[Cite as *State v. Walck*, 2003-Ohio-7340.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 02CA22
	:	
v.	:	
	:	
STEPHEN J. WALCK,	:	DECISION AND JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	**RELEASED 12/30/03**

APPEARANCES:

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EVANS, P.J.

{¶1} Defendant-Appellant Stephen J. Walck appeals the judgment of the Pickaway County Court of Common Pleas, which found him guilty of assembling chemicals to manufacture a controlled substance, a third-degree felony in violation of R.C. 2925.041. Appellant asserts

that the trial court erred in denying his motion to suppress certain evidence obtained pursuant to a search warrant.

{¶2} For the reasons that follow, we disagree with appellant and affirm the judgment of the trial court.

Trial Court Proceedings

{¶3} In August 2001, local law enforcement was conducting surveillance on a residence on York Street in Circleville, Ohio. This surveillance was being performed by law enforcement officers assigned to the U.S. 23 Pipeline Drug Task Force (Task Force). Evidently, the surveillance was initiated upon information from confidential informants, which indicated that an individual nicknamed "Viking" was producing methamphetamine in that neighborhood. The information gathered by law enforcement also indicated that "Viking" was known to regularly drive his girlfriend's blue Chevrolet Corvette.

{¶4} During this investigation, Lieutenant Randy Sanders of the Ross County Sheriff's Office and Officer Matthew Steinbrook of the Circleville Police Department, both on assignment to the Task Force, observed a blue Corvette parked behind a house on York Street. The officers learned that the Corvette was registered to a Nancy Snyder. A garage was also located behind the house. On August 28 and 29, 2001, Lieutenant Sanders and Officer Steinbrook noticed the garage windows were covered so that no one could see in. They also heard the sound of fans running inside. They further observed that the

garage door was open approximately twelve to eighteen inches from the ground. Through the open space of the garage door, the officers observed two propane tanks. In addition, while watching the residence and garage, the officers observed Defendant-Appellant Stephen J. Walck enter and exit the garage several times. Appellant was observed driving a blue Ford Probe that was registered to him.

{¶5} On August 30, 2001, Detective John James of the Fairfield County Sheriff's Office, on assignment to the Hocking-Fairfield Major Crimes Unit (Crimes Unit), was surveilling appellant and appellant's mother's residence located on Walnut Street in Lancaster, Fairfield County, Ohio, where appellant resided. Detective James observed appellant leave his mother's home carrying a five-gallon bucket and place the bucket into the rear passenger compartment of appellant's vehicle. Several items were protruding from the top of the bucket, but Detective James could not determine what those items were from his location. The detective followed appellant as he drove from the Walnut Street property to a local gas station. While following appellant, Detective James contacted local law enforcement and suggested to members of the Lancaster Police Department that they find a reason to stop appellant.

{¶6} Officer William Tolly of the Lancaster Police Department (LPD) located appellant's vehicle at the gas station and proceeded to tail appellant. During this time period, Officer Tolly was in communication with Detective James via an LPD dispatcher. Following

Detective James' suggestion, Officer Tolly continued to follow appellant, waiting for a sufficient reason to conduct a stop of appellant's vehicle. Shortly after leaving the gas station, appellant drove his vehicle into a marked school zone. Warning lights indicated to drivers that the speed limit in the zone was twenty m.p.h. While driving through the school zone, Officer Tolly paced his cruiser with appellant's vehicle. The officer's speedometer indicated that he was traveling at approximately thirty m.p.h. Officer Tolly verified his speed with his radar and then initiated a stop of appellant's vehicle for speeding.

{¶7} At 3:27 p.m. Officer Tolly stopped appellant's vehicle. The officer then approached appellant's vehicle and asked appellant for his driver license and registration. After obtaining appellant's license and registration, Officer Tolly returned to his cruiser, informed the LPD dispatcher that he had stopped appellant's vehicle, and asked that the Crimes Unit be notified of the stop. The officer also ran appellant's information through the Law Enforcement Automated Database Software (LEADS) system, checking for outstanding warrants. The check revealed no outstanding warrants for appellant.

