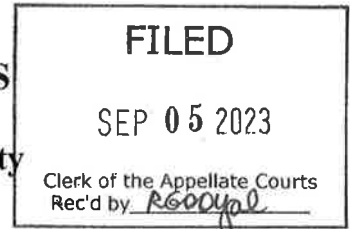


IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
June 27, 2023 Session

**STATE OF TENNESSEE v. RIKI KALE MOSS**  
**Appeal from the Criminal Court for Hamilton County**  
**No. 310218 Don W. Poole, Judge**



---

**No. E2022-01227-CCA-R3-CD**

---

In 2020, the Defendant, Riki Kale Moss, was indicted for violation of the implied consent law, driving under the influence (“DUI”) by impairment, and DUI, per se. The Defendant filed a pretrial motion to suppress the evidence resulting from the traffic stop of his vehicle. The trial court granted the Defendant’s motion, and the State filed a motion to reconsider on the grounds that law enforcement had probable cause to stop the Defendant’s vehicle. The trial court issued a revised order denying the motion to suppress, and a jury convicted the Defendant of DUI by impairment and DUI per se. The Defendant appeals the denial of his motion to suppress and also contends that the evidence was insufficient to support his convictions. After review, we affirm the trial court’s judgments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR. and ROBERT H. MONTGOMERY, JR., JJ., joined.

John G. McDougal, Chattanooga, Tennessee, for the appellant, Riki Kale Moss.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Coty Greer Wamp, District Attorney General; and Christopher Post, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Facts and Background**

This case arises from the stop of the Defendant’s vehicle on December 30, 2018, after which law enforcement officers arrested the Defendant for DUI. A Hamilton County grand jury indicted the Defendant for violation of the implied consent law, DUI by

impairment, and DUI, per se.

### **A. Motion to Suppress**

Before trial, the Defendant filed a motion to suppress, contending that the police officer who stopped his vehicle did so unlawfully because he did not have probable cause to stop or arrest the Defendant. The trial court held a hearing, during which the parties presented the following evidence: Jeffrey Cannon testified that he was employed by the Chattanooga Police Department (“CPD”) as a patrol officer and observed a Toyota FJ Cruiser on December 30, 2018 at approximately 3:15 a.m. His attention was drawn to the Toyota when it “squeal[ed] its tires” past law enforcement vehicles. He also observed that the vehicle did not have a tag light on its license plate. For these reasons, Officer Cannon effectuated a traffic stop of the vehicle. He identified the Defendant in the courtroom as the driver of the Toyota FJ Cruiser.

He stated that he later learned that the Defendant’s model of the vehicle came with a tag light or “license plate lamp,” which became the federal standard for vehicles in 1981. He identified a diagram of the Defendant’s vehicle and the license plate lamp directly above the license plate. Officer Cannon stated that he was equipped with body and dashboard video equipment, which recorded the traffic stop. He acknowledged that it was unclear from the recording whether the license plate lamp was illuminated. The State played the footage of the traffic stop in open court.

On cross-examination, Officer Cannon testified that the sole reason he pulled over the Defendant’s vehicle was the tag light being out. He stated that he did not perform a field sobriety test. Officer Cannon surmised that the Defendant was intoxicated based on his slurred speech and the smell of alcohol on his person. He denied seeing any erratic driving. He clarified that he heard the Defendant’s tires squeal but that the tire’s squealing was not heard in the recording. It was, however, contained in the officer’s police report.

On redirect-examination, Officer Cannon reiterated that, when he first observed the Defendant’s vehicle, it was traveling at a high rate of speed with its tires squealing. After the stop, the Defendant got out of his vehicle and approached the police vehicle in an “aggressive” manner. He stated that the Defendant declined to participate in a field sobriety test when asked.

The Defendant testified and was shown a picture of the rear of his vehicle. He stated that, from the picture, he could not determine whether there was a license plate light and that its existence had never been an issue prior to being stopped that day.

The trial court granted the Defendant’s motion to suppress, making the following

statements:

From the officer's testimony, the Court gathers that, despite a reference to a "high rate of speed", the [D]efendant was stopped for having an unlighted license plate, not for speeding. . . . the Court gathers that [the Defendant] does not dispute that, at the time of the initial stop, his license plate was unlighted.

