IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

STATE OF OHIO	:	**CASE NO. 20-CR-00064**
Plaintiff,	:	**Jonathan P. Hein, Judge**
vs.	:	
STACY W. HAMPTON	:	
Defendant.	:	**DECISION AND ENTRY - Defendant's Motion to Suppress**

This matter came before the Court pursuant to the Defendant's motion filed September 23, 2020 which seeks (1) to challenge the probable cause for stopping the Defendant's vehicle, the subsequent detention of the Defendant, and the search of the Defendant's vehicle as a result of the stop; and (2) to suppress his statements given to Officer Monnin of the Greenville Police Department.

The State of Ohio was represented by Deborah S. Quigley, the Assistant Prosecuting Attorney; the Defendant appeared with attorney David A. Rohrer.

The Court heard testimony from the investigating officer, P.O. Monnin, subject to cross-examination. Further, the parties agreed to the admissibility of State Exhibit 1 and Exhibit 2 after establishing an evidentiary foundation for the audio / video recording on DVD format; this recording commenced prior to the traffic stop and continued for 75 minutes.

Summary of Case Facts

In this case, the Defendant is charged with Aggravated Possession of Drugs (methamphetamine), contrary to R.C. 2925.11(A),(C)(1)(c), a second degree felony. The charge results from conduct that occurred on May 8, 2020 as a result of a traffic stop and investigation by P.O. Monnin of the Greenville Police Department.

The investigation began with an observation of excessive speed of the Defendant while driving westbound on East Main Street toward the traffic circle in Greenville. The speed was estimated to be over the 25 MPH limit - a fact not disputed by the Defendant after the stop. When both vehicles were about to stop near the intersection of North Broadway and Water Street, Officer Monnin called in the traffic stop and also asked for the drug sniffing K-9 to be sent to the scene.

The traffic stop occurred at 1:11 a.m. Officer Monnin conducted the customary questioning to establish the Defendant's identity and ownership of the vehicle. He then asked if there was anything illegal in the vehicle. The Defendant responded that he didn't know and asked whether the officer was planning to search the vehicle; the Defendant was then confronted about his lack of knowledge of the contents of his own vehicle. The Defendant was asked if Officer Monnin could search the vehicle and the Defendant stated that he preferred that a search not occur. Officer Monnin confronted the Defendant when he stated that he did not think there was anything illegal n the vehicle. As this went on for about one additional minute, the Defendant finally stated there was noting illegal in the vehicle. But at 1:13:30 a.m., the Defendant was instructed to exit his vehicle and wait on the sidewalk in the presence of P.O. Jones. He was not patted down, but a knife visible near his pocket was removed.

Officer Monnin testified that he then returned to his vehicle to prepare a traffic citation. At 1:22 a.m., he was advised that the K-9 unit was still pretty far away from the scene. During this time, the Defendant was pacing on the sidewalk and street area; he asked what they were waiting on. (Questions asked of the Defendant about ownership of the vehicle, his driving behavior and the weather do not seem particularly relevant to the citation.) The K-9 unit (Dep. Magel and K-9 "Bear") arrived at about 1:26:50 which coincided with the time that the citation was completed for apparent presentation to the Defendant.

Upon again approaching the Defendant, Officer Monnin immediately asked twice whether there was anything illegal in the vehicle. The Defendant admitted there was "all kinds of stuff" inside the vehicle and, on further questioning, made other incriminating statements about drug possession. He was handcuffed at 1:28:30 and read his rights pursuant to *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) at 1:28:50. The K-9 unit from the Darke County Sheriff's Department was asked to conduct a free air sniff, but the offer was declined since the Defendant had admitted there was methamphetamine in the vehicle. At about 1:32 a.m., the Defendant was placed in the police cruiser and a search of the Defendant's vehicle ensued. The search found an extensive amount of methamphetamine and some marijuana; drug abuse instruments and packaging materials were also located. Eventually, the Defendant was transported to jail and subsequently indicted.

Issue No. 1: Probable Cause for Motor Vehicle Stop

As stated in *State v. Chapel,* 5th Dist. Guernsey No. 99-CA-18 (Mar. 8, 2000), "a police officer may lawfully stop a vehicle if he has a reasonable articulable suspicion that the motorist has engaged in criminal activity including a minor traffic violation. The stop is

constitutionally valid regardless of the officer's underlying motivation." See also *State v. Buckner*, 2nd Dist. Montgomery No. 21892, 2007-Ohio-4329.

Officer Monnin testified about the Defendant's driving behavior on East Main Street. The cruiser camera is not helpful in corroborating this testimony. However, if any corroboration is needed, the Defendant's admissions are sufficient. Therefore, the Court concludes that there was reasonable and articulable suspicion of traffic violations for Officer Monnin to conduct a traffic stop of the Defendant's motor vehicle.