{¶8} Shortly thereafter, another LPD officer arrived on the scene to back up Officer Tolly. Officer Tolly then returned to appellant's vehicle and interacted with him. The officer, at this point, did not issue appellant a ticket for speeding or return to appellant his license or registration. Rather, from outside the

vehicle, he tried to look into the vehicle for contraband. Appellant continued to become more irritated and requested that he be allowed to leave, so that he could get to work. During his interaction with appellant and about fifteen to twenty minutes after stopping appellant's vehicle, Officer Tolly noticed the white five-gallon bucket in the back seat. In the bucket, the officer observed two large bottles whose labels indicated that they contained acetone and hydrogen peroxide. Officer Tolly then asked appellant to exit the vehicle.

{¶9} About twenty to thirty minutes after Officer Tolly stopped appellant, four detectives from the Crimes Unit arrived at the scene in unmarked cars. Among the Crimes Unit's officers at the scene were Detective James and LPD Detective Kevin Everhart. The detectives approached appellant's vehicle and noticed the bucket and chemicals in the back seat. Officer Tolly then asked appellant if the officers could search the vehicle. Appellant consented to the search.

{¶10} Three law enforcement officers, including Officer Tolly, commenced a search of appellant's vehicle. During the search, Officer Tolly discovered a black shaving kit bag. As the officer was attempting to open the bag, appellant withdrew his consent to search the vehicle. At this point, Detective Everhart contacted the local prosecutor in order to commence the process to obtain a search warrant for appellant's vehicle.

{¶11} Based on an affidavit executed by Detective James, a search warrant for appellant's vehicle was eventually issued by the Fairfield County Municipal Court. Detective James' affidavit related the following facts: (1) a confidential informant, Tim Neff, Jr., had informed the Crimes Unit that appellant was engaged in the manufacture and sale of methamphetamine; (2) Detective James believed the confidential informant to be reliable based on previously verified information; (3) Officer Tolly stopped appellant while driving a 1990 blue Ford Probe for speeding in a school zone; (4) during the stop, Officer Tolly observed acetone and hydrogen peroxide inside the passenger compartment of the vehicle, in plain view; (5) chemicals used in the manufacture of methamphetamine include acetone and hydrogen peroxide; (6) appellant consented to a search of the vehicle, but withdrew that consent when officers began to open a bag found in the passenger compartment; and (7) Detective James believed other pre-cursor chemicals used in the manufacture of methamphetamine may be in the vehicle.

{¶12} Detective James returned to the scene of the traffic stop with the search warrant approximately one hour and ten minutes after Officer Tolly initially stopped appellant's vehicle. Pursuant to the warrant, the officers conducted the search of appellant's vehicle and discovered the following items: acetone, hydrogen peroxide, a cylinder resembling an oxygen tank, notes, tubes, and a black bag containing vials of methamphetamine. Upon discovering these items,

the Crimes Unit officers contacted the Task Force to inform it of the results of the search.

{¶13} Based in part on the items discovered in appellant's vehicle, Detective Everhart executed an affidavit and obtained a search warrant for the Walnut Street property, appellant's mother's residence from which appellant was observed carrying the bucket.

{¶14} After being advised of the traffic stop and the items discovered in appellant's vehicle, Lieutenant Sanders of the Task Force executed an affidavit in support of a search warrant for the York Street property in Circleville. The affidavit related the following: (1) the information gathered concerning "Viking"; (2) Lieutenant Sanders' and Officer Steinbrook's observations of the York Street property (i.e., garage door partially opened, propane tanks, sound of fans running in the garage, and covered windows); (3) information concerning the traffic stop and items discovered through the search of appellant's vehicle; and (4) that Nancy Snyder confirmed that appellant was using the garage for something, but that she did not know for what. The Pickaway County Juvenile Court issued the search warrant for the York Street property and the Circleville Police Department executed that warrant with assistance from the Drug Enforcement Administration and the Ohio Bureau of Criminal Identification and Investigation. Many items used in the production of methamphetamine, including chemicals and hardware, were found in the garage.

