

[Cite as *State v. Matthews*, 2015-Ohio-1750.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-23
	:	
v.	:	T.C. NO. 14CR113
	:	
ANSON J. MATTHEWS	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 8th day of May, 2015.

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FROELICH, P.J.

{¶ 1} Following the trial court’s denial of his motion to suppress evidence, Anson J. Matthews pled no contest to one count of possession of drugs in violation of R.C. 2925.11(A) and (C)(4)(e) (cocaine, greater than or equal to 27 grams, but less than 100 grams), a felony of the first degree. He was sentenced to eight years in prison. He

appeals from the trial court's denial of his motion to suppress.

{¶ 2} On the afternoon of March 4, 2014, Matthews was a passenger in a car driven by a friend, Nevada Butcher, when the men were stopped by Tipp City Police Officer Darren Soutar because the license plate on their vehicle was registered to a different vehicle. Officer Soutar suspected that the white Cadillac in which the men were driving may have been stolen. During the traffic stop, Matthews claimed to have recently purchased the Cadillac, and he produced a title from the glove box. However, the title was in the names of Russell Smith and Michael Cotterman, and it contained no indication of a transfer to Matthews.

{¶ 3} When Officer Soutar checked their identities on his computer, he learned that Butcher and Matthews had "prior drug histories." Soutar requested a canine unit, then discussed the alleged transfer of title with Matthews and the impropriety of switching license plates from one car to another; he also attempted to verify the ownership of the vehicle. At Soutar's request, a dispatcher attempted to reach Cotterman, without success, and Soutar attempted to call a cell phone number (allegedly for Cotterman) provided to him by Matthews. When the canine unit arrived (about 33 minutes after the traffic stop), the dog alerted on the rear of the Cadillac. Soutar and another officer then searched the car and found cocaine.

{¶ 4} In April 2014, Matthews was indicted on one count of possession of cocaine. In June, he filed a motion to suppress the evidence against him. Based on his assertion that a traffic stop for a registration problem should generally take approximately 15 minutes, Matthews argued that his detention for more than 30 minutes was unreasonably long and was extended, without sufficient basis, to await the arrival of the canine unit.

After a hearing, the trial court denied the motion; the court concluded that “the length of the detention occasioned by waiting for the drug dog was reasonable under all of the circumstances, including the diligence on the part of the veteran police officer in investigating the facts as they unfolded.” Matthews subsequently entered a no contest plea. In August 2014, he was found guilty and was sentenced as described above.

{¶ 5} Matthews appeals, raising two assignments of error.

{¶ 6} The first assignment of error states:

The trial court erred in denying the Motion to Suppress in that the scope and duration of the investigative stop lasted longer than was necessary to effectuate the purpose for which the initial stop was made and was, therefore, constitutionally impermissible.

{¶ 7} Matthews contends that Officer Soutar extended the length of the traffic stop for reasons unrelated to the original stop – to await the arrival of the canine unit – in contravention of prior Supreme Court case law and without reasonable articulable suspicion of criminal activity, and therefore that the evidence against him should have been suppressed.

{¶ 8} The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). A traffic stop by a law enforcement officer must comply with the Fourth Amendment’s reasonableness requirement. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). “[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures. A seizure justified only by a police-observed

traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Rodriguez v. United States*, _____ U.S. _____, 2015 WL 1780927, * 3 (Apr. 21, 2015), citing *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *State v. Ramos*, 155 Ohio App.3d 396, 401, 2003-Ohio-6535, 801 N.E.2d 523 (2d Dist.).

{¶ 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 perform routine procedures such as a computer check on the motorist’s driver’s license, registration and vehicle plates. *State v. Thomas*, 2d Dist. Montgomery No. 22833, 2009-Ohio-3520, ¶ 14, citing *State v. Pryor*, 2d Dist. Montgomery No. 20800, 2005-Ohio-2770, ¶ 15 and *Ramos* at 401. In determining whether an officer completed the tasks of a traffic stop within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation. *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, ¶ 17.

