



**NAILAH K. BYRD**  
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**Court of Appeals**

**APPELLEE'S BRIEF FILED**  
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By: ALICIA HARRISON 0099058

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STATE OF OHIO

CA 22 111330

vs.

TYRA BYRD

**Judge:**

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IN THE COURT OF APPEALS  
EIGHTH DISTRICT COURT OF APPEALS  
CUYAHOGA COUNTY

**NO. 111330**

STATE OF OHIO

Plaintiff-Appellee,

v.

TYRA BYRD

Defendant-Appellant,

CASE NO. CR-21-657035

**BRIEF OF APPELLEE**

Counsel for Plaintiff-Appellee,

**MICHAEL C. O'MALLEY (0059592)**  
CUYAHOGA COUNTY PROSECUTOR

**ALICIA HARRISON (0099058)**  
Assistant Prosecuting Attorney  
The Justice Center, 9th floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7416

Counsel for Defendant-Appellant

**AARON T. BAKER, ESQ.**  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, OH 44113

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**STATEMENT OF THE ASSIGNMENT OF ERROR**

**ASSIGNMENT OF ERROR:** THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO SUPPRESS.

**ISSUE PRESENTED**

**ISSUE:** WHETHER THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO SUPPRESS.

## **STATEMENT OF THE CASE**

On February 17, 2021 Tyra Byrd hereinafter “Appellant” was indicted on two charges. The two charges were Improperly Handling Firearms in a Motor Vehicle in violation of R.C. 2921.16(B) and Carrying Concealed Weapon in violation of R.C. 2923.12(A)(2). Defendant filed a motion to suppress all evidence pursuant to 12(B)(3) of the Ohio Rules of Criminal Procedure arguing that the evidence was obtained in violation of the Appellant’s Fourth Amendment rights. The Court denied the motion to suppress all the evidence. Appellant entered into a plea of no contest and Appellant now appeals that decision.

## **STATEMENT OF THE FACTS**

On Thursday December 17, 2020 at approximately 11:05am, Trooper Austin Ashenfelter observed Appellant driving her vehicle in an irregular fashion. (Tr. 15). The Appellant was driving while leaning forward and hugging the steering wheel. (Tr. 15). Trooper Ashenfelter proceeded onto Interstate 71 behind Appellant. (Tr. 16-17). Once the Appellant noticed the patrol car behind her, the Appellant abruptly hit her brakes, changed lanes and exited the highway on to Bagley Road. (Tr. 17). Trooper Ashenfelter observed the Appellant drive onto the right berm. (Tr. 17). Once Trooper Ashenfelter observed this reckless driving, he activated his emergency lights and initiated a traffic stop. (Tr. 18).

Once officers approached Appellant, she was in a very nervous state. (Tr. 19). Trooper Ashenfelter asked about the Appellant’s intended destination. (Tr. 19). The Appellant responded in a nervous and suspicious manner. (Tr. 19). Trooper Ashenfelter testified that she was speaking a hundred miles an hour out of nervousness and her story is making less sense. (Tr. 34). In order

to gauge the Appellant's disposition, Trooper Ashenfelter questioned the Appellant further and asked the Appellant to exit the vehicle. (Tr. 19).

When Appellant exited the vehicle, she was asked if she was in possession of any weapons, which the Appellant dishonestly answered "no." (Tr. 38). The trooper performed a pat down with the Appellant's consent. (Tr. 21). Appellant was wearing a fanny pack and was asked to remove it. (Tr. 21). Appellant was placed in the rear of the patrol car. (Tr. 26). The Trooper again questioned the Appellant about the inconsistencies in her story. (Tr. 24). Appellant explained to Trooper Ashenfelter that she had driven all the way from North Royalton to North Olmstead to "get something to drink." (Tr. 23). Trooper Ashenfelter testified that because of the inconsistencies within Appellant's story that this is indicative of criminal behavior. (Tr. 25).

Trooper Ashenfelter requested a K-9 unit in light of the Appellant's conduct. (Tr. 28). Upon arrival, the K-9 alerted the Appellant's vehicle. (Tr. 28). Trooper Ashenfelter then spoke to the Appellant regarding the Miranda warning. (Tr. 29). The Appellant then confessed to having possession of a firearm. (Tr. 38). A purple SCCY was recovered from the Appellant's fanny pack. (Tr. 29).

## **LAW AND ARGUMENT**

**ASSIGNMENT OF ERROR:** THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION TO SUPPRESS.

### **A. Standard of Review**

In *Johnson v. Robey*, the court conducted a de novo review of the trial court's application of the law to the facts. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. (When reviewing a ruling on a motion to suppress, deference is given to the trial court's findings of fact so long as they are supported by competent, credible evidence. The reviewing court,

however, must independently determine whether those facts satisfy the applicable legal standard.)  
*Johnson v. Robey*, 8th Dist. Cuyahoga No. 108682, 2020-Ohio-2, ¶ 28.