{¶15} In addition, officers discovered items tagged as belonging to appellant's employer, Berger Hospital. Among the property belonging to Berger Hospital were computers, computer peripherals and software, medical equipment and supplies, plumbing and electrical supplies, and tools. More than three hundred items belonging to the hospital were found at the garage.

{¶16} Appellant was subsequently indicted for possession of chemicals used to manufacture a controlled substance, a third-degree felony in violation of R.C. 2925.041(A), and receiving stolen property, a fourth-degree felony in violation of R.C. 2913.51. Appellant pled not guilty to the charges and subsequently filed a motion to suppress all evidence obtained following the stop of his vehicle.

{¶17} Appellant argued in his motion that all evidence obtained as a result of the traffic stop should be suppressed because the stop was not supported by a reasonable, articulable suspicion of unlawful activity. Appellant further argued that appellant's detention during the traffic stop was unreasonably extended and not supported by a reasonable, articulable suspicion and that the search of appellant's vehicle was illegal. Finally, appellant also asserted that the search warrants for the residences in Circleville and Lancaster were issued based on the evidence illegally obtained through the traffic stop. Accordingly, appellant concluded that all evidence seized

pursuant to the search warrants should be suppressed as "fruit of the poisonous tree."

{¶18} The trial court held a hearing on appellant's motion. The state presented the testimony of Officer Tolly, Detective James, Detective Everhart, Lieutenant Sanders, and Officer Steinbrook. In addition to the aforementioned facts surrounding the traffic stop and searches, Detective James testified that when he observed appellant leave his mother's residence (Walnut Street) with the bucket, he was unable to identify the items in the bucket. Detective James further testified that at the time, he did not have a reasonable, articulable suspicion or probable cause to justify stopping appellant. Furthermore, Lieutenant Sanders testified that he did not have probable cause to search the York Street garage until after the search of appellant's vehicle was done and the chemicals and other items were discovered. Accordingly, Lieutenant Sanders believed that his observations during the surveillance of the York Street property were insufficient to support a search of that property.

{¶19} The trial court denied appellant's motion to suppress, finding that the traffic stop was not impermissibly extended, that the warrant to search appellant's vehicle was valid, and that the evidence seized from the two properties was not "fruit of the poisonous tree."

{¶20} Subsequently, appellant changed his plea to the charge of assembling chemicals to manufacture a controlled substance from not

guilty to no contest. In exchange for his no contest plea, the state dismissed the charge of receiving stolen property. The trial court accepted appellant's no contest plea as having been voluntarily and knowingly made and found appellant guilty of the offense of assembling chemicals to manufacture a controlled substance. The trial court then sentenced appellant to one year incarceration.

The Appeal

{¶21} Appellant timely filed his notice of appeal and presents the following assignment of error for our review: "The trial court erred in denying Defendant's-Appellant's [sic] motion to suppress."

I. Standard of Review

{¶22} In his assignment of error, appellant challenges the trial court's denial of his motion to suppress. Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. See *State v. Long* (1998), 127 Ohio App.3d 328, 332, 713 N.E.2d 1.

{¶23} During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. See *State v. Brooks,* 75 Ohio St.3d 148, 154, 1996-Ohio-134, 661 N.E.2d 1030; *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. Accordingly, we are bound to accept the trial court's findings of facts if they are supported by competent, credible evidence. See *State v. Medcalf* (1996), 111 Ohio App.3d 142, 145, 675 N.E.2d 1268;

State v. Harris (1994), 98 Ohio App.3d 543, 546, 649 N.E.2d 7. Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. See *State v. Williams* (1993), 86 Ohio App.3d 37, 41, 619 N.E.2d 1141.