{¶ 10} A police officer need not have a reasonable suspicion that a vehicle contains contraband prior to summoning a canine drug unit. *Thomas* at ¶ 15, citing *Ramos* at 400. Furthermore, the use of a trained narcotics dog to sniff an automobile does not constitute a “search” under the Fourth Amendment. *Id.*, citing *Pryor* at ¶ 13; *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). Reasonable suspicion that a vehicle contains drugs is not required prior to conducting a canine sniff of the vehicle during a traffic stop so long as the duration of the traffic stop is not extended beyond what is reasonably necessary to resolve the issue that led to the stop and issue a

traffic citation. *State v. Johnson*, 2d Dist. Montgomery No. 20624, 2005-Ohio-1367, ¶ 19. If a trained canine alerts to the odor of drugs from a lawfully stopped and detained vehicle, an officer has probable cause to search the vehicle for contraband. *State v. Heard*, 2d Dist. Montgomery No. 19323, 2003-Ohio-1047, ¶ 17.

{¶ 11} Appellate review of a decision on a motion to suppress presents a mixed question of law and fact. A court of appeals reviews de novo a trial court's legal conclusions with respect to a motion to suppress, but defers to its factual findings so long as the findings are supported by competent, credible evidence. *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994); *State v. Rhines*, 2d Dist. Montgomery No. 24203, 2011-Ohio-3615, ¶ 16.

{¶ 12} At the suppression hearing, Officer Soutar testified that he stopped the white Cadillac at 2:07 p.m. on March 4, 2014, to investigate "fictitious tags," because the tags came back as registered to a white Ford sports utility vehicle; he suspected the Cadillac may have been stolen. Matthews, the passenger in the vehicle, claimed to have recently purchased it, but could offer no proof of this claim. The title he produced from the glove box named Russell Smith and Michael Cotterman.

{¶ 13} Soutar questioned the driver and Matthews separately; the driver, Butcher, was placed in the cruiser, and Matthews remained in the Cadillac. The men gave inconsistent accounts of the purpose of their trip. Soutar observed that Matthews was nervous and fidgeting and would not make eye contact. "He was * * * constantly looking around inside of the vehicle; not like he was looking for something but almost like -- what was visible." These behaviors caused Soutar to believe that "something was going on other than just a minor registration violation." Officer Rismiller, the "officer in charge that

day,” arrived at approximately 2:12 p.m. Soutar called for a canine unit while he continued to investigate the ownership of the vehicle.

{¶ 14} Officer Soutar testified that towing a vehicle is “typical” procedure where ownership cannot be established and there is concern about whether it has been stolen. After Officer Rismiller arrived, Soutar and Rismiller were discussing the situation “in the vicinity of” Matthews (near his car window). Matthews overheard a reference to towing the car and asked the officers not to tow it. In an effort “to cut Matthews a break,” Soutar tried “to investigate the ownership issue more, rather than just telling him I’m towing it and have the owner come pick it up.” Soutar testified that, if he could have verified Matthews’s claim of ownership, he would not have had to tow the vehicle.

{¶ 15} During the traffic stop, Officer Soutar determined within a few minutes that the Cadillac had not been reported stolen and that Butcher and Matthews had “drug histories.” The determination that the Cadillac had not been reported stolen did not dispel Soutar’s concern; he testified that, if a car has very recently been stolen, the owners may not yet have reported it. In response to Matthews’s request that the car not be towed, Soutar attempted, through the dispatcher, to find a telephone number for Cotterman. The dispatcher reported that the number he or she found had been disconnected. Matthews then gave Officer Soutar a cell phone number, which he claimed to be Cotterman’s number, but no one could be reached at that number.

{¶ 16} The last of the calls to Cotterman’s phone numbers was completed at 2:29 p.m. Soutar testified that he was still talking with Matthews about the title at this time, advising him that “you can’t just take tags off another vehicle and stick them on.” Soutar learned that an Ohio State Highway Patrol canine unit was on its way, and he asked

Matthews to step out of the Cadillac. Up to this time, Soutar stated that there had been no “downtime” in his investigation; he had been talking with Matthews about the title and attempting to contact the alleged prior owner. He denied that he had been “just waiting for the dog.” He was explaining to Matthews that it is impermissible to move tags from one vehicle to another, and Matthews continued to ask that his car not be towed. There is no indication from Soutar’s testimony that a citation had yet been written at this time. There is also no suggestion that Soutar ever wavered in his intention to tow the vehicle if ownership could not be established. Soutar testified that they had “hit a wall” in getting information about the title and ownership of the vehicle, since none of the available phone numbers for Cotterman was working.

