[Cite as *State v. Davis*, 2016-Ohio-3539.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 15CA26
v.	:	DECISION AND JUDGMENT ENTRY
JESSICA LYNN DAVIS,	:	
Defendant-Appellant.	:	RELEASED: 06/14/2016

APPEARANCES:

Timothy Young, Ohio Public Defender and Eric M. Hedrick, Assistant State Public Defender, Columbus, Ohio for appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney and Merry M. Saunders, Athens County Assistant Prosecuting Attorney, Athens, Ohio for appellee.

Hoover, J.

{¶ 1} Defendant-appellant Jessica L. Davis ("Davis") appeals the judgment of the Athens County Common Pleas Court, denying her motion to suppress. Davis had argued that her consent to search her vehicle following a traffic stop was obtained during the course of an illegal detention and was therefore invalid. After the trial court denied her motion to suppress, Davis pleaded no contest to the five offenses included in the indictment against her. The trial court found Davis guilty of the offenses and sentenced Davis to an aggregate total of four years and eleven months in prison.

{¶ 2} Here on appeal, Davis presents one assignment of error asserting that the trial court erred by failing to suppress the evidence found as a result of the officer's illegal search and seizure in violation of her rights under the Fourth Amendment of the United States Constitution.

Davis contends that the officer unlawfully detained her without reasonable suspicion after he completed all tasks related to the traffic stop, rendering any consent invalid. Davis also argues that any consent to search her vehicle did not extend to a search of her, her passengers, or her purse.

{¶ 3} For the reasons more fully discussed below, we find that the trial court properly denied Davis's motion to suppress. Therefore, we overrule Davis's assignment of error; and we affirm the judgment of the Athens County Common Pleas Court.

I. Facts and Procedural Posture

{¶ 4} In January 2015, the Athens County Grand Jury indicted Davis on one count of identity fraud, a fifth degree felony, in violation of R.C. 2913.49(B)(1), one count of possession of cocaine, a fifth degree felony, in violation of R.C. 2925.11(A), one count of possession of heroin, a fifth degree felony, in violation of R.C. 2925.11(A), and two counts of possession of drugs, fifth degree felonies, in violation of R.C. 2925.11(A). These charges stemmed from a search of Davis's vehicle following a traffic stop that occurred on August 19, 2014.

{¶ 5} In April 2015, Davis, through counsel, filed a motion to suppress all the evidence obtained as the result of the search. In the motion, Davis argued that her consent to search the vehicle was obtained during the course of an illegal detention and was therefore invalid. The trial court held a hearing on Davis's motion to suppress in June 2015.

{¶ 6} Sergeant Kevin Lemon ("Lemon") of the Glouster Police Department was the only witness to testify at the suppression hearing. Lemon testified that on August 19, 2014, he was on patrol when he noticed a "little gray car" parked in front of a suspected drug dealer's house. Lemon then parked his cruiser nearby at the bottom of a hill on North Street. Then, Lemon observed the same "little gray car" turn left onto North Street. Lemon did not observe an

activated turn signal as the vehicle turned. Lemon began to follow the vehicle. Lemon observed the vehicle make several turns without displaying a turn signal. Lemon stopped the vehicle and proceeded to complete routine traffic stop procedures.

{¶ 7} Defendant-appellant Davis was the driver of the vehicle. Davis had two passengers riding with her, Garnett DeCoursey ("DeCoursey") and Harold Spears ("Spears"). DeCoursey was sitting in the front passenger seat, while Spears was sitting in the backseat of the vehicle. Davis did not provide Lemon with a driver's license. Instead, Davis provided Lemon with a social security number. However, Lemon testified that he later found out that the social security number belonged to someone named Kathy Smith. Lemon testified that he knew DeCoursey and that Spears provided him with a prison identification. Upon checking their information, Lemon did not find any outstanding warrants.

{¶ 8} Davis, DeCoursey, and Spears remained in the car during this time. Lemon returned to Davis's vehicle, issued a warning to Davis regarding the turn signals, and told her that she was "good to go." Then, Lemon asked them if they had anything they should not have. Lemon also asked for their consent to search. Specifically, Lemon testified to the following:

Lemon: I walked back up, gave Mr. Spears his I.D. And I had told her [Davis] that I was not going to cite her for the, for the turn signal offenses and gave her a warning for that, told her she was good to go.