Issue No. 2: Violation of Miranda Rights

The cruiser video camera provides exceptional detail about the circumstances and conduct of the traffic stop. Although this is a vehicle stop for a traffic violation, about the third statement by Officer Monnin to the Defendant was whether there was anything illegal inside the car. Follow up questions by both the Defendant and Officer Monnin quickly focused on the propriety and necessity of searching the vehicle. (This clearly was a "cat and mouse" dialogue by both participants.) Officer Monnin's testimony explained the context for this dialogue: the Defendant's vehicle was regularly seen at a residence used for drug abuse transactions. However, no further facts regarding drug-related conduct by the Defendant was provided.

Regarding the Defendant's motion to suppress statements, the question is whether Officer Monnin complied with the mandates of *Miranda v. Arizona, supra.* As is widely known, the protections of *Miranda* to apply when a person is subjected to "custodial interrogation." However, understanding whether there is a "custodial interrogation" or not requires fact specific inquiry. As stated in *Thompson v. Keohane*, 516 U.S. 99, 116 S.Ct. 457 (1995):

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances,

(fn11) would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a `formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)* (quoting *Mathiason*, 429 U. S., at 495).

[T]he only relevant inquiry is how a reasonable man in the suspect's shoes would have understood his situation." 511 U. S., (slip op., at 6) (quoting *Berkemer v. McCarty*, 468 U. S. 420, 442 (1984).

See *State v. Hall* (August 26, 2005), Greene App. No. 04-CA-86, 2005-Ohio-4526; *Yarborough v. Alvarado*, 541 U.S. 652, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004).

As recently stated in *State v. Collins*, 2nd Dist. Clark No. 2018CA104, 2019-Ohio-3197:

An individual is subject to an investigatory detention when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority, a reasonable person would have believed that he was not free to leave or [was] compelled to respond to questions." *State v. Lewis*, 2d Dist. Montgomery No. 22726, 2009-Ohio-158, ¶ 22, citing *United States v. Mendenhall*, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) and *Terry* at 19. Fourth Amendment protections are implicated in an investigatory detention, i.e., a *Terry* stop.

Holdings from the recent decision in *Cleveland v. Oles*, 152 Ohio St.3d 1, 92 N.E.3d 810, 2017 -Ohio-5834 are also instructive:

{¶ 9} What are now commonly known as *Miranda* warnings are intended to protect a suspect from the coercive pressure present during a custodial interrogation. *Miranda* at 469, 86 S.Ct. 1602. A custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444, 86 S.Ct. 1602. If a suspect provides responses while in custody without having first been informed of his or her *Miranda* rights, the responses may not be admitted at trial as evidence of guilt. *Id.* at 479, 86 S.Ct. 1602.

{¶ 10} In *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984), the Supreme Court addressed whether the scope of *Miranda* extended to the roadside questioning of a motorist during a routine traffic stop. In that case, an Ohio State Highway Patrol trooper initiated a traffic stop after observing a vehicle weave in and out of a highway lane. The trooper asked the driver to get out of the vehicle. When the driver had difficulty standing, the trooper asked him to perform a field sobriety test, which the

driver failed. When asked whether he had been using intoxicants, the driver, in slurred speech, said that he had consumed two beers and had smoked several marijuana joints. The trooper then arrested the driver and transported him to jail, where he was administered a blood-alcohol test and asked additional questions. At no time were *Miranda* warnings provided. *Berkemer* at 424, 104 S.Ct. 3138.

{¶ 11} In *Berkemer,* the Supreme Court recognized that although a traffic stop "significantly curtails the 'freedom of action' of the driver and passengers, if any, of the detained vehicle," the stop alone does not render a suspect "in custody" and therefore does not trigger the need for *Miranda* warnings. *Id.* at 436, 440, 104 S.Ct. 3138. The court explained that "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda.*" *Id.* at 440, 104 S.Ct. 3138.

Based on these long-standing legal principles, the Court finds that the Defendant was in detention and not free to leave when directed by Officer Monnin to leave his vehicle and stand on the sidewalk.[1] The fact that he was continually under the supervision of Officer Jones and that his knife was removed from his pocket also demonstrate Officer Monnin's assertion of authority over the Defendant and existence of a detention.[2] An additional fact is that directing a driver to exit his car is not customary or generally necessary for a minor traffic violation.

Since the Defendant was detained and not free to go, the Court finds that the safeguards of *Miranda* were applicable. Therefore, any statements by the Defendant after removal from his vehicle at 1:13:30 a.m. until advised of *Miranda* rights at 1:28 a.m. are deemed inadmissible.

---

[1] The Court agrees with Officer Monnin's statement that the officer "does not need a reason to remove" the driver from the car. However, doing so may result in the immediate application of Fourth and Fifth Amendment rights.

[2] This conclusion was conceded during the suppression hearing.