{¶ 17} The canine unit arrived at 2:40 p.m., 33 minutes after the traffic stop. The dog alerted on the “rear of the trunk of the Cadillac.” The canine officer and Soutar then searched the Cadillac; they found cocaine in the center console and in Matthews’s jacket, which was still inside the car. Matthews was cited for “fictitious registration” and a complaint was filed for possession of drugs.

{¶ 18} On cross-examination, Soutar testified that an average stop for fictitious plates usually lasts 20 to 25 minutes. Soutar estimated that the traffic stop of Matthews had been extended by approximately 22 minutes due to Matthews’s requests that the car not be towed and Soutar’s attempts to accommodate that request by finding the owner or determining whether Matthews had permission to be driving the vehicle. Soutar’s computer search had verified that the license plates belonged to Matthews, but the plates were on the wrong car. Soutar stated that, in the absence of verification of ownership, he intended to follow his typical procedure and tow the car, which would have resulted in an

inventory search of the vehicle.

{¶ 19} The trial court concluded that, “[g]iven the issues that confronted the officer, including the potential that the vehicle may have been stolen, and the indicators that caused Soutar to believe that criminal activity may be present, and the defendant’s insistence that the vehicle not be towed, * * * the delay in waiting for the drug dog was not unreasonable.” The court further found that Soutar had diligently investigated the facts as they unfolded, and that the length of detention was reasonable under all of the circumstances. It denied the motion to suppress.

{¶ 20} Based on the evidence presented in this case, the trial court reasonably concluded that Officer Soutar had not extended the amount of time required for the issuance of a citation for fictitious plates for the purpose of allowing the canine unit to arrive, thereby violating Matthews’s constitutional rights. Matthews repeatedly requested that Officer Soutar not tow the vehicle, as he would normally do; Soutar attempted to accommodate this request by making additional efforts to contact the titled owner. The fact that Matthews’s behavior aroused suspicion on the part of Officer Soutar does not undercut Soutar’s legitimate investigation of the ownership of the vehicle, at Matthews’s request. The majority of the elapsed time was attributable to this investigation, and Soutar had not yet issued the citation or arranged for the tow when the canine unit arrived.

{¶ 21} Matthews points out that, on cross-examination, Officer Soutar answered affirmatively when asked whether Matthews “was going to be detained for the K-9 unit” “regardless of whether [the Cadillac] was stolen.” Soutar then reasserted that he had “never found anything about the title.” Although this testimony suggests that, under

different circumstances, Soutar might have improperly detained Matthews beyond the resolution of the title issue, it does not establish that he did so in this case. This testimony did not provide a basis to suppress the evidence against Matthews.

{¶ 22} The first assignment of error is overruled.

{¶ 23} The second assignment of error states:

The trial court erred in overruling Appellant's Motion to Suppress in that probable cause to search the vehicle did not exist in that the State provided no evidence that the drug dog was properly trained or certified so as to establish the drug dog's reliability.

{¶ 24} Matthews claims that probable cause for the search of the Cadillac was lacking because the State offered no evidence at the suppression hearing that the "drug dog" was properly trained or reliable. In response, the State asserts that Matthews waived this argument because it was not raised in his motion to suppress. In his reply brief, Matthews cites several cases and contends that he sufficiently raised this issue under Crim.R. 47.