State: Okay. And after you said that what did you do next?

Lemon: I told them while we're here do you have anything on you that you shouldn't have. And they replied that it was not their car so if there was anything in there it wouldn't have been theirs. I said, that's

fine but is it okay if I look. And all three of them had consented to it.

{¶ 9} During cross-examination, Lemon provided the following testimony:

Counsel: Okay. And you told the driver that you were only giving her [Davis] a warning and you weren't going to give her a ticket.

Lemon: Correct.

Counsel: And you told her at that point she was free to go.

Lemon: Yes.

Counsel: And you followed that up by asking whether or not there was [sic] any illegal materials in the car.

Lemon: Yes.

Counsel: And you followed that up by asking for consent to search.

Lemon: Yes.

Counsel: Okay. And the, and everybody in the car consented to allow you to search?

Lemon: Yes.

{¶ 10} Lemon denied ever threatening anyone in the vehicle. Once Lemon obtained consent to search, he began by searching each of the occupant's person. Lemon found a partial orange pill in Spears's "right digital pocket." Spears told Lemon that he did not have a prescription. Lemon then placed Spears inside his police vehicle. Lemon did not find anything on either Davis or DeCoursey.

{¶ 11} Next, Lemon searched the vehicle. Lemon testified to the following:

Lemon: * * *And then I continued to search the car where a lot of other paraphernalia and pills and things like that were found.

State: Okay. Do you recall where you found them in the vehicle?

Lemon: * * *I believe after the pill I had started in the back where he [Spears] was and I found, I believe it was a syringe in a baggie with a bunch of different pills in it.

State: Okay.

Lemon: And then in the front where the two females [Davis and DeCoursey] were in the center console there was a black hoodie jacket, something like that. It had a syringe in the pocket. And then the purse on the passenger front floorboard had a lot of different drug items in it.

State: Okay. And this, and who did you learn was the owner of that purse?

Lemon: Ms. Davis.

{¶ 12} When the search was completed, Lemon drove Spears back to the police station in his cruiser, while Davis and DeCoursey followed them in the other vehicle. Lemon testified that prior to telling Davis that she was "good to go," the stop had lasted approximately five minutes. Lemon testified that both Davis and DeCoursey were cooperative. Lemon also testified that during the search nothing was said indicating that the consent was revoked. At the police station, Lemon conducted interviews with the three individuals. Lemon then instructed them that the items from the vehicle were going to be sent to the Ohio Bureau of Criminal Investigations ("BCI") for chemical testing. Davis, Spears, and DeCoursey were released thereafter.

{¶ 13} At the conclusion of the suppression hearing, the trial court heard final arguments from the State and Davis's counsel. Afterwards, the trial court stated on the record:

> * * *it appears to the Court that there was clearly reasonable articulable suspicion for the initial stop based upon the numerous traffic violations which were witnessed by Sergeant Lemon. And once the stop was completed and the identification returned to the folks in the car the testimony was clearly that the officer indicated that the Defendant was free to go at that point. And at that point he then asked after that for consent to search. However, the Defendant being free to go at that point obviously this did not trigger any sort of requirement for Miranda and this was not a continuation of an illegal detention. The defense states correctly that had this been an illegal initial stop then anything that would have flowed after that in terms of consent would have been poisoned by the illegal nature of the conduct. That's not the case that's been presented to the Court in this case where there is no, or where it appears that this was very much a legal stop. So any request for consent once that stop had been completed and once the Defendant was told she was free to go would have been entirely appropriate. And once consent was given I see no constitutional violation that had taken place by Officer Lemon. So given all of the testimony that was presented here the Court will deny the motion to suppress. * * *

We note that the trial court did not file a corresponding judgment entry, journalizing the court's decision.

{¶ 14} Thereafter, Davis entered a plea of no contest to all five counts in the indictment. In exchange for Davis's plea of no contest, the State agreed to recommend a sentence of four

years and eleven months in prison for all counts and to not oppose judicial release after six months into a Community Based Correctional Facility pending a favorable institutional report. The trial court accepted Davis's plea and found her guilty of the indicted offenses.

