[Cite as *State v. Kazazi*, 2004-Ohio-4147.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio — Court of Appeals No. WD-03-035

Appellee — Trial Court No. 02-CR-140

v.

Fatjon Kazazi — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: August 6, 2004

* * * * *

Raymond Fischer, Wood County Prosecuting Attorney, Gary D. Bishop, Chief Assistant Prosecuting Attorney, and Gwen Howe-Gebers, Assistant Prosecuting Attorney, for appellee.

Jeffrey M. Gamso, for appellant.

* * * * *

SINGER, J.

{¶1} This is an appeal from a judgment of conviction and sentence for possession and trafficking of marijuana entered on a no contest plea in the Wood County Court of Common Pleas. Because we conclude that the trial court's denial of appellant's motion to suppress was proper, we affirm.

{¶2} On May 2, 2002, on Ohio Highway patrol trooper stopped appellant, Fatjon Kazazi, for a marked lane violation on an interstate highway in Wood County.

According to the trooper's suppression testimony, she was stationary when she observed a Dodge Intrepid with Michigan plates traveling southbound, following another vehicle by about two car lengths. When the trooper began to follow the Intrepid, she saw the car cross the right edge of the highway, slow to approximately 50 m.p.h. in a 65 m.p.h. zone, then drift back into the lane, crossing the centerline. The trooper then initiated a traffic stop.

{¶3} On request, appellant produced an Illinois operator's license and rental papers showing that the car had been rented in Detroit for two days. The trooper asked appellant if he was traveling out of his lane because he was tired or if he had a long trip ahead of him. He responded, "yes." When the trooper asked appellant's destination, he responded, "Washington." On further inquiry, appellant indicated that he meant the state of Washington. Asked where he was coming from, appellant replied, "Chicago." According to the trooper, during this conversation, appellant avoided eye contact. The trooper also noted that except for a cell phone and deodorizer, the interior of the car was empty. Eventually, appellant amended his destination to Washington, D.C. Nevertheless, the trooper reported, appellant had no map and did not seem to know the next step in getting to Washington, D.C.

{¶4} Appellant's vagueness, coupled with his rather circuitous route from Chicago to whichever Washington was his destination, aroused the trooper's suspicion. She radioed for backup, which arrived approximately 15 to 20 minutes later. At that point, she conducted a "walk around" appellant's car with a drug sniffing dog. When the

dog alerted on the rear of the car, the trooper opened the trunk and found two duffel bags, containing 60 pounds of marijuana.

{¶5} Appellant was arrested and advised of his Miranda rights. During subsequent questioning, he admitted to knowing that there were drugs in the car. Appellant also stated that he was being paid to transport the drugs.

{¶6} On June 5, 2002, a grand jury indicted appellant on the underlying charges. He pled not guilty and moved to suppress the marijuana discovered in the warrantless search of his car. When, following a suppression hearing, the trial court denied the motion, appellant changed his plea to "no contest," was found guilty and sentenced to eight years imprisonment. This appeal followed. Appellant sets forth the following single assignment of error:

{¶7} "The trial court erred when it denied appellant's motion to suppress after undisputed evidence at the hearing on the motion revealed that no exception to the warrant clause of either the federal or state constitution permitted the warrantless search in this case."

{¶8} The Fourth Amendment to the Constitution of the United States and Article I, Section 14, of the Ohio Constitution forbid unreasonable searches and seizures. Without a warrant, searches and seizures are unreasonable per se, *State v. Kessler* (1978), 53 Ohio St.2d 204, 207, unless within one of a small number of recognized exceptions. Id.; *State v. Smith* (1991), 73 Ohio App.3d 471, 475. The state has the burden of proving that one of these exceptions apply in order to survive a motion to suppress. Id.

{¶9} The temporary detention of a person during a traffic stop is a seizure. *State v. Vass*, Mahoning App. No. 01CA4, 2002-Ohio-6887, ¶12. A traffic stop may be based on reasonable articulable suspicion that an offense was or is being committed (e.g. erratic driving may indicate an impaired driver) or on probable cause that an offense has been committed (e.g. an officer witnesses a violation). *State v. Downs*, 6th Dist. No. WD-03-030, 2004-Ohio-3003, ¶11-12. However, once the stop is made, its scope must be tailored to its justification and the seizure of the driver must last no longer than reasonably necessary to effect its purpose. *State v. Gonyou* (1995), 108 Ohio App.3d 369, 372, citing *Florida v. Royer* (1983), 460 U.S. 491, 500. "'The lawfulness of the initial stop will not support a "fishing expedition" for evidence of crime.'" *Gonyou*, supra, quoting *State v. Smotherman* (July 29, 1994), Wood App. No. 93-WD-082. Nevertheless, the stop may be prolonged if information gleaned while pursuing the initial purpose of the stop gives rise to an independent reasonable articulable suspicion of other offenses. *State v. Robinette* (1997), 80 Ohio St.3d 234, 240; *State v. Fuller* (Sept. 27, 1989), Allen App. No. 1-88-1. If, during an investigatory traffic stop, an officer develops probable cause that the vehicle contains contraband, a search for such contraband is not unreasonable. *United States v. Ross* (1982), 456 U.S. 798, 800. A dog trained and accredited to detect the presence of drugs who alerts on a vehicle provides probable cause of the presence of drugs. *State v. Palicki* (1994), 97 Ohio App.3d 175, 181.

{¶10} In the present matter, appellant concedes the validity of his initial stop, but argues that the trooper was on a prohibited "fishing expedition" when she obtained

articulable suspicion to continue the stop. Appellant also invites us to revisit *Palicki* and conclude that there is no particular relationship between a dog "alert" and the presence of drugs.

{¶11} We have had recent occasion to reexamine the reliability of drug sniffing dogs and after extensive consideration chose to leave *Palicki* undisturbed. *State v. Nguyen*, 6th Dist. No. L-03-1152, 2004-Ohio-2879, ¶22; *State v. Serreno*, 6th Dist. No. L-03-1096, 2004-Ohio-1640, ¶15.

{¶12} With respect to appellant's assertion that the arresting officer was on a "fishing expedition," the trooper testified that she grew suspicious by the presence of an air freshener in a rental car, the lack of any personal belongings or maps inside the car, the fact that appellant had an Illinois driver's license and a Michigan rental car. All of these indicators were readily observable in the normal course of issuing a traffic citation. Moreover, since the offense for which appellant was stopped could have been the result of impairment or fatigue, it is not unreasonable for the officer to inquire about appellant's route and destination. When appellant responded with vague and/or conflicting answers, the trooper had a suspicion sufficient to continue the stop and the investigation; specifically, to hold appellant until backup arrived. Once the trooper performed the "walk around" with her dog, the dog alerted. This provided probable cause that the vehicle's trunk contained drugs. This was sufficient to warrant a search. Consequently, the trial court did not err in denying appellant's suppression motion. Appellant's sole assignment of error is not well-taken.

{¶13} On consideration whereof, the judgment of the Wood County Court of Common Pleas is affirmed. Costs, pursuant to App.R. 24, are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J. _____
JUDGE

Judith Ann Lanzinger, J. _____
JUDGE

Arlene Singer, J. _____
CONCUR.
JUDGE