

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
MADISON COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2000-08-044
- vs -	:	<u>O P I N I O N</u>
	:	10/1/2001
ANTHONY B. TOMPKINS,	:	
Defendant-Appellant.	:	

Eamon P. Costello, 23 West High Street, London, Ohio 43140, for plaintiff-appellee

L. Patrick Mulligan, Mulligan Bldg., 28 North Wilkinson Street, P.O. Box 248, Dayton, Ohio 45402, for defendant-appellant

WALSH, J. Defendant-appellant, Anthony Tompkins, appeals his conviction in the Madison County Court of Common Pleas for carrying a concealed weapon, a violation of R.C 2923.12(A)(d). The conviction is affirmed.

On November 14, 2000, Ohio State Highway Patrol Troopers Daniel Finnell and Gary Thompson were on duty, checking speed on eastbound Interstate 70 near State Route 56 in Madison County. They were each in uniform in marked state highway patrol cars.

Trooper Thompson was also operating a "K-9" unit, and had a drug dog in his patrol car. Around 10:24 P.M., Trooper Finnell clocked two eastbound vehicles traveling in excess of the posted speed limit of sixty-five m.p.h. The first vehicle was traveling seventy-eight m.p.h., while the second vehicle, driven by appellant, was traveling seventy-nine m.p.h. Trooper Thompson stopped the first vehicle and Trooper Finnell stopped second vehicle driven by appellant. After stopping, the vehicles were parked approximately two hundred feet apart.

Appellant produced his valid driver's license and registration in response to Trooper Finnell's request. Upon questioning, appellant told Trooper Finnell that he and the driver of the first vehicle had been traveling together. Trooper Finnell noticed that appellant was sweating, in spite of the twenty-five degree temperature, was nervous, and avoided eye contact. Trooper Finnell contacted Trooper Thompson, who told him that the driver of the first auto denied that he and appellant were traveling together. Trooper Finnell then asked appellant to move his vehicle closer to Trooper Thompson's vehicle, and appellant complied. Trooper Finnell continued to write out the citation for speeding.

Trooper Thompson informed appellant that he was going to walk the drug-sniffing dog around appellant's vehicle. At this point, appellant opened the center console compartment of his vehicle part way, concealing its contents, and retrieved a small bag of marijuana which he handed to Trooper Thompson. Appellant was ordered out of his car, and Trooper Finnell placed appellant in the back of

his patrol car after patting him down. The driver of the first vehicle similarly produced a small bag of marijuana, and was placed in the back of Trooper Finnell's patrol car as well.

Trooper Finnell advised both men of their Miranda rights, and then asked each of them if there were any more drugs or weapons in their vehicles. Appellant stated that there were no other drugs in his vehicle. Trooper Finnell asked him if he had any weapons in his vehicle, and appellant looked down and shook his head, indicating "no." Trooper Finnell asked again, but appellant made no reply.

Based on appellant's voluntary production of drugs, the furtive manner in which appellant opened the center console compartment, and appellant's nervousness, Trooper Thompson believed he had probable cause to search appellant's vehicle. The search revealed a loaded .38 caliber handgun concealed in the center console compartment of appellant's vehicle.

Appellant was subsequently indicted on one count of carrying a concealed weapon. He filed a motion to suppress the evidence gathered in the search, alleging that his detention and arrest were unlawful. The trial court overruled the motion, and appellant pled no contest to the charge. He was found guilty and sentenced accordingly. He appeals, raising a single assignment of error:

THE TRIAL COURT ERRED WHEN IT OVERRULED DEFENDANT'S MOTION TO SUPPRESS.

Appellant concedes that the initial stop based on the speeding violation is valid. However, appellant contends that the trial court should have granted his motion to suppress because the police

officer unreasonably extended the stop beyond its original purpose and began a "fishing expedition" for drugs.

An appellate court may not disturb a trial court's decision on a motion to suppress where it is supported by competent, credible evidence. State v. Retherford (1994), 93 Ohio App.3d 586, 592. When considering a motion to suppress, the trial court serves as the trier of fact and is the primary judge of the credibility of witnesses and the weight of the evidence. State v. Fanning (1982), 1 Ohio St.3d 19, 20. Relying on the trial court's findings, the appellate court determines "without deference to the trial court, whether the court has applied the appropriate legal standard." State v. Anderson (1995), 100 Ohio App.3d 688, 691.

Once a police officer has made a legitimate stop of a vehicle, the driver may be detained only for as long as the officer continues to have a reasonable suspicion that there has been a violation of the law. State v. Myers (1990), 63 Ohio App.3d 765, 771. However, "[i]f during the scope of the initial stop, an officer discovers additional specific and articulable facts which give rise to a reasonable suspicion of criminal activity beyond that which prompted the stop, the officer may detain the vehicle and driver for as long as the new articulable and reasonable suspicion continues." State v. Waldroup (1995), 100 Ohio App.3d 508, 513. Once a law enforcement officer has probable cause to believe that a vehicle contains contraband, he or she may search a validly stopped motor vehicle based upon the well-established automobile exception to the warrant requirement. State v. Moore, 90 Ohio St.3d 47, 51,

citing Maryland v. Dyson (1999), 527 U.S. 465, 466, 119 S.Ct. 2013, 2014; United States v. Ross (1982), 456 U.S. 798, 804, 102 S.Ct. 2157, 2162; State v. Mills (1992), 62 Ohio St.3d 357, 367.

Trooper Finnell initially observed that appellant was nervous and even sweating in spite of the frigid weather. The inconsistent statements of the drivers raised additional suspicions. Finally, appellant's suspicious behavior surrounding the center console compartment aroused further suspicions. Due to these indicators, Trooper Thompson had a reasonable suspicion of illegal activity.

Further, while Trooper Thompson conducted the search, Trooper Finnell was attempting to complete the routine procedure of completing the traffic citation for speeding. When conducting an investigative stop for a traffic violation, a police officer may detain a motorist for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a computer check on the motorist's driver's license, registration, and vehicle license plates. State v. Carlson (1995), 102 Ohio App.3d 585, 598, citing State v. Keahtley (1988), 55 Ohio App.3d 130, 131-132, and Delaware v. Prouse (1979), 440 U.S. 648, 659, 99 S.Ct. 1391, 1399.

Because Trooper Thompson had probable cause to search the vehicle, and appellant's detention was not unreasonable under the circumstances, the trial court did not err in denying the motion to suppress. The assignment of error is overruled.

Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.

[Cite as *State v. Tompkins*, 2001-Ohio-8713.]