{¶ 15} The trial court sentenced Davis to an aggregate sentence of four years and eleven months in prison, as well as a suspension of her operator's license for six months.[1] In August 2015, the trial court filed a nunc pro tunc judgment entry correcting an earlier judgment entry that mistakenly stated that Davis had pleaded guilty to the indicted counts. The nunc pro tunc judgment entry corrected the earlier entry by stating that Davis had in fact pleaded no contest.

{¶ 16} Davis now presents this timely appeal.

II. Assignment of Error

{¶ 17} Davis presents the following assignment of error for our review:

> The trial court erred by failing to suppress the drugs obtained as a result of an illegal seizure and search in violation of Ms. Davis's rights under the Fourth Amendment to the U.S. Constitution and Article I, Section 14 of the Ohio Constitution. * * *

III. Appellate Review of a Decision on a Motion to Suppress

{¶ 18} Usually, appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Gurley*, 4th Dist. Scioto No. 14CA3646, 2015-Ohio-5361, ¶ 16, citing *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100. At a suppression hearing, the trial court acts as the trier of fact and is in the best position to resolve factual questions and evaluate witness credibility. *Id*.; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Thus, when reviewing a ruling on a motion to suppress, we defer

[1] The trial court sentenced Davis to twelve months in prison for counts one through four and eleven months for count five, to be served consecutively to each other.

to the trial court's findings of fact if they are supported by competent, credible evidence. *Gurley* at ¶ 16, citing *State v. Landrum*, 137 Ohio App.3d 718, 722, 739 N.E.2d 1159 (4th Dist.2000). However, "[a]ccepting those facts as true, we must independently determine whether the trial court reached the correct legal conclusion in analyzing the facts of the case." *Id*., citing *Roberts* at ¶ 100.

{¶ 19} Here, the trial court did not file a judgment entry journalizing its decision to deny Davis's motion to suppress. At the conclusion of the suppression hearing, the trial court did announce its intention to deny the motion. When a trial court fails to rule on a motion, we presume that the court overruled the motion. *State v. Dickess*, 174 Ohio App.3d 658, 667, 2008-Ohio-39, 884 N.E.2d 92 (4th Dist.). Accordingly, the record and the trial court's explanation for its intention to deny Davis's motion at the suppression hearing are adequate to provide a full review of the suppression issues. *See State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, 822 N.E.2d 1239, ¶ 96.

IV. Law and Analysis

{¶ 20} In her assignment of error, Davis asserts that the trial court erred in denying her motion to suppress the evidence obtained as a result of a warrantless search, following a traffic stop. Within her assignment of error, Davis sets forth the following arguments. First, Davis contends that Lemon unlawfully extended her detention after he completed all tasks relating to the traffic stop. Davis asserts that once Lemon completed the stop by issuing her a warning, his authority to seize her ended.

{¶ 21} Next, Davis asserts that absent reasonable suspicion, an officer may not extend a traffic stop to engage in a criminal investigation. Davis argues that Lemon lacked such reasonable suspicion. Davis avers that the only reason, outside of the turn signal violations, that

Lemon took an interest in her car was because, as he testified, it was parked in front a suspected drug dealer's house. According to Davis, this was not enough to establish reasonable suspicion that she had committed a crime. Davis argues that because Lemon unlawfully prolonged the stop, her consent to search was invalid.

{¶ 22} Lastly, Davis argues that any consent to search the vehicle did not extend to her, her passengers, or her purse. Davis claims that Lemon did not communicate what he wanted to look for prior to asking if he could search her vehicle. Thus, Davis contends, a reasonable person would not have understood Lemon's request to look in the car to include searching the contents of her purse.

{¶ 23} In rebuttal, the State argues that the trial court did not err by denying Davis's motion to suppress. The State asserts that the facts in *State v. Fry*, 4th Dist. No. 03CA26, 2004-Ohio-5747, are analogous to the case here. The State contends that based on the totality of the circumstances, even though the traffic stop was completed, Davis and the other occupants of the vehicle voluntarily consented to the search of the vehicle. The State further contends that because Davis's purse was located within the vehicle, Lemon's search of the purse was not in error.