The Tennessee statute that governs the display of license plates provides in relevant part as follows:

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so to prevent the plate from swinging and at a height of not less than twelve inches (12") from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible; . . . No tinted materials may be placed over a license plate even if the information upon the license plate is not concealed.

T.C.A. § 55-4-110(b). Construing a prior version of the same statute, which differs from the current version of the statute only in that the prior version does not include the provision for motorcycles, the Court of Criminal Appeals in *State v. Hunt*, 302 S.W.3d 859, 864-5 (Tenn. Crim. App. 2009), holds that "Tennessee does not require a single vehicle to have a light to illuminate the license plate." Thus, even if, without violating the Full Faith and Credit Clause or the Commerce Clause of the United States Constitution, the officer could apply Tennessee equipment law to an out-of-state vehicle or, if, because of the lack of light, he could not see the out-of-state registration, the lack of a license-plate light did not give the officer reason to stop the [D]efendant's vehicle for violation of T.C.A. § 55-4-110(b).

Furthermore, even if the officer could see the [D]efendant's out-of-state registration, there is no evidence that, at the time of the stop, the officer was aware that Georgia law or federal standards require a license-plate light. *See Hunt*, 302 S.W.3d at 864-5 (including Georgia in a list of jurisdictions the laws of which specifically require a license-plate light) (citing in part Ga. Code Ann. § 40-8-23(d)).

The trial court granted the Defendant's motion to suppress. Thereafter, the State

filed a motion to reconsider, contending that the decision in *Hunt* had been superseded by the enactment of Tennessee Code Annotated section 55-4-110(c), which requires all motor vehicles with factory-equipped license plate illumination capability to illuminate the vehicle's license plate when the headlights are on. The trial court issued an order stating that the State was correct in its assertion and therefore reconsidered its prior order granting the suppression motion. The trial court stated in its order:

The officer testified that he stopped the [D]efendant for an unlighted license plate and the [S]tate introduced an exhibit that purports to show wiring for a license-plate light. The [D]efendant avoided answering whether the vehicle is wired for a license-plate light, referring instead to a photograph the angle of which the [S]tate contends is misleading. From the [D]efendant's evasive testimony, the Court gathers that he does not dispute the evidence that, at the time of the stop, his headlights were illuminated but his license-plate light was not illuminated and to dispute without contradicting the evidence that his vehicle, a 2007 Toyota, is factory-equipped with a license-plate light. The Court therefore now finds that, at the time of the stop, there was reason to suspect the [D]efendant of driving with illuminated headlights and an unilluminated license-plate light in violation of T.C.A. § 55-4-110(c). *See State v. Bourrage*, No. M2014 01194 CCA R3 CD, 2015 WL 3372377, \*5 (Tenn. Crim. App. 05/26/2015), *perm. app. denied* (Tenn. 09/17/2015) (stating that, "[a]pplying the 'reasonable suspicion' standard, our supreme court has held that it is constitutionally permissible to stop a vehicle for an equipment violation in Tennessee) (citing *State v. England*, 19 S.W.3d 762, 766 (Tenn. 2000)). Accordingly, the initial stop was within the reasonable-suspicion exception to the warrant requirement.

....

From the officer's testimony and the video recordings, the Court gathers that, at the time of the expansion of the scope of the stop to investigate the [D]efendant for driving under the influence in violation of T.C.A. § 55-10-401, there were several reasons to suspect the [D]efendant of that offense:

- (1) the [D]efendant's initial argumentativeness;
- (2) the [D]efendant's offers to retrieve his identification instead of providing his name, date of birth, and social security number;
- (3) the [D]efendant's initial misstatement of his birthday as 03/09/1948, instead of 03/09/1978; and

(4) the [D]efendant's odor of alcohol.

The odor of alcohol alone is a reason to suspect a motorist of driving under the influence in violation of T.C.A. § 55-10-401 and expand the scope of a traffic stop. *See State v. Roscoe*, No. W2013 01714 CCA R9 CD, 2014 WL 3511041, \*3 (Tenn. Crim. App. 07/11/2014) (listing cases that hold that the odor of alcohol alone justifies a brief detention, though not arrest). Accordingly, the expansion of the scope of the stop was also within the reasonable-suspicion exception to the warrant requirement.

....

