

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-240459 |
| Plaintiff-Appellee, | : | TRIAL NO. C/24/CRB/2829 |
| vs. | : | |
| MICHAEL BALDWIN, | : | <i>JUDGMENT ENTRY</i> |
| Defendant-Appellant. | : | |

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

On February 17 of last year, Hamilton County Sheriff’s Deputy Vollrath initiated a traffic stop on Mr. Baldwin for a window tint violation. Deputy Vollrath ran the license plate and found that Mr. Baldwin was also under a license suspension. Aside from these two violations, Mr. Baldwin did not commit any other moving violations or appear to be impaired in any way.

As Deputy Vollrath approached Mr. Baldwin’s vehicle, Mr. Baldwin admitted to having a firearm on his person and promptly stepped out of the vehicle as directed. After conducting a pat-down frisk for additional weapons and finding none, Deputy Vollrath unloaded Mr. Baldwin’s firearm and secured it. Mr. Baldwin had no criminal history, nor was he under a disability to keep him from carrying a firearm. Thus, Deputy Vollrath only planned to cite Mr. Baldwin for driving while under suspension and had no intention of arresting him.

OHIO FIRST DISTRICT COURT OF APPEALS

However, while at the scene, Deputy Vollrath smelled burnt marijuana coming from Mr. Baldwin. Without a warrant or consent, Deputy Vollrath determined that he had probable cause to search the car based on the odor. Mr. Baldwin admitted to smoking with a friend prior to driving and denied having any marijuana in the car. Deputies searched the car and found burnt marijuana roaches, but no other marijuana or visible contraband.

After the search, Mr. Baldwin asked the officers if they found his other gun. They had not, so they searched the vehicle again, this time finding a rifle in the back seat under a pile of laundry. Mr. Baldwin was then arrested for improperly handling firearms in a motor vehicle under R.C. 2923.16(C) on account of the semi-automatic rifle being loaded and inappropriately stored. Incident to his arrest, the officers searched him again and found marijuana on his person.

On April 3, 2024, Mr. Baldwin filed a motion to suppress all the evidence seized during the stop. After the trial court denied the motion, he entered a no-contest plea and was found guilty. He was sentenced to six days in the Hamilton County Justice Center, with credit for the six days already served, and remitted fines and costs. Mr. Baldwin now timely appeals, asserting the trial court erred when it denied the motion to suppress.

“[R]eview of a motion to suppress presents a mixed question of law and fact.” *State v. Burnside*, 2003-Ohio-5372, ¶ 8. In ruling on a motion to suppress, “the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses.” *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). We “must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19, 20 (1982). Accepting those facts as true, we must then “independently

OHIO FIRST DISTRICT COURT OF APPEALS

determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 (4th Dist. 1997).

Rather than oppose the assignment of error, the State concedes there should not have been a search in the first place. The State agrees that the circumstances known to Deputy Vollrath before the search did not support his belief that evidence of a crime would be found in the vehicle. That is, the State concedes that the smell of burnt marijuana at the scene of Mr. Baldwin’s non-arrestable traffic violation did not constitute probable cause to search his vehicle.

While the parties agree that the motion should have been granted, they disagree about whether *State v. Moore*, 90 Ohio St.3d 47 (2000) and *State v. Farris*, 2006-Ohio-3255, are still good law due to the legalization of marijuana in Ohio in December 2023. Since the parties agree that the trial court erred, we leave that debate for a contested case.

Thus, we sustain Mr. Baldwin’s sole assignment of error, reverse the judgment of the trial court convicting Mr. Baldwin of improperly handling firearms in a motor vehicle, and remand the cause to the trial court for further proceedings consistent with this entry.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., CROUSE and NESTOR, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on 4/18/2025 per order of the court.

By: _____
Administrative Judge