{¶ 24} "The Fourth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, provides: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.' " *State v. Eatmon*, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, ¶ 11. "Section 14, Article I of the Ohio Constitution also prohibits unreasonable searches and seizures." *Id.* "Because Section

14, Article I and the Fourth Amendment contain virtually identical language, the Supreme Court of Ohio has interpreted the two provisions as affording the same protection." *Id.*, citing *State v. Orr*, 91 Ohio St.3d 389, 391, 745 N.E.2d 1036 (2001).

{¶ 25} "Searches and seizures conducted without a prior finding of probable cause by a judge or magistrate are per se unreasonable under the Fourth Amendment, subject to only a few specifically established and well-delineated exceptions." *Id*. at ¶ 12, citing *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). " 'Once the defendant demonstrates that he was subjected to a warrantless search or seizure, the burden shifts to the [S]tate to establish that the warrantless search or seizure was constitutionally permissible.' " *Id*., quoting *State v. Smith*, 4th Dist. Ross No. 12CA3308, 2013-Ohio-114, ¶ 12.

{¶ 26} In the case sub judice, it is clear that Lemon did not obtain a warrant prior to the search of Davis's vehicle.

A. Davis Voluntarily Consented to the Search

{¶ 27} Typically, "[w]hen 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. Aguirre*, 4th Dist. Gallia No. 03CA5, 2003-Ohio-4909, ¶ 36, citing *State v. Carlson*, 102 Ohio App.3d 585, 598, 657 N.E.2d 591 (9th Dist.1995). However, "[a]n officer may expand the scope of the stop and may continue to detain the vehicle without running afoul of the Fourth Amendment if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *State v. Rose*, 4th Dist. Highland No. 06CA5, 2006-Ohio-5292, ¶ 17, citing *State v. Robinette*, 80 Ohio St.3d

234, 240, 685 N.E.2d 762 (1997). The *Robinette* court explained, at paragraph one of the syllabus:

> When a police officer's objective justification to continue detention of a person * * * 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.
>
> Conversely, "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.' "

Rose at ¶ 17, quoting *Robinette* at 241.

{¶ 28} In her appellate brief, Davis specifically cites the United States Supreme Court's recent decision of *Rodriguez v. United States*, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) as outlining the limits the Fourth Amendment places on the duration and scope of a traffic stop. It is Davis's contention that, pursuant to *Rodriguez*, when Lemon concluded his traffic stop tasks, his authority for the seizure of her and her vehicle ended.

{¶ 29} In *Rodriguez*, a police officer issued a written warning to the defendant Rodriguez during a traffic stop. *Id* at 1613. After the officer returned Rodriguez's information and " '* * *got all the reason[s] for the stop out of the way[,]* * *' " the officer asked for permission to walk his dog around Rodriguez's vehicle. *Id*. After Rodriguez refused to consent to the request, the officer instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for a second officer to arrive with a dog. *Id*. The dog later conducted a sniff and

alerted to the presence of drugs in the vehicle. *Id.* A search of the vehicle revealed a large bag of methamphetamine. *Id.*

{¶ 30} The United States Supreme Court held that while a police officer "may conduct certain unrelated checks during an otherwise lawful traffic stop * * * he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Id*. at 1615. Accordingly, the Court concluded that police officers may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. *Id*. at 1614-1617.

{¶ 31} This case is factually distinguishable from *Rodriguez*. In *Rodriguez*, the officer asked the defendant if he would allow a dog to conduct a sniff of the defendant's vehicle. Although Rodriguez refused, the officer still held Rodriguez until a dog conducted a sniff of the vehicle. Here, after Lemon completed the traffic stop by issuing a warning to Davis and telling her that she was "good to go," he asked for her consent to search. According to Lemon's suppression hearing testimony, Davis and her passengers all consented to a search. Lemon extended his stop of Davis and her passengers only because he gained consent to do so. Although *Rodriguez* offers guidance on the issue of the legality of an officer's extension of a traffic stop, its holding does not provide us with complete resolution of all the issues before us here. Beyond deciding whether Lemon illegally detained Davis in order to obtain consent to search her vehicle, we must also determine whether Davis *voluntarily* consented to a search.

