

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23919
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-2032
v.	:	
	:	
THOMAS J. RIDDLEBAUGH	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	

.....

OPINION

Rendered on the 23rd day of December, 2010.

.....

MATHIAS H. HECK, JR., by JOHNNA M. SHIA, Atty. Reg. #0067685, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

VICTOR A. HODGE, Atty. Reg. #0007298, Law Office of the Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

.....

FAIN, J.

{¶ 1} Defendant-appellant Thomas Riddlebaugh appeals from his conviction and sentence, following a no-contest plea for Having Weapons While Under Disability. Riddlebaugh claims that the trial court should have granted his motion to

suppress, because the police officer impermissibly extended the length of a traffic stop by asking for permission to search Riddlebaugh's vehicle, although the officer lacked reasonable articulable suspicion of criminal activity. We conclude that Riddlebaugh's consent to the search, which was given within the normal time period needed to process a traffic violation, was sufficient to warrant extending the length of the traffic stop, regardless of whether there was reasonable, articulable suspicion of criminal activity. The judgment of the trial court is Affirmed.

I

{¶ 2} While on patrol early one morning in 2009, Dayton Police Officers Speelman and Bogner saw Riddlebaugh speed past and then fail to signal for a turn. The officers activated their overhead lights, and Riddlebaugh pulled over. After verifying that the car was not reported as stolen, the officers approached. In addition to Riddlebaugh in the driver's seat, Officer Speelman observed a male passenger in the front seat and a dog in the back seat. Officer Speelman told Riddlebaugh why he had stopped the car and asked Riddlebaugh for his driver's license, while Officer Bogner obtained the passenger's identity.

{¶ 3} Officer Speelman noticed a strong smell of cologne coming from the interior of the car, and based on prior experience, he suspected that the occupants were attempting to mask the smell of marijuana. The officers returned to their cruiser to verify the driver's and passenger's identifications, and found that multiple field interviews of both men had been conducted concerning prior suspicions of drug activity.

{¶ 4} The officers returned and asked Riddlebaugh for permission to search his car, which he granted. Riddlebaugh was removed from his car and patted down for officer safety before being placed in the back seat of a police cruiser. Riddlebaugh stated that he was unarmed, but Officer Speelman found a knife in Riddlebaugh's pocket. Officer Speelman also felt a large roll of money and a pill bottle. Officer Speelman asked Riddlebaugh if he was employed, to which Riddlebaugh replied that he was not. Upon searching the vehicle, Officer Speelman found a bag of marijuana under the driver's seat and an unloaded handgun and empty magazines in the center console.

{¶ 5} Officer Speelman advised Riddlebaugh of his *Miranda* rights and placed him under arrest. Riddlebaugh was indicted for Having a Weapon While Under Disability. He filed a motion to suppress, which the trial court overruled. Riddlebaugh pled no contest and was sentenced to community control. From his conviction and sentence, Riddlebaugh appeals.

II

{¶ 6} Riddlebaugh's sole assignment of error is as follows:

{¶ 7} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS."

{¶ 8} Riddlebaugh contends that the trial court should have granted his motion to suppress, because Officer Speelman unlawfully extended the scope and length of the traffic stop by asking for permission to search his vehicle when the officer lacked reasonable, articulable suspicion of criminal activity. When assessing

a motion to suppress, the trial court is the finder of fact, judging the credibility of witnesses and the weight of evidence. *State v. Jackson*, Butler App. No. CA2002-01-013, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 20. An appellate court must rely on those findings and determine “without deference to the trial court, whether the court has applied the appropriate legal standard.” *Id.*, quoting *State v. Anderson* (1995), 100 Ohio App.3d 688, 691. When the trial court’s ruling on a motion to suppress is supported by competent, credible evidence, an appellate court may not disturb that ruling. *Id.*, citing *State v. Retherford* (1994), 93 Ohio App.3d 586.

{¶ 9} “When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the 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 plates.” *State v. Wilkins*, Montgomery App. No. 20152, 2004-Ohio-3917, ¶10, citations omitted. In this case, the trial court found that Officer Speelman did not detain Riddlebaugh for an unreasonable period of time before asking to search his car. Officer Speelman asked Riddlebaugh for permission to search the car after he had obtained all of the information that he needed to complete the traffic citation, but before he actually wrote out the citation. Riddlebaugh insists that once the officer had all of the information that he needed for the citation, he should not have asked to search the car, absent reasonable, articulable suspicion of criminal activity. The court, on the other hand, noted that the officer’s request to search the vehicle “added only a negligible amount of time to the duration of the stop.”

{¶ 10} We agree with the trial court's conclusion that "[t]he fact that the Defendant consented to the search is paramount. * * * * Had the Defendant refused to provide consent and Speelman continued to detain him, an argument that further detention was unreasonable may be compelling. However, the facts as presented indicate that Defendant willingly consented to the search, thus authorizing the duration of the traffic stop." A defendant's consent to search his vehicle, which has been stopped for a traffic violation, is valid if it is obtained within the period of time required to process the traffic violation, regardless of whether the officer has a reasonable, articulable suspicion of criminal activity. *State v. Loffer*, Montgomery App. No. 19594, 2003-Ohio-4980, ¶22.

{¶ 11} Riddlebaugh's sole assignment of error is overruled.

III

{¶ 12} Riddlebaugh's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

.....

BROGAN and GRADY, JJ., concur.

Copies mailed to:

Mathias H. Heck, Jr.
Johnna M. Shia
Victor A. Hodge
Hon. Connie S. Price