**B. The Officer had Lawful Authority to Stop the Defendant.**

A traffic stop is lawful even if the traffic violations are minor, or “de minimis.” *State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 14 citing *Strongsville v. Spoonamore*, 8th Dist. Cuyahoga No. 86948, 2006-Ohio-4884. In *Terry v. Ohio*, the United States Supreme Court established guidelines for determining when a stop is reasonable. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). The Court held that police officers can seize the car and all occupants during a lawful traffic stop. The Supreme Court of the United States has given a bright line rule that police officers can demand license, registration, and proof of insurance and make all riders exit the vehicle. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977). Furthermore, the investigative stop exception to the Fourth Amendment warrant requirement permits a police officer to stop and briefly detain a person for the purpose of enforcing traffic laws. *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968); See also *City of Parma v. Long*, 8th Dist. Cuyahoga No. 109201, 2020-Ohio-4833. A police officer may stop and detain a motorist when he observes a violation of the law, including any traffic offense. *State v. Trammer*, 8th Dist. Cuyahoga No. 85456, 2005-Ohio-3852. No independent reasonable and articulable suspicion of other criminal activity is required. *Id.*

Here, Trooper Ashenfelter observed the Appellant commit a marked-lane violation in violation of ORC §4511.33 and lawfully pulled her over. Following the traffic stop, Trooper Ashenfelter requested the Appellant’s license and registration, to which she complied. Following this encounter, Trooper Ashenfelter requested the Appellant exit the vehicle, where she was patted down and placed in the rear of the police cruiser while Trooper Ashenfelter waited for the K-9 unit

to arrive. Trooper Ashenfelter was well within the scope of a lawful *Terry* stop due to the fact that the Appellant committed a traffic violation.

**C. Defendant Consented to a Search and Therefore Lacks Standing to Suppress the Recovery of her Illegally Possessed Firearm.**

It is a crucial legal standard that the Fourth Amendment of the United States Constitution protect individuals from unreasonable searches and seizures at the hands of the government. *Katz v. United States*, 389 U.S. 347, 351 (1967); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Also, as a matter of law a defendant can only challenge the admissibility of obtained evidence if the defendant's own constitutional rights have been violated.

The Sixth Circuit analyzed these principles in *United States v. Elmore*, considering the issue in this way:

[The question is] whether the challenged search and seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect. *Elmore*, 304 F. 3d 557, 560, citing *Rakas v. Illinois*, 439 U.S. 128, 140 (1978).

The Sixth Circuit has applied this reasoning to standing with regard to derivative evidence. In *United States v. Williams*, the court reasoned that suppression of evidence obtained in violation of the Fourth Amendment can only be asserted by "those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." *United States v. Williams*, 354 F.3d 497, 511 (6th Cir. 2003), citing *United States v. Padilla*, 508 U.S. 77, 81-82, (1993) quoting *Alderman v. United States*, 394 U.S. 165, 171-72, (1969).

Here, Appellant consented to a search of her vehicle. The Appellant knew she was in possession of a weapon at the time of consent. Appellant knew there was a likelihood the weapon



would be recovered. A K-9 search does not negate the consent that Appellant gave for her vehicle to be searched. Appellant now moves this Court to suppress a firearm that was recovered during the consensual search. Although it is true that the firearm is damaging evidence, the law prohibits this from being the basis for which evidence can be suppressed. The moment the Appellant willingly gave consent for a search made the search and seizure of anything found constitutional. Therefore, the Appellant lacks standing for a motion to suppress the firearm seized from her vehicle.

**D. The Traffic Stop Was Not Unduly Prolonged While Awaiting the K-9 Unit's Arrival.**

*Terry v. Ohio*, permits officers to detain individuals for as long as necessary to complete the purpose of the investigation. Detention justified by issuing a traffic ticket can become unlawful if it is prolonged beyond the time reasonably required to complete that process. *State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 22; citing *State v. Brown*, 183 Ohio App.3d 337, 2009-Ohio-3804, 916 N.E.2d 1138 (6th Dist.) (holding on average an officer should complete necessary checks and be ready to issue a traffic citation within 15 minutes).

In *State v. White*, Ohio State Highway Patrol stopped a defendant on a traffic violation for having no front license plate. *State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 5. Troopers requested the defendant exit the vehicle and come in the police vehicle while his information was gathered. *Id.* at ¶ 6. Troopers asked the defendant if they could pat him down and search for contraband and he consented. *Id.* Troopers searched the exterior of the vehicle with a K-9 and detected the presence of narcotics. *Id.* This all occurred within eight minutes of the traffic stop. *Id.* The court found this did not unreasonably or unlawfully prolong the stop. *Id.*

Here, the Appellant was pulled over for driving in a suspicious and reckless manner. The Appellant was asked to exit her vehicle and consented to search of her person and vehicle. After

recovering the Appellant's fanny pack which held a firearm and the weight of which could be felt by Trooper Ashenfelter, a K-9 unit was requested. The K-9 alerted the vehicle. The Appellant admits that the traffic stop did not take fifteen minutes for Trooper Ashenfelter to issue a citation to the Appellant. The trooper ordered the K-9 unit as soon as he had the necessary suspicion to do so. The K-9 unit arrived not even fifteen minutes after Trooper Ashenfelter initially stopped the Appellant. But further, from the time Appellant is placed in the cruiser, the K-9 unit arrived approximately seven minutes later. The amount of time it took for Trooper Ashenfelter to understand the Appellant's intended whereabouts was not unlawful because the reason for the investigation was the Appellant's suspicious conduct.

### **CONCLUSION**

For the foregoing reasons, the State respectfully asks this Honorable Court to deny the Appellant's motion to suppress.

Respectfully submitted,

**MICHAEL C. O'MALLEY (0059592)**  
CUYAHOGA COUNTY PROSECUTOR

/s/ Alicia Harrison

**ALICIA HARRISON (0099058)**

Assistant Prosecuting Attorney

Justice Center, 9th Floor

1200 Ontario Street

Cleveland, Ohio 44113

(216) 443-7800

**CERTIFICATE OF SERVICE**

A copy of the foregoing Brief of Appellee was sent by regular U.S. mail or electronic service this 18th day of July 2022 to counsel for Appellant Aaron Baker.

/s/ Alicia Harrison

**ALICIA HARRISON (0099058)**

Assistant Prosecuting Attorney