{¶ 32} One well-established exception to the warrant requirement is the consent search. Thus, no Fourth Amendment violation occurs when an individual voluntarily consents to a search. *See United States v. Drayton*, 536 U.S. 194, 207, 122 S.Ct. 2105 (2002) (stating that "[p]olice officers act in full accord with the law when they ask citizens for consent");

Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S.Ct. 2041 (1973) ("[A] search conducted pursuant to a valid consent is constitutionally permissible"); *State v. Comen*, 50 Ohio St.3d 206, 211, 553 N.E.2d 640 (1990). Consent to a search is "a decision by a citizen not to assert Fourth Amendment rights." Katz, Ohio Arrest, Search and Seizure (2004 Ed.), Section 17:1, at 341. In *Schneckloth*, the United States Supreme Court acknowledged the importance of consent searches in police investigations and noted that "a valid consent may be the only means of obtaining important and reliable evidence" to apprehend a criminal. *Id*. at 227-228.

{¶ 33} The circumstances here are analogous to those presented to this court in *State v. Fry*, 4th Dist. Jackson No. 03CA26, 2004-Ohio-5747 (where this Court held that assuming defendant was illegally detained by police officer following traffic stop, when officer asked defendant for consent to search defendant's vehicle, such illegal detention did not render defendant's consent to search invalid given that the consent was voluntary). In *Fry*, an officer asserted that he obtained consent to search defendant's vehicle after the officer issued a warning for not having an illuminated headlight and a citation for failing to wear a seatbelt. *Id*. at ¶ 4. The defendant in that case, Fry, testified at the suppression hearing that he did not give consent to the officer. *Id.* at ¶¶ 6-9. Fry also testified that he felt intimidated by the officer. *Id*. at ¶ 9. The trial court made a factual determination that the officer advised Fry that the traffic stop was completed and that he was free to leave before requesting Fry's consent to search. *Id.* at ¶ 10. On appeal, Fry argued that the officer discovered evidence during an illegal detention and that he never consented to the search of his vehicle. *Id.* at ¶ 15.

{¶ 34} During our analysis in *Fry*, this Court assumed that the officer's brief detention to ask for consent was illegal. *See Fry* at ¶ 19 ("Fry contends that once the purpose of the initial stop was completed, the trooper's continued questioning amounted to an illegal detention.

Accordingly, we will assume without deciding that briefly detaining Fry to ask for his consent was illegal.") That is because "* * * the fact the detention was illegal does not per se render the consent invalid." *Id.* "Voluntary consent, determined under the totality of the circumstances, may validate an otherwise illegal detention and search." *Robinette,* 80 Ohio St.3d at 241, 685 N.E.2d 762, citing *Davis v. Unites States*, 328 U.S. 582, 593-594, 66 S.Ct. 1256, 90 L.Ed. 1453 (1946).

{¶ 35} In *Robinette,* the Ohio Supreme Court stated that an officer is justified in briefly detaining a person in order to ask if they are carrying any illegal drugs or weapons, because such a policy promotes the public interest in quelling the drug trade. *Id.* at 241, citing *Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) and *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979). However, the Court also found that without obtaining reasonably articulable facts giving rise to a suspicion of criminal activity, an officer is not justified in detaining a defendant in order to ask for and execute a search. *Robinette* at 241. Even though the Court determined that the officer unlawfully detained the defendant in order to ask for permission to search his car, its analysis was not complete. *Id.*

{¶ 36} Here, Davis contends that Lemon did not have reasonable suspicion to continue her detention after the traffic stop was complete. The State does not contend that Lemon possessed any reasonable suspicion to prolong the traffic stop. Therefore, as we did in *Fry,* we can assume that Lemon's continued detention was illegal. Accordingly, we must now examine whether or not Davis's subsequent consent validated Lemon's otherwise illegal detention.