{¶ 25} Pursuant to Crim.R. 47, a motion to the court must "state with particularity the grounds upon which it is made and shall set forth the relief or order sought." This rule encompasses motions to suppress evidence. *State v. Demus*, 192 Ohio App.3d 181, 2011-Ohio-124, 948 N.E.2d 508, ¶ 13-14 (2d Dist.). If a motion to suppress fails to state a particular basis for relief, that issue is waived and cannot be argued on appeal. *Id.*, citing, for example, *State v. Cullins*, 2d Dist. Montgomery No. 21881, 2007-Ohio-5978, ¶ 10; *State v. Carter*, 2d Dist. Montgomery No. 21999, 2008-Ohio-2588, ¶ 20. "The prosecutor must know the grounds of the challenge in order to prepare his case, and the

court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the merits. Therefore, the defendant must make clear the grounds upon which he challenges the submission of evidence pursuant to a warrantless search or seizure. Failure on the part of the defendant to adequately raise the basis of his challenge constitutes a waiver of that issue on appeal.” (Citations omitted.) *Xenia v. Wallace*, 37 Ohio St.3d 216, 218, 524 N.E.2d 889 (1988).

{¶ 26} Matthews’s motion to suppress made no reference to the dog’s or the dog handler’s qualifications and/or training. The trial court accurately characterized the motion as follows: “The motion to suppress raises the single issue of the delay and resulting detention of the defendant while waiting for a drug dog to arrive at the scene to perform a ‘drug sniff.’” The State correctly asserts that Matthews did not raise any issue with respect to the dog’s or handler’s qualifications or training in his motion and, thus, that he waived this argument.

{¶ 27} Matthews contends in his reply brief that he “raised the issue of probable cause,” and that doing so was sufficient to preserve the issue of the canine’s qualifications and reliability. He further asserts that he did “not have an obligation to provide the State with a blueprint of the facts which it must establish in order to support a finding of probable cause upon which the search was conducted.”

{¶ 28} Although Matthews was not required to provide a “blueprint,” he was required to state the bases for his motion “with particularity.” A general, conclusory assertion that probable cause for a search was lacking does not satisfy the factual particularity requirement of Crim.R. 47. *State v. Butt*, 2d Dist. Montgomery No. 16215, 1997 WL 568013, * 3 (Aug. 29, 1997) (holding that “simple assertions” that testing of

blood, alcohol or urine for alcohol content of a driver's blood failed to comply with administrative regulations did not satisfy "factual particularity requirement" of Crim.R. 47).

{¶ 29} The only issue raised with particularity in Matthews's motion to suppress was the officer's "continued detention" of Matthews "at the scene of the traffic stop until a drug sniffing K-9 could arrive," when the officer did not have reasonable suspicion of criminal activity or probable cause. The motion did not put the trial court or the State on notice that Matthews intended to challenge the qualifications, training, or reliability of the dog or its handler. Because Matthews's motion to suppress did not put the State on notice of his intent to raise these issues, and he did not object at the suppression hearing to Officer Soutar's testimony about the use of the dog to establish probable cause to search the vehicle, he has waived any argument regarding the dog's or handler's qualifications for purposes of this appeal. See, e.g., *State v. Rindler*, 2d Dist. Montgomery No. 19536, 2003-Ohio-2403, ¶ 10-11, and *State v. Kelley*, 2d Dist. Greene No. 93 CA 57, 1994 WL 124825 (April 13, 1994) (both finding that failure to challenge the jurisdictional authority of the arresting officer had been waived by failure to raise it with specificity); *State v. Daniel*, 2d Dist. Montgomery No. 24267, 2011-Ohio-1278, ¶ 10 (holding that defendant waived issues related to compliance with police department policy in conducting a search of an automobile when issue was not raised in motion to suppress).

{¶ 30} Moreover, Matthews arguably suffered no prejudice as a result of Soutar's call for and deployment of the canine unit. Soutar testified that his "typical" procedure, in a fictitious tags case when he is unable to verify ownership, is to tow the vehicle. Thus, in this case, the evidence supports the conclusion that Soutar would have

towed the vehicle when he was unsuccessful in ascertaining the ownership of the vehicle, and Soutar testified that officers would have inventoried the car as a routine part of having it towed. The cocaine would have been inevitably discovered during the inventory. Thus, Matthews was not prejudiced by the officers' reliance on the canine unit to establish probable cause to search the Cadillac.

{¶ 31} Matthews's second assignment of error is overruled.

{¶ 32} The judgment of the trial court will be affirmed.

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HALL, J. and WELBAUM, J., concur.

Copies mailed to:

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