With respect to the officer's description of the [D]efendant's responses, what the video recordings with their inconsistent sound seem to establish is that some of the [D]efendant's responses were prompt, his stop in response to blue lights, his immediate emergence from his vehicle, and his own anxious questions, some of his responses were unclear or perhaps evasive, and one of his responses was incorrect, his birthday. With respect to the officer's description of the [D]efendant's speech, what the video recordings with their inconsistent sound establish is that the [D]efendant's speech was not noticeably slurred. With respect to the officer's account of the [D]efendant's refusal to perform field, sobriety tests, the video recordings establish that the [D]efendant initially refused to perform field, sobriety tests and offered to take a breath test instead but, after his arrest and placement in the patrol vehicle, offered to perform field, sobriety tests.

....

Nevertheless, the Court finds that, at the time of the [D]efendant's arrest for driving under the influence, violation of T.C.A. § 55-10-401, there was probable cause to arrest him for that offense for two reasons:

- (1) the [D]efendant's odor of alcohol and
- (2) the discernible effects of alcohol on the [D]efendant's mental state, as evidenced by his unclear and incorrect responses to simple requests for identifying information.

Accordingly, the Court finds that the arrest was within the probable-cause exception to the warrant requirement.

On these bases, the trial court granted the State's motion to reconsider, vacated its

prior order, and denied the Defendant's motion to suppress.

## **B. Trial**

Prior to trial, the State dismissed the violation of implied consent charge, and the Defendant proceeded to trial on the remaining two counts of the indictment. The following evidence was presented at the trial: Officer Jeffrey Cannon testified consistently with his testimony at the suppression hearing. He stated that he heard the Defendant's vehicle's tires squeal, and that he observed the vehicle's movement as it was leaving an intersection. He immediately got into his police vehicle to stop the Defendant's vehicle. As he drove behind the Defendant's vehicle, he noticed the license tag light was "not working, or burnt out." After he stopped the vehicle, the Defendant got out of his vehicle, which Officer Cannon stated was concerning and unusual. Officer Cannon instructed the Defendant to get back into his vehicle, and the Defendant failed to comply. Officer Cannon detected the odor of alcohol on the Defendant's breath and his person. He described the Defendant as uncooperative and unable to answer routine questions or follow simple instructions. Signs of the Defendant's impairment were slurred speech, unsteadiness, unable to state his birthday or social security number on the first try. The Defendant declined to do a field sobriety test but changed his mind once inside the police vehicle. Officer Cannon retrieved the Defendant's belongings from his vehicle and smelled alcohol inside.

The State played the officer's body camera recording of the stop. A blood draw was eventually taken from the Defendant and subsequent analysis revealed that his blood alcohol content was .217 percent. Based on this evidence, the jury convicted the Defendant of driving under the influence by impairment and driving under the influence, per se. The trial court merged the two convictions and sentenced the Defendant to an eleven-month and twenty-nine day probation sentence with twelve days of incarceration. It is from these judgments that the Defendant now appeals.

## **II. Analysis**

### **A. Suppression**

The Defendant contends that his motion to suppress should have been granted. He contends that Officer Cannon unlawfully stopped his vehicle and unlawfully arrested him at the scene because Officer Cannon lacked probable cause to believe that a criminal offense was being committed. He avers that the officer had no reason to pull him over, other than the unlit license plate light, which he contends was not a traffic violation at the time. Instead, he contends that *State v. Hunt* is still "good law" and has not been overturned by *U.S. v. Melton* or superseded by statute. He further argues that the officer lacked probable cause to arrest him for DUI. The State responds that Officer Cannon's stop of the vehicle was legally justified because he saw the Defendant driving with an

unilluminated license plate light and that, on that date, Tennessee law required all motor vehicles with a factory-equipped license plate light to have the license plate illuminated whenever headlights were illuminated. T.C.A. § 55-4-110(c)(1) (2018). The State further responds that the officer had probable cause to arrest the Defendant because the Defendant smelled of alcohol and exhibited signs of impairment. Thus, the State contends that the trial court properly denied the Defendant's motion to suppress. We agree with the State.

