



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Appeals**

**REPLY BRIEF OF APPELLANT FILED**  
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By: AARON T. BAKER 0082994

Confirmation Nbr. 2611774

STATE OF OHIO

CA 22 111330

vs.

TYRA BYRD

**Judge:**

**Pages Filed: 6**

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

CA 111330

STATE OF OHIO :

Plaintiff-Appellee :

:

vs. :

TYRA BYRD :

Defendant-Appellant :

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APPELLANT'S REPLY BRIEF  
ORAL ARGUMENT REQUESTED

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**None cited.**

## LAW AND ARGUMENT

### REPLY AS TO ASSIGNMENT OF ERROR I:

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

The Appellee, the State of Ohio, presents a Statement of the Facts that is a regurgitation of the testimony offered by then State Trooper Austin Ashenfelter. Appellee Br. at 2-3. Helpful in this case is that we have the benefit of a dashcam with audio. (State's Exhibit 1 – dashcam video). Therefore, for instance, this Court can make its own judgement as to whether "...Appellant [drove] onto the right berm." Appellee Br. at 2. The Appellant, Tyra Byrd, did not do so, and the dashcam clearly illustrates this, as noted in Ms. Byrd's merit brief. These details cannot be deciphered from the bare transcript of the hearing but can be seen in the dashcam the State presented as its own exhibit before the trial court, but tellingly makes no reference to in its Brief to this court. Therefore, whether it is possible that Trooper Ashenfelter observed the "reckless driving" referenced at Page 2 of the State's Brief (no citation or warning was issued for reckless operation), can be objectively viewed in the dashcam video.

At no point in the State's Brief does it grapple with its own evidence of the dashcam video. The State concludes that Ms. Byrd committed a marked lanes violation, simply by virtue of Trooper Ashenfelter claiming that she did, even though the dashcam contradicts this claim. The State likewise never addresses the trial court's crediting of Trooper Ashenfelter with merely a belief that Ms. Byrd's right-side tires completely crossed the white fog line, thus ignoring whether the traffic offense occurred in the first place (Tr. at 84-85).

The State then inexplicably argues that Ms. Byrd has no standing to suppress the fruits of the search, reasoning that she "...consented to a search of her vehicle." (State Br. at 5). It is flatly untrue that Ms. Byrd consented to the search. The only reference to any sort of consent anywhere in the transcript of the hearing comes in the context of what Trooper Ashenfelter called consent to a "pat-down for weapons" (Tr. at 21, 33). The State makes no reference to what part of the record supports that Ms. Byrd consented to the search. The State did not argue in the suppression hearing that Ms. Byrd consented. The trial court never concluded that Ms. Byrd consented. Trooper Ashenfelter never once asked for consent to search the vehicle. The State's boilerplate claim of consent fully ignores that this search was conducted pursuant to a canine sniff. Had Ms. Byrd consented to the search, there would have been no need for the canine at all.

As to the prolonging of the stop beyond the period reasonably needed to complete the original purpose of issuing a traffic ticket, the State again relies on boilerplate argument and makes no reference to the record in order to support its conclusory arguments.

The entirety of the dashcam makes it plain that Trooper Ashenfelter unduly prolonged the stop throughout the ordeal in order to get a canine unit there on a hunch. And it all began with a traffic violation which never occurred in the first place. The trial court's denial of the motion to suppress was error, as outlined in Ms. Byrd's merit brief, and that decision should be reversed by this court. Ms. Byrd reserves any further argument of this matter for Oral Argument.

CONCLUSION

Based on the foregoing argument and law, as well as that presented in the Brief of Appellant, the Appellant, Tyra Byrd, respectfully requests that this Court 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

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AARON T. BAKER  
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**SERVICE**

A copy of the foregoing Appellant's Reply Brief 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 July, 2022.

Respectfully Submitted,

/S/ Aaron T. Baker

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