{¶ 37} "An individual's voluntary consent, determined under the totality of the circumstances, may validate an illegal detention and subsequent search if the consent is an 'independent act of free will.' " *Fry* at ¶ 19, quoting *Royer* at 501-502. "For an unlawfully detained individual's consent to be considered an independent act of free will, 'the totality of the

circumstances must clearly demonstrate that a reasonable person would believe that he or she had the freedom to refuse to answer further questions and could in fact leave.' " *Fry* at ¶ 19, quoting *Robinette* at paragraph three of the syllabus. "This is an objective test, and the proper inquiry 'is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.' " *Fry* at ¶ 19, quoting *Florida v. Bostick,* 501 U.S. 429, 436, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991).

{¶ 38} "Whether an individual voluntarily consented to a search is a question of fact, not a question of law." *Fry* at ¶ 21, citing *Ohio v. Robinette,* 519 U.S. 33, 40, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996); *Schneckloth,* 412 U.S. at 219, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *Robinette,* 80 Ohio St.3d at 248-249; *State v. Southern,* 4th Dist. Ross No. 00CA2541, 2000-Ohio-2027. Here, the trial court stated at the suppression hearing that "* * *once consent was given I see no constitutional violation that had taken place by Officer Lemon." Although the trial court did not state that it found the consent was "voluntary," its statement during the suppression hearing implies as much. *See State v. Stepp,* 4th Dist. Scioto No. 09CA3328, 2010-Ohio-3540, ¶ 28.

{¶ 39} Thus, we review the court's finding that Davis voluntarily consented to the search under the weight of the evidence standard. *Fry* at ¶ 22. "Even though the state's burden of proof is "clear and convincing," this standard of review is highly deferential and the presence of only "some competent, credible evidence" to support the trial court's finding requires us to affirm it." *Fry* at ¶ 22, citing *State v. Schiebel,* 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

{¶ 40} Important factors for the trial court to consider in determining whether a consent was voluntary include: (1) the suspect's custodial status and the length of the initial detention; (2) whether the consent was given in public or at a police station; (3) the presence of threats,

promises, or coercive police procedures; (4) the words and conduct of the suspect; (5) the extent and level of the suspect's cooperation with the police; (6) the suspect's awareness of his right to refuse to consent and his status as a "newcomer to the law"; and (7) the suspect's education and intelligence. *See Schneckloth* at 248-249.

{¶ 41} "However, an individual's knowledge of the right to refuse consent 'is not a prerequisite of a voluntary consent.' " *Fry* at ¶ 24, quoting *Schneckloth* at 234. "Rather, it must be determined if a person felt compelled to submit to the officer's questioning in light of the police officer's superior position of authority." *Fry* at ¶ 24, citing *Robinette*, 80 Ohio St.3d at 244-245. " 'The Court has rejected in specific terms the suggestion that police officers must always inform citizens of their right to refuse when seeking permission to conduct a warrantless consent search.' " *Fry* at ¶ 24, quoting *Drayton*, 536 U.S. at 206, 122 S.Ct. 2105, 153 L.Ed.2d 242 (2002), citing *Ohio v. Robinette*, 519 U.S. 33, 39-40, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996).

{¶ 42} We are cognizant that "[t]he transition between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred. The undetectable transition may be used by police officers to coerce citizens into answering questions that they need not answer, or to allow a search of a vehicle that they are not legally obligated to allow." *Robinette*, 80 Ohio St.3d at 243-244, 685 N.E.2d 762 (1997) quoting *State v. Robinette*, 73 Ohio St.3d 650, 654, 653 N.E.2d 695 (1995) (overruled).

{¶ 43} Applying the seven factors cited in *Scheckloth* to the facts here, we find that the record supports the conclusion that Davis's consent was voluntary. The traffic stop, prior to Lemon's request to search Davis's vehicle occurred in public for approximately five minutes. Lemon's testimony indicated that Davis and the other two occupants of the vehicle consented to a search when they were not under arrest and after they had been told that they were "good to

go." The record does not demonstrate that Lemon made any threats, promises, or engaged in other coercive police tactics. According to Lemon's testimony, when asked if they had anything illegal, they indicated that the vehicle was not theirs; thus, whatever Lemon might find would not be theirs. It appears that Davis was cooperative with Lemon throughout Lemon's investigation, even following Lemon back to the police station in her own vehicle. The record is silent as to Davis's education, intelligence, or her status as a "newcomer to the law."