II. Scope of Traffic Stops

{¶24} When an officer witnesses a traffic violation and stops the vehicle to issue a citation, that stop must be "supported by probable cause, which arises when the stopping officer witnesses the traffic violation." *State v. Moeller* (Oct. 23, 2000), 12th Dist. No. CA99-07-128; see, e.g., *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, 665 N.E.2d 1091, syllabus ("Where a police officer stops a vehicle based upon probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment ***."); see *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769; *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 98 S.Ct. 330. Furthermore, stopping a vehicle based on probable cause that a traffic offense has occurred is not improper "even if the officer had some ulterior motive for making the stop, such as suspicion that the violator was engaging in more nefarious criminal activity." See *Dayton v. Erickson,* 76 Ohio St.3d 3, syllabus.

{¶25} In the case sub judice, Officer Tolly stopped appellant for speeding in a school zone. The stop was based on the officer's observation that appellant committed a traffic offense. Therefore,

the traffic stop was supported by probable cause. See *State v. Moeller* and *Dayton v. Erickson*, supra. Further, the fact that Officer Tolly may have had an ulterior motive (i.e., Detective James suggested finding a reason to stop appellant's vehicle) is immaterial and has no bearing on whether the stop was legal. See *Dayton v. Erickson*, supra. In other words, the fact that the stop was pre-textual is irrelevant to the issue of whether the stop was proper.

{¶26} Since the traffic stop was supported by probable cause, we must turn our attention to the issue of whether the stop was impermissibly extended beyond its initial scope. "[O]nce an officer lawfully stops an individual, the officer must carefully tailor the scope of the stop 'to its underlying justification.' *Florida v. Royer* (1983), 460 U.S. 491, 500, 103 S.Ct. 1319[]; see, also, *State v. Gonyou* (1995), 108 Ohio App.3d 369, 372, 670 N.E.2d 1040[]; *State v. Birchfield* (Aug. 26, 1997), Ross App. No. 97CA2281. Additionally, the length of the stop must 'last no longer than is necessary to effectuate the purpose of the stop.' *Royer,* 460 U.S. at 500[]. The rule set forth in *Royer* is designed to prevent law enforcement officers from conducting 'fishing expeditions' for evidence of a crime. See *Gonyou,* supra; *Sagamore Hills v. Eller* (Nov. 5, 1997), Summit App. No. 18495." *State v. Snyder*, Vinton App. No. 02CA575, 2003-Ohio-2039, at ¶16-17.

{¶27} Nevertheless, an officer may "expand the scope of the stop and may continue to detain the individual without running afoul of

Royer if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *State v. Snyder*, supra (citing *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868; *State v. Robinette*, 80 Ohio St.3d 234, 240, 1997-Ohio-343, 685 N.E.2d 762; *State v. Retherford* (1993), 93 Ohio App.3d 586, 601, 639 N.E.2d 498).

{¶28} In *State v. Robinette*, the Supreme Court of Ohio held: "When a police officer's objective justification to continue detention of a person stopped for a traffic violation for the purpose of searching the person's vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure." Id. at paragraph one of the syllabus.

{¶29} Accordingly, if a law enforcement officer, during a valid investigative stop, ascertains "reasonably articulable facts giving rise to a suspicion of criminal activity, the officer may then further detain and implement a more in-depth investigation of the individual." Id., 80 Ohio St.3d at 241; see, also, *State v. Spindler*, Ross App. No. 01CA2624, 2002-Ohio-2037.