When this Court reviews a trial court's ruling on a motion to suppress, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). The party prevailing at the suppression hearing is afforded the "strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998). The findings of a trial court in a suppression hearing are upheld unless the evidence preponderates against those findings. *See id.* However, the application of the law to the facts found by the trial court is a question of law and is reviewed de novo. *Walton*, 41 S.W.3d at 81; *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999); *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and "article 1, section 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment." *State v. Downey*, 945 S.W.2d 102, 106 (Tenn. 1997) (quoting *Sneed v. State*, 221 Tenn. 6, 423 S.W.2d 857, 860 (1968)). Such searches, and resulting seizures, are per se unreasonable under the Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution. An exception to the warrant requirement exists when a police officer conducts an investigatory traffic stop based on a reasonable suspicion that a criminal offense has been or is about to be committed. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Binette*, 33 S.W.3d at 218. In *State v. Davis*, our supreme court made clear that a traffic violation, however minor, created probable cause to stop a vehicle. 484 S.W.3d 138, 143 (Tenn. 2016). Tennessee Code Annotated section 55-4-110(c)(1) provides that for all motor vehicles that are factory-equipped to illuminate the registration plate, the registration plate shall be illuminated at all times that headlights are illuminated.

The evidence presented at the suppression hearing was Officer Cannon's testimony and the video recording from his police car and body camera. The trial court stated that, based on the evidence presented including the Defendant's own testimony, at the time of the stop, the Defendant's vehicle's headlights were illuminated but his license-plate light was not illuminated. It also found that his vehicle was factory-equipped with a license-plate light and that he was operating his vehicle in violation of section 55-4-110(c)(1).

We conclude that the evidence does not preponderate against the trial court's findings. It is not entirely clear from the video recording whether the Defendant's license-plate light was illuminated. However, the Defendant elected to testify at the hearing and declined to say that his vehicle was not equipped with such a light, prompting the trial court to find his testimony "evasive." Officer Cannon specifically testified as to the reason he initially followed the Defendant's vehicle (squealing tires and leaving the intersection at a high rate of speed), and at what point he determined that a traffic violation had occurred (when he observed the Defendant's license-plate light not functioning). Nothing in the video contradicts his observation or testimony. On this basis, we conclude that there was probable cause to stop the Defendant's vehicle.

Similarly, Officer Cannon provided specific details for probable cause to arrest the Defendant for DUI: slurred speech, unusual behavior during the traffic stop, inability to answer basic questions, the odor of alcohol on the Defendant's breath and person, and the odor of alcohol from inside the Defendant's vehicle.

The Defendant cites to *State v. Hunt* for its holding that Tennessee does not require a single vehicle to have a light to illuminate the license plate, 302 S.W.3d 859, 865 (Tenn. Crim. App. 2009), which he contends is still "good law." As the trial court noted, this holding was superseded by the passage of Senate Bill 131, which explicitly codified the requirement that "registration plate[s] on motor vehicles be illuminated at all times headlights are required to be turned on." S.B. 131, 108<sup>th</sup> Leg., 1<sup>st</sup> Reg. Sess. (Tenn. 2013). Accordingly, we affirm the trial court's judgment denying the Defendant's motion to suppress.

## **B. Sufficiency**

The Defendant also contends that the evidence is insufficient to support his convictions because the officer did not allow him to take a field sobriety test, proving whether or not he was under the influence. The State responds that the Defendant has waived this issue for failing to offer any argument in his brief but that, nevertheless, there was sufficient evidence to sustain his convictions for driving under the influence. We agree with the State.

The Rules of Appellate Procedure require that citations to authority and references to the record be included in the argument portion of the brief. Tenn. R. App. P. 27(a)(7). The rules of this court also contemplate waiver of issues not supported by citation to authorities or appropriate references to the record. See Tenn. R. Ct. Crim. App. 10(b) ("Issues which are not supported by argument, citation to authorities, or appropriate references to the record will be treated as waived in this court."). The Defendant's brief, in the sufficiency section, appears to address only the issue of probable cause and makes



no argument as to the sufficiency of the evidence other than the lack of a field sobriety test being administered at the scene of the traffic stop. Therefore, the Defendant has waived review of this issue. *Id.* Nonetheless, as we have pointed out in the previous section, there was ample evidence that the Defendant was under the influence when he was stopped by law enforcement, not the least of which was his blood alcohol content of .217 percent. The Defendant is not entitled to relief.

### III. Conclusion

After a thorough review of the evidence and relevant authorities, we affirm the judgments of the trial court.

  
ROBERT W. WEDEMEYER, JUDGE