{¶ 44} Obviously, the suppression hearing evidence and the reviewable facts in this case come solely from the uncontested testimony of the detaining officer. Upon our review of Lemon's testimony, we cannot discern any evidence that demonstrates that Davis's consent was involuntary or that she may have felt as if she was unable to leave. We recognize that the burden rests with the State to prove that Davis's consent was voluntary; however, we find a lack of indicia that Davis may have just "merely submitted to a claim of lawful authority rather than consenting as a voluntary act of free will." *See Robinette*, 80 Ohio St.3d at 245, 685 N.E.2d 762. In fact, Davis's only arguments here on appeal regarding her consent are that it was invalid because Lemon had illegally detained her.

{¶ 45} In *Fry*, we examined the circumstances in the Ohio Supreme Court's decision in *Robinette*:

> There, the court concluded that the defendant, who was subjected to an illegal detention, did not voluntarily consent to a search of his vehicle. The officer had stopped the defendant for speeding. He decided to give the defendant a warning and "without any break in the conversation and still in front of the [patrol vehicle's video] camera," the officer stated to the defendant, "One question before you get gone [sic]: are you carrying any illegal contraband in your car? Any

> weapons of any kind, drugs, anything like that?" The court concluded this inquiry was not illegal. See *Robinette,* 80 Ohio St.3d at 241, 685 N.E.2d 762. The defendant denied having any contraband in the car. The officer then immediately asked the defendant if he could search the car. The court concluded that this follow up question and detention were improper. *Id*. In response to the additional question, the defendant hesitated, looked at his car, looked back at the officer, then nodded his head. During the search the officer recovered some marijuana and a pill and subsequently charged the defendant with drug abuse.
>
> At a suppression hearing, the defendant explained the circumstances surrounding the search: "Q And did [the officer] indicate to you that at that time [when he returned from activating the video camera] that he was giving you a warning and that you were free to go? A Yes, he did. Q And then at that time, I think, as the tape will reflect, the officer asked you some questions about did you have any weapons of any kind, drugs, anything like that. Do you recall that question? A Yes. * * * Q Did you in fact feel that you were free to leave at that point? A I thought I was. * * * Q The officer then asked if he could search your vehicle. What went through your mind at that point in time? A Uhm, I was still sort of shocked and I-I thought-I just automatically said yes. Q Did-did you feel that you could refuse the officer? A No."

Fry at ¶¶ 27-28.

{¶ 46} The Ohio Supreme Court stated that the officer's "words did not give [the defendant] any indication that he was free to go, but rather implied just the opposite-that [the defendant] was not free to go until he answered [the officer]'s additional questions. The timing

of [the officer's] immediate transition from giving [defendant] the warning for speeding into questioning regarding contraband and the request to search is troubling." *Robinette* at 244.

{¶ 47} The Ohio Supreme Court concluded:

> When these factors are combined with a police officer's superior position of authority, any reasonable person would have felt compelled to submit to the officer's questioning. While [the officer's] questioning was not expressly coercive, the circumstances surrounding the request to search made the questioning impliedly coercive. * * * From the totality of the circumstances, it appears that [the defendant] merely submitted to 'a claim of lawful authority' rather than consenting as a voluntary act of free will. Under *Royer,* this is not sufficient to prove voluntary compliance. *Royer,* 460 U.S. at 497, 103 S.Ct. at 1324, 75 L.Ed.2d at 236.

Robinette at 244-245.

{¶ 48} We find this case to be difficult as the interaction between Lemon and Davis shares some resemblance with the interaction between the officer and the defendant in *Robinette.* However, distinguishing factors also exist. First and foremost, Lemon testified that he told Davis that she was "good to go." Those words gave at least some indication that Davis was free to go, whereas, the officer's words in *Robinette* indicated that defendant needed to answer one more additional question before he was free to leave. Additionally, Lemon's words, "while we're here" before asking for Davis's consent do not imply the same mandatory connotations as the words used by the officer in *Robinette*. Here, no testimony from Davis indicated that she was under duress, or that she felt as if she could not refuse Lemon's request. *Compare Robinette* at 244. Also, Davis and her passengers remained inside the vehicle during the traffic stop.

