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LORAIN COUNTY

2024 DEC 26 A 10:12

**LORAIN COUNTY COURT OF COMMON PLEAS**  
**LORAIN COUNTY, OHIO**  
**JOURNAL ENTRY**  
**Hon. D. Chris Cook, Judge**

Date Dec. 23, 2024

Case No. 24CR110936

STATE OF OHIO  
Plaintiff

Paul Griffin  
Plaintiff's Attorney

VS

INEY DANKS  
Defendant

Anthony Nici  
Defendant's Attorney

This matter is before the Court on the Defendant's Motion to Suppress, filed August 16, 2024, and the State's Objection, filed October 16, 2024.

Evidentiary hearing had on December 9, 2024.

The Motion is not well-taken and hereby **DENIED**.

Final pre-trial scheduled for January 13, 2025, jury trial to be scheduled at final pre-trial

IT IS SO ORDERED. See Judgment Entry.

  
\_\_\_\_\_  
Judge D. Chris Cook

cc: Griffin, Asst. Pros. Atty.  
Nici, Esq.

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**I. INTRODUCTION**

This matter is before the Court on the Defendant's Motion to Suppress, filed August 16, 2024, and the State's Objection, filed October 16, 2024.

Evidentiary hearing had on December 9, 2024.

**II. STATEMENT OF PERTINENT FACTS**

On March 2, 2024, Officers Orzech and Inch of the Lorain Police Department were on patrol in the City of Lorain. They were in an unmarked police vehicle on duty as part of the City's Patrol Impact Team. The Patrol Impact Team's primary purpose is narcotics intervention.

While on patrol, the Officers observed a vehicle pull into the driveway of a known drug house. They ran the license plate and discovered that the vehicle was owned by the Defendant, Iney Danks. Using their law enforcement data resources, the Officers learned that Danks had previous encounters with police for drug related activity.

The Officers observed a person approach Danks' vehicle from the residence, speak with her, then return to the residence. Danks remained parked in the driveway for about 15 minutes, then left. According to the testimony of Officer Orzech, this conduct is consistent with drug activity. Based upon these observations, the Officers followed Danks' vehicle until she ultimately initiated a left turn at an intersection. Danks activated her turn signal shortly before beginning the turn, well-within 100 feet of the intersection.



As a result of failing to use her turn signal 100 feet *before* her turn, the Officers initiated a traffic stop of her vehicle for this traffic violation.

As they approached Danks' vehicle, they observed her make furtive movements towards the center console. The Officers made contact with Danks, obtained her driver's license, registration, and insurance, and instructed her to exit the vehicle.

Danks did so and advised upon inquiry that there was a marijuana bong in the vehicle, but nothing else. The Officers sought consent to search Danks' vehicle, which she refused.

Based upon the admission of drug paraphernalia in the vehicle and the other information they developed during the investigation, the Officers initiated a search of Danks' vehicle for firearms. While searching the vehicle for firearms, Officers Orzech discovered drugs and drug paraphernalia.

### III. ANALYSIS

#### STANDARD OF REVIEW

Very recently, the Ninth District Court of Appeals reiterated the standard of review for appellate review of a trial court's ruling on a motion to suppress. The standard has not changed in years. Deference must be given to the trial court's findings of fact which the reviewing court then uses *de novo* to determine whether the facts found by the trial court satisfy the applicable legal standard.

A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 2003-Ohio-5372, ¶ 8. "When considering 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). Thus, a reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Burnside* at ¶ 8. "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.*, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

*State v. Anderson*, 2024-Ohio-37, (9<sup>th</sup> Dist.), at ¶ 7. See also: *State v. Harrison*, 2021-Ohio-4465, ¶ 11.



This Court's role, *ab initio*, is to determine the propriety of the warrantless traffic stop initiated by the City of Lorain Officers. The Ninth District also gives guidance in this regard.

"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 protect individuals from unreasonable searches and seizures." *State v. Bearer*, 2022-Ohio-4554, (9<sup>th</sup> Dist.), ¶ 13. "To justify an investigative stop, an officer must point to 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" (Internal quotations and citations omitted.) *Id.*, quoting *State v. Kordich*, 2017-Ohio-234, (9<sup>th</sup> Dist.), ¶ 7. "[W]here an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid \* \* \*." *Bearer* at ¶ 13, quoting *Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12 (1996).

*Harrison, supra*, at ¶ 14.

#### THE INITIAL TRAFFIC STOP OF DANKS' VEHICLE WAS CONSTITUTIONALLY SOUND

Danks initially challenges the propriety of the traffic stop of her vehicle by the Officers.

This challenge lacks merit.

There is no question that the Officers had specific and articulatable facts to justify the traffic stop of Danks' vehicle for a violation of the City's Traffic Code. Moreover, they actually had probable cause to affect the traffic stop. The fact that the Officers were also engaged in drug interdiction activity is of no accord.

The evidence is uncontroverted that while operating her vehicle in the City of Lorain, Danks initiated a left-hand turn at an intersection without activating her turn sign at least 100 feet from the intersection. The City of Lorain's Codified Ordinance at issue reads,

When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning . . .

Lor. Cod. Ord. 331.14(a).



Danks did not activate her turn signal until almost directly at the intersection. As such, her violation of this specific traffic ordinance provided probable cause to initiate the traffic stop.

Danks also urges that the Officers had an ulterior motive for initiating the traffic stop because they were primarily engaged in drug interdiction activity and that because they were in an unmarked police vehicle, they had no authority to initiate a traffic stop.

These arguments lack merit as well.

**PRETEXTUAL TRAFFIC STOPS ARE NOT CONSTITUTIONALLY  
INFIRM WHERE AN ACTUAL TRAFFIC VIOLATION IS COMMITTED**

Almost 30 years ago, the Ohio Supreme Court held that a traffic stop based upon probable cause of a minor traffic law violation was not improper even if the real purpose of the stop was to investigate more serious criminal activity,

Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity.

*Dayton v. Erickson*, 76 Ohio St. 3d 3, (1996), *syllabus*.

The Ninth District Court of Appeals has repeatedly followed suit,

"[W]here an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, including a minor traffic violation, the stop is constitutionally valid regardless of the officer's underlying subjective intent or motivation for stopping the vehicle in question." \* \* \* "[A] traffic stop will not be pretextual if the officer had specific and articulable reasons to believe the driver was violating the law."

*State v. Jackson*, 2018-Ohio-19, (9<sup>th</sup> Dist.), ¶ 16.

Given the forgoing, the fact that the Officers who stopped Danks' vehicle were primarily engaged in drug interdiction activities is of no accord as there was probable cause to affect a traffic stop for a violation of the City's traffic ordinances.



## POLICE IN AN UNMARKED VEHICLE MAY INITIATE A TRAFFIC STOP FOR A VIOLATION OF TRAFFIC LAWS

Danks next urges suppression on the basis that the Officers who stopped her vehicle were not authorized to conduct a traffic stop for a violation of the City's traffic laws because they were in an unmarked police vehicle.

This argument also lacks merit.

There is some confusion among the public, and even the bar, about the propriety of law enforcement conducting traffic stops in unmarked police vehicles. This confusion stems from the requirement that where law enforcement is *primarily engaged* in the enforcement of traffic laws, they must be in conspicuously marked police vehicles. This mandate is codified in the Ohio Revised Code,

Any motor vehicle used by a member of the state highway patrol or by any other peace officer, **while said officer is on duty for the exclusive or main purpose of enforcing the motor vehicle or traffic laws of this state**, provided the offense is punishable as a misdemeanor, shall be marked in some distinctive manner or color and shall be equipped with, but need not necessarily have in operation at all times, at least one flashing, oscillating, or rotating colored light mounted outside on top of the vehicle. The superintendent of the state highway patrol shall specify what constitutes such a distinctive marking or color for the state highway patrol.

R.C. 4549.13, "Marking and equipment for motor vehicle used by traffic enforcement officers." (Emphasis added.)

In the case at bar, the Officers who stopped Danks' vehicle were in an unmarked police vehicle. They were not primarily engaged in traffic enforcement, however, instead, they were part of a drug interdiction unit that was primarily tasked with investigating and policing illegal narcotic activity.

When they observed Danks' vehicle pull into the driveway of a known drug house, stop, and engage in a short interaction with an individual who came out of the house, and then remain in the driveway for 10 to 15 minutes, they observed conduct consistent with a drug transaction. They then followed Danks and observed her commit a traffic violation, after which they initiated a traffic stop of her vehicle.



The Ohio Supreme Court gives guidance on this issue,

The Supreme Court of Ohio has interpreted the phrase, " 'on duty exclusively or for the main purpose of enforcing [motor vehicle or traffic] laws' in R.C. 4549.14 and similar language in Evid.R. 601(C) to refer to the officer's main purpose for his whole period of duty and not to his duty during the apprehension and arrest of the suspect." *State v. Huth*, 24 Ohio St.3d 114, (1986), quoting *Columbus v. Stump*, 41 Ohio App.2d 81, 85, (10th Dist.1974).

Given that the Officers who stopped Danks' vehicle were primarily engaged in narcotics interdiction, the fact that they stopped her in an unmarked police vehicle is of no accord.

THE OFFICERS HAD THE RIGHT TO REMOVE DANKS FROM HER VEHICLE AND PROBABLE CAUSE TO DETAIN HER IN ORDER TO CONDUCT A BRIEF SEARCH OF HER VEHICLE FOR WEAPONS, EVEN WHERE SHE DID NOT GIVE CONSENT FOR THE SEARCH

It is axiomatic that a law enforcement officers may order the driver of a vehicle stopped for a traffic violation out of the vehicle. The Ninth District recently reiterated this procedure,

It is well established that an officer may remove a driver from a vehicle during a traffic stop. See *Pennsylvania v. Mimms*, 434 U.S. 106, 111, (1977) ("[O]nce a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures."); see also *Maryland v. Wilson*, 519 U.S. 408, 414 (1997) (recognizing that officers routinely order occupants to exit the vehicle during traffic stops for officer safety); *State v. Thomas*, 2020-Ohio-3539, ¶ 12 (9th Dist.).