Issue No. 3: Application of the Exclusionary Rule

The Defendant's motion asks the Court to exclude evidence as the result of a violation of the Defendants *Miranda* rights. The complex constitutional question of whether the exclusionary rule should apply was settled in *State v. Farris*, 109 Ohio St.3d 519, 849 N.E. 2d 985, 2006-Ohio-3255:

> {¶ 45} Pursuant to the Fifth Amendment [of the U.S. Constitution], then, the physical evidence seized by the troopers in this case was admissible. We must now consider whether the evidence was admissible pursuant to Section 10, Article I of the Ohio Constitution.
>
> {¶ 48} To hold that the physical evidence seized as a result of unwarned statements is inadmissible, we would have to hold that Section 10, Article I of the Ohio Constitution provides greater protection to criminal defendants than the Fifth **996 Amendment to the United States Constitution. We so find here.
>
> {¶ 49} Only evidence obtained as the direct result of statements made in custody without the benefit of a *Miranda* warning should be excluded. We believe that to hold otherwise would encourage law-enforcement officers to withhold *Miranda* warnings and would thus weaken Section 10, Article I of the Ohio Constitution. In cases like this one, where possession is the basis for the crime and physical evidence is the keystone of the case, warning suspects of their rights can hinder the gathering of evidence. When physical evidence is central to a conviction and testimonial evidence is not, there can arise a virtual incentive to flout *Miranda*. We believe that the overall administration of justice in Ohio requires a law-enforcement environment in which evidence is gathered in conjunction with *Miranda*, not in defiance of it. We thus join the other states that have already determined after *Patane* that their state constitutions' protections against self-incrimination extend to physical evidence seized as a result of pre-*Miranda* statements. *State v. Knapp* (2005), 285 Wis.2d 86, 700 N.W.2d 899; *Commonwealth v. Martin* (2005), 444 Mass. 213, 827 N.E.2d 198. Thus, the physical evidence obtained as a result of the unwarned statements made by Farris in this case is inadmissible pursuant to Section 10, Article I of the Ohio Constitution.

In short, the United States Constitution does not require suppression of tangible evidence when there are violations of *Miranda* protections; however, the Ohio Constitution does require suppression of tangible evidence resulting from a violation of constitutional rights against self-incrimination.

Issue No. 4: Inevitable Discovery

However, an exception to the suppression of evidence for violation of constitutional rights is permitted when there would be "inevitable discovery" of the evidence. This concept was recently discussed and explained in *State v. Banks-Harvey*, 152 Ohio St. 3d 368, 96 N.E.3d 262, 2018-Ohio-201:

> {¶ 27} This court adopted the inevitable-discovery exception to the exclusionary rule in State v. Perkins, 18 Ohio St.3d 193, 480 N.E.2d 763 (1985). Under that exception, illegally obtained evidence may be admitted in a proceeding once the state establishes that the evidence would inevitably have been discovered in the course of a lawful investigation. Id. at paragraph one of the syllabus, following Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). If the state can establish by a preponderance of the evidence that it would inevitably have discovered the information by lawful means, "then the deterrence rationale [for the exclusionary rule] has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense." (Footnote omitted.) Nix at 444, 104 S.Ct. 2501. The prosecution has the burden of demonstrating a reasonable probability that the evidence would have been discovered apart from the unlawful conduct. Perkins at 196, 480 N.E.2d 763.

It is uncontroverted that the K-9 did not actually conduct a free-air sniff (and this Court cannot conclude that the dog would have detected the drugs if one had occurred). This sniff was not conducted apparently because the Defendant admitted drug possession as a result of his non-Mirandized statement. From the record, there are insufficient facts to conclude that there would have been an inevitable discovery of the evidence regardless of the *Miranda* violation.[3]

Conclusion

The duties of law enforcement officers require extensive and nuanced understandings of legal principles that are not always easily applied in their daily functions.

---

[3] While an inventory search may have been another opportunity to inevitably discover the drugs, the vehicle should not have been impounded for the traffic violations of speeding and window tint. No testimony was presented to otherwise justify impoundment or inevitable discovery.

While continuing education for law enforcement officers may not be a common occurrence, suppression hearings can provide opportunities for further education.

Precedence dating back more than 30 years established that the protection against self-incrimination (aka *Miranda* warning) applies when a person is detained at the insistence of a law enforcement officer during the investigation of a possible crime. It is an unfortunate (and persistent) misunderstanding that the act of pronouncing an "arrest" is the time to provide *Miranda* rights.[4]

The Court is mindful of the current scourge on society caused by rampant methamphetamine (and other drug) abuse. Daily arrests are made in Darke County of its residents who travel to Dayton to buy drugs from anonymous dealers trolling for customers seeking their next fix. The insistent nature of Officer Monnin's inquiry is understandable and an indication of his knowledge of this scourge. Nonetheless, a "search prosecuted in violation of the Constitution is not made lawful by what it brings to light. . . ." *Byars v. United States*, 273 U.S. 28, 29, 47 S.Ct.248, 71 L.Ed. 520 (1927).

IT IS, THEREFORE, ORDERED AND DECREED that the Defendant's motion to suppress is granted.

Jonathan P. Hein, Judge

cc: Prosecuting Attorney's Office

David A. Rohrer, Attorney for Defendant (via email) jph\research\criminal\miranda traffic stop delayed 4

[4] On an unrelated issue raised in the recording, what may not be widely known is that forfeiture statutes [R.C.2981.04 et. seq.] have been rewritten and interpreted to require a balancing of the forfeiture interests of the investigating agency against the interests of the Defendant (aka "proportionality review"). Motor vehicles are not blindly handed to the investigating agency after a conviction. See Exhibit 1 at 1:53 a.m.