Therefore, they were not impeded from returning to their car and leaving by the officer's additional questions like the defendant in *Robinette. Compare Id.* at 235.

{¶ 49} Furthermore, facts that other courts have relied upon to find a defendant's consent was not voluntary are not present here. *Compare State v. White*, 2d Dist. No. 25396, 2013-Ohio-3027, ¶ 23 ("Being flanked by two officers certainly would lead a reasonable person to believe she was not free to disregard the officer's questions and pull off. * * *the undetectabilty of [the seamless transition between detention and consensual exchange] was used by these two officers to compel [defendant] into answering questions * * *[.]"); *State v. Dieckhoner*, 8th Dist. Cuyahoga No. 96684, 2012-Ohio-805, ¶ 26 (finding defendant would not believe at the time that he was free to get in his car and drive away when the officer had no reasonable suspicion that defendant was involved in criminal activity, another uniformed police officer was present, and the officer asked whether defendant had anything illegal as defendant was walking back towards his vehicle); *State v. Ferrante*, 196 Ohio App.3d 113, 2011-Ohio-4870, 962 N.E.2d 383 (2d Dist.) (concluding that defendant did not freely and voluntarily consent to officer's search of her vehicle when upon giving the defendant the completed traffic citation and returning her driver's license to her, the officer simultaneously asked defendant if he could search her vehicle).

{¶ 50} Accordingly, as this Court concluded in *Fry*, although Lemon's request may have closely followed his statement that Davis was "good to go," we see nothing so overbearing in Lemon's request that requires us to overturn the trial court's conclusion that Davis's consent resulted in no constitutional violation. *Id.*, 2004-Ohio-5747 at ¶ 31. Therefore, we find that, under the totality of the circumstances, Davis voluntarily consented to a search; and her consent was an independent act of free will. Davis's argument is without merit.

B. The Scope of the Consent Search

{¶ 51} Additionally, Davis argues that any consent given to Lemon authorized only search of the car itself, not of her, her passengers or her purse. Davis contends that Lemon's search exceeded the scope of her consent. Davis did not raise this issue before the trial court below. Davis's motion to suppress, as well as her counsel's arguments during the suppression hearing focused solely on the issue that consent obtained during an illegal detention was invalid. In other words, Davis never set forth an alternate argument that even if the consent was voluntary, the scope of the search was limited to just the vehicle.

{¶ 52} "It is well settled that issues not raised in an original motion to suppress cannot be raised for the first time on appeal." *State v. Jones*, 4th Dist. Highland No. 04CA9, 2005-Ohio-768, ¶ 18; *see also State v. Markins*, 4th Dist. Scioto No. 10CA3387, 2013-Ohio-602, ¶ 25. As we stated in *Jones*, this is no mere technicality. *Id*. Crim.R. 47 requires a motion to suppress to "state with particularity the grounds upon which it is made and [to] set forth the relief or order sought." *State v. Rife*, 4th Dist. Ross No. 11CA3276, 2012-Ohio-3264, ¶ 17. "These requirements exist because 'the prosecutor cannot be expected to anticipate the specific legal and factual grounds upon which the defendant challenges the legality of a warrantless search.' " *Id.*, quoting *Xenia v. Wallace*, 27 Ohio St.3d 216, 218 524 N.E.2d 889 (1988).

{¶ 53} Here, because the issue of the scope of the consent to search was not raised below, the issue was not fully developed during the trial court proceedings and we should not consider it for the first time on appeal. *Jones* at ¶ 18. Accordingly, we decline to consider Davis's argument regarding the scope of Lemon's search.

V. Conclusion

{¶ 54} Based on the forgoing, we find that Lemon's search was constitutionally valid. We find no merit in Davis's arguments here on appeal. Therefore, we overrule Davis's

assignment of error. The judgment of the Athens County Common Pleas Court to deny Davis's motion to suppress is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earliest of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

By:_____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.