*State v. Wright*, 2024-Ohio-3142, (9<sup>th</sup> Dist.), ¶ 12.

Recall that Officer Orzech testified that as they were pulling Danks' vehicle over, he observed her to make furtive movements towards the center console of her vehicle. As a result, she was removed from the vehicle and asked whether she had any weapons or contraband in the car. She stated that she had a [marijuana] bong in the car, at which point Officer Orzech requested consent to search her vehicle – Danks refused.

As a result of this refusal, arguably, Officer Orzech was not legally entitled to conduct an *unfettered* search of Danks' vehicle, but he nevertheless was entitled to conduct a limited, protective search and he was entitled to detain Danks to investigate the presence of contraband.



The Ninth District has also given guidance on this issue,

When an officer stops a vehicle for a violation of a traffic law, an investigatory stop occurs. \* \* \* In general, "[a]n investigatory stop may last no longer than necessary to accomplish the initial goal of the stop." \* \* \* ("Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been— completed."). Yet, an officer may briefly extend a seizure to ask about the presence of illegal drugs or weapons. \* \* \* Such an inquiry need not be based on reasonable suspicion because it serves "a legitimate public concern" that outweighs an individual's interest in resuming their normal activities. If, when inquiring, "the officer ascertain[s] reasonably articulable facts giving rise to a suspicion of criminal activity," the officer may continue the detention and conduct "a more in-depth investigation \* \* \*." If facts giving rise to reasonable suspicion do not present themselves, however, "[a] continued detention to conduct a search constitutes an illegal seizure."

*State v. Bramley*, 2017-Ohio-8512, (9<sup>th</sup> Dist.), ¶ 8.

In a similar situation, the Ninth District upheld a search of a motorist's vehicle when a marijuana cigarette (a "blunt") was found in plain view that resulted in the discovery of a firearm.

Once the second officer observed the marijuana cigarette, he had probable cause to believe that Jackson's car contained contraband. Under the automobile exception to the warrant requirement, officers may search a vehicle without obtaining a warrant when they have probable cause to believe the vehicle contains evidence of illegal activity. See *Chambers v. Maroney*, 399 U.S. 42, (1970). Thus, the officers did not transgress the Fourth Amendment when they searched the vehicle and found the pistol.

*State v. Jackson*, 2022-Ohio-4365, at ¶ 28.

In addition to conducting a limited search based upon the observation of a possible drug transaction and admission of contraband in her vehicle (the bong), Officer Orzech was also entitled to conduct a limited search for weapons for officer safety.

Often referred to as a *Terry* stop, the Ninth District instructs,

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Accord Ohio Constitution, Article I, Section 14.1 Its protections extend to brief investigative stops that fall short of traditional arrests. \*  
\* \* An officer may perform such a stop when the officer has a reasonable





suspicion based on specific and articulable facts that criminal behavior has occurred or is imminent. \* \* \* And when the officer is "justified in believing" that an individual may be "armed and presently dangerous," the officer may conduct a limited protective search of the individual for concealed weapons. \* \* \*  
*State v. Hairston*, 2019-Ohio-1622, at ¶ 9.

As noted by the State in its opposition brief, the United States Supreme Court extended the *Terry* stop doctrine to include a brief search of automobiles for weapons under certain situations,

... the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possess a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of the weapons.

*Michigan v. Long*, 463 U.S. 1032, (1983), citing *Terry*, 392 U.S. at 21.

Here, Officer Orzech testified that it is common for weapons to be found or involved in drug transactions and as a result of observing Danks' conduct at the known drug house, he was concerned that Danks may have had a weapon on or about her person.

Accordingly, Officer Orzech conducted a limited *Terry* search of the passenger area of Danks' vehicle and discovered contraband in the form of narcotics.

#### IV. CONCLUSION

In the case at bar, members of the Lorain Police Department, while on duty in a special drug interdiction unit, observed Danks pull into the driveway of a known drug house, stop, then interact with an occupant who came out of the house. She remained in the driveway for 10 to 15 minutes, then left.

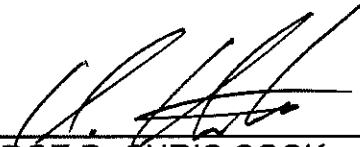
Officers followed Danks' vehicle and observed her commit a traffic violation. A traffic stop was initiated, her vehicle was stopped, and she was removed from the car. The Officers were not in a marked police vehicle but instead, in an unmarked vehicle because of their assignment.

Once the Officers interacted with Danks, they learned that she had a bong in her vehicle. Based upon officer safety and the presence of contraband, they conducted a limited search of the passenger area of her car and discovered the presence of illegal narcotics. Danks was thereafter arrested.



Contra the position urged by Danks, the Officers had probable cause to conduct a traffic stop of her vehicle. They were authorized to remove her from the vehicle, and based on the totality of the facts and circumstances attendant to this interaction, the Officers were on firm constitutional footing to conduct a limited search of Danks' vehicle. A search that disclosed the presence of narcotics.

The motion to suppress is DENIED.

  
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JUDGE D. CHRIS COOK