "hugging" the steering wheel, which he contended could be a sign of nervousness at his presence (Tr. at 15). Although this "hugging" left him uncertain as to whether she was wearing her seat belt, he later observed that she was (Tr. at 16). Trooper Ashenfelter never testified throughout his interaction with Ms. Byrd that she seemed intoxicated, or that he smelled alcohol or drugs. Trooper Ashenfelter also did not detect the presence of a firearm, either during his patdown of Ms. Byrd, or when he laid hands on the very fanny pack containing the firearm.

Trooper Ashenfelter indicated dissatisfaction at the answers Ms. Byrd offered as to where she was coming from and where she was going. As to where she was going, Ms. Byrd repeatedly answered that she was going to the grocery store, Aldi, which she indicated was straight ahead. Trooper Ashenfelter never indicated that this was incorrect. Trooper Ashenfelter's main point of contention was that while Ms. Byrd was traveling northbound on I-71, she indicated that she was coming from "the mall" in North Olmsted, but also seemed confused, and indicated she may mean North Royalton. Of course, "the mall" could have meant either Great Northern in North Olmsted or Southpark, which she mistakenly indicated to be in North Royalton (it is actually in the neighboring suburb of

Strongsville). Missing from all of this was any explanation whatsoever as to why confusion over which “North” suburb is where was indicative of criminal behavior. No doubt many perfectly innocent people have confused the names North Olmsted and North Royalton (undersigned counsel included).

Only this confusion, coupled with a vague “nervousness,” is what led Officer Ashenfelter to claim suspicion that there was contraband in the vehicle, despite the vehicle registration being valid, Ms. Byrd’s license being valid, her having no warrants, no sign of intoxication, and no odor of drugs. Despite all of this, Officer Ashenfelter persisted until the canine unit arrived, and for reasons unknown, alerted on Ms. Byrd’s vehicle (Tr. at 28).

Ms. Byrd urges this Court to find that the State did not meet its burden of establishing any reasonable suspicion for the extension of the stop.

CONCLUSION

For the foregoing reasons, this Court should sustain Ms. Byrd’s sole assignment of error, reverse the trial court’s judgment denying Ms. Byrd’s motion to suppress, and remand this matter to the trial court.

Respectfully Submitted,

/S/ Aaron T. Baker

AARON T. BAKER
Assistant Public Defender

SERVICE

A copy of the foregoing Appellant's Brief and Assignment of Error was delivered, via electronic service pursuant to this Court's e-filing system, upon Michael C. O'Malley, Cuyahoga County Prosecutor, and/or one of his assistants at The Justice Center, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113 on this 27th day of June, 2022.

Respectfully Submitted,

/S/ Aaron T. Baker

AARON T. BAKER
Assistant Public Defender