{¶30} "In [*Robinette*], a police officer stopped Robinette for speeding and issued a warning. As the police officer returned Robinette's driver's license, he inquired as to whether or not

Robinette was transporting contraband in his vehicle. Robinette said he was not, and the police officer then asked Robinette if he could search the vehicle. Later, Robinette testified that he was surprised by the question and automatically answered yes, since he did not feel as if he had a choice. Upon these facts, the Ohio Supreme Court determined that, because the police officer had no reasonable articulable suspicion to detain Robinette after the traffic stop was complete, the detention was unlawful. Thereafter, the court found that the totality of the circumstances did not suggest that Robinette submitted to the search by his own free will, but rather submitted because he thought he had to." *State v. Martinez*, 3rd Dist. No. 9-02-57, 2003-Ohio-1821 (discussing *Robinette*).

{¶31} In *State v. Anderson* (1995), 100 Ohio App.3d 688, 654 N.E.2d 1034, this Court addressed a situation similar to the one found in *Robinette*. In determining that the officer in *Anderson* violated the defendant's Fourth Amendment rights, this Court noted that the officer extended the traffic stop by asking the defendant questions regarding contraband after having issued him a warning for excessive window tinting. See id.

{¶32} In *State v. Snyder*, supra, however, this Court found that an officer's continued detention to investigate whether the defendant's vehicle was overloaded was supported by reasonable, articulable facts. Accordingly, we concluded that the continued

detention in order to weigh the vehicle did not violate the defendant's Fourth Amendment rights. See id.

{¶33} In the case sub judice, Officer Tolly stopped appellant for speeding. However, the stop was motivated by a call from the Crimes Unit suggesting that Officer Tolly find a reason to stop the vehicle. Officer Tolly had no knowledge concerning the reasons for the Crimes Unit's suggestion that he find a reason to stop the vehicle. After stopping appellant, Officer Tolly approached the vehicle and asked appellant for his driver's license, registration, and proof of insurance. After obtaining the requested documentation, Officer Tolly returned to his cruiser to run the information through LEADS. When nothing turned up, the officer did not issue a citation, but returned to talk with appellant in hopes of discovering some basis to permit a search of the vehicle without a warrant and to delay appellant's departure until other officers arrived. During this second visit to appellant's vehicle, approximately fifteen minutes after the stop was initiated, Officer Tolly noticed the bucket and chemicals in the back seat.

{¶34} In *State v. Robinette*, the Supreme Court of Ohio's holding specifies that a continued detention after a traffic stop is illegal if it is for the purpose of seeking permission to search the vehicle. See *State v. Robinette*, 80 Ohio St.3d 234, at paragraph one of the syllabus. However, briefly continuing the detention is not illegal if it is confined to questioning concerning illegal drugs or weapons.

See id. at 241. Furthermore, when the goals of a traffic stop (i.e., issuance of a ticket or warning) have not been met at the time of the questioning unrelated to the stop, the stop is not unreasonably extended. See *State v. Lippmeier*, 117 Ohio Misc.2d 66, 2002-Ohio-1731, 767 N.E.2d 796.

{¶35} In light of all the circumstances surrounding the stop of appellant's vehicle, we do not find that Officer Tolly's continued detention of appellant was unreasonable or illegal. While the officer's delay in issuing the ticket was intended to prevent appellant's departure, Officer Tolly observed the chemicals and bucket in the back seat approximately fifteen minutes after stopping appellant. The officer's observation of the chemicals in the vehicle, in addition to the surrounding circumstances, provided Officer Tolly a reasonable basis to continue his investigation. The investigation first involved the consensual search of the vehicle, which the officers ceased when appellant withdrew his consent. The investigation resumed when a search warrant for the vehicle was obtained within a relatively short period of time.

{¶36} Furthermore, appellant does not challenge the validity of the search warrants except to argue that they were obtained as a result of the "illegal" extension of appellant's traffic stop. Since we have determined that the stop and subsequent investigation was valid, it is unnecessary for us to review the issuance of the search warrants.

{¶37} Therefore, appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

Judgment affirmed.

Abele, J., and Kline, J.: Concur in Judgment Only.

FOR THE COURT

BY: _____
David T. Evans
Presiding Judge