[Cite as *State v. Ruffer*, 2012-Ohio-4491.]

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

State of Ohio	Court of Appeals No. F-11-007
Appellee	Trial Court No. 10CR78
v.	
Ian C. Ruffer	**DECISION AND JUDGMENT**
Appellant	Decided: September 28, 2012

* * * * *

Scott A. Haselman, Fulton County Prosecuting Attorney, and
Paul H. Kennedy, Assistant Prosecuting Attorney, for appellee.

Bertrand R. Puligandla, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Ian Ruffer, appellant, appeals the denial of his motion to suppress evidence by the Fulton County Court of Common Pleas in a prosecution for aggravated possession of the drug ecstasy (a violation of R.C. 2925.11(A) and a third degree felony). The motion sought an order suppressing evidence of any statements made by Ruffer and

evidence seized by police during the course of a traffic stop on June 12, 2010. After an evidentiary hearing, the trial court denied the motion in a judgment filed on November 22, 2010. The court supplemented the judgment with findings of fact and conclusions of law filed on December 3, 2010.

{¶ 2} The Fulton County Grand Jury indicted Ruffer on the aggravated possession of drugs charge on June 22, 2010. After the trial court denied the motion to suppress, Ruffer pled no contest to the charge. The trial court sentenced Ruffer on February 22, 2011, to a three-year prison term and a mandatory $5,000 fine. The court also suspended Ruffer's driver's license for one year. Ruffer was released from prison on July 18, 2011, and placed on a one-year term of postrelease control.

{¶ 3} Appellant filed a notice of appeal on March 1, 2011. In a single assignment of error, appellant argues that the vehicle stop was unreasonably prolonged beyond the length and scope of a traffic stop for an equipment violation without additional facts that would give rise to a reasonable, articulable suspicion of criminal activity beyond what prompted the original stop. Appellant argues that such a stop constitutes an illegal seizure under the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

Assignment of Error

> For police to legally expand the scope and duration of a traffic stop, there must be articulable facts indicating that criminal activity is afoot; absent such facts, continued detention to conduct a search is an illegal

seizure. Here, although the stop stemmed from a burned out license-plate light, it lasted for about an hour; the desire of police to search for drugs was clear from the outset, and the facts on which they relied to expand the stop were (1) a search warrant was executed at Rugger's residence 18 to 24 months before, at which marihuana was seized, and (2) Ruffer and one of his passengers had felony-drug convictions stemming therefrom. Did the trial court err in ruling that Ruffer was not subjected to an illegal seizure?

Mootness

{¶ 4} This appeal challenges appellant's conviction for aggravated possession of drugs, a felony. Appellant asserts trial court error in failing to suppress evidence offered by the state against him in support of a conviction. The Ohio Supreme Court has recognized that "an appeal challenging a felony conviction is not moot even if the entire sentence has been satisfied before the matter is heard on appeal." *State v. Golston*, 71 Ohio St.3d 224, 643 N.E.2d 109 (1994), syllabus; *see State v. Ambriez*, 6th Dist. No. L-04-1382, 2005-Ohio-5877, ¶ 8. We conclude that although appellant has served his sentence this appeal is not moot.

Standard of Review

{¶ 5} Review of a trial court's denial of a motion to suppress presents mixed questions of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and

evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972." *Id.* An appellate court defers to a trial court's factual findings made with respect to its ruling on a motion to suppress where the findings are supported by competent, credible evidence. *Id.*; *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). "[T]he appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539." *State v. Burnside* at ¶ 8.

Traffic Stop

{¶ 6} The trial court conducted an evidentiary hearing on the motion to suppress on November 16, 2010. It is undisputed that Sergeant John Roof of the Wauseon Police Department stopped appellant at 12:10 a.m. on June 12, 2010, in Wauseon when appellant was driving his father's S-10 pickup truck. There were also three passengers with appellant, two inside the pickup and one in the pickup bed. Three police officers (Sergeant Roof, Officer Michael Coopman, and Officer Jose Gonzales), one deputy sheriff (Deputy Jeremy Simon), appellant, and two other occupants of the pickup (Simon Champada and Ryan Gainor) testified at the hearing.

{¶ 7} Sergeant Roof testified that he decided to stop the pickup truck because of an equipment violation. The pickup had a burned out license plate light. As he approached to stop the vehicle, Sergeant Roof also observed that the license plate

validation sticker for the vehicle was expired. Appellant has not challenged the legality of the vehicle stop.

{¶ 8} Sergeant Roof stopped the pickup and approached it. He knew appellant and one passenger, Simon Champada, by sight. He asked all four for identification to check who they were and to check for outstanding warrants. He returned to his patrol car to provide the identifying information by radio to the police dispatcher.

{¶ 9} Shortly after the vehicle stop, Officer Coopman, also of the Wauseon Police Department, came to the scene. Coopman stopped as a matter of routine, without request, to assist upon learning of the stop from radio dispatch. Sergeant Roof requested Coopman to speak to appellant, the driver, and to ask Ruffer for his consent to search the pickup. Coopman made the request. Appellant refused to consent to the search.

{¶ 10} After Coopman informed Roof that permission to search the pickup had been refused, Roof contacted the Sheriff's office and requested that Deputy Simon of the canine unit come to the scene with his dog, a certified drug dog. Roof testified that he wanted Simon to walk outside the vehicle with his dog to see if there were any drugs inside the pickup.

{¶ 11} Deputy Simon arrived and spoke to Sergeant Roof concerning the vehicle stop and the fact that Ruffer had refused consent to search the pickup. Sergeant Roof requested Simon to assist with his dog to check for drugs. Simon went to the pickup and had Ruffer exit the vehicle. Simon testified that he wanted to speak to appellant apart

from the other occupants of the pickup. Simon and appellant spoke at a point between the rear of the pickup and to the front of the patrol car.

{¶ 12} According to Simon, he explained to Ruffer that he had been requested to walk his drug dog around the vehicle and that the dog searches for narcotics. Simon further explained that if the dog finds any narcotics it alerts to the vehicle. Deputy Simon testified that it was at this point that Ruffer stated there was marihuana, a roach, in the ashtray of the pickup. Ruffer admitted at the hearing that he told Simon that there was a roach in the vehicle ashtray.

{¶ 13} Sergeant Roof testified to events following appellant's statement that there was marihuana in the vehicle:

> The Defendant had admitted to having marihuana in the vehicle. We had everybody patted done [sic]. Officer Gonzales had informed me that he found drugs on the Defendant. Deputy Simon and I then searched the vehicle. We located a marihuana cigarette in the ashtray where the Defendant said it was. We also located an ashtray under the seat which had, what we believe is marihuana residue.

{¶ 14} During the patdown of Ruffer, Officer Gonzales found a plastic bag with a small amount of marihuana in Ruffer's rear pant pocket. The officer testified that he found 30 ecstasy pills in a cigarette box from the same pant pocket, a fact which appellant denied. Appellant testified that the cigarette box from his pocket contained

tobacco cigarettes and that the pills were found on the ground nearby in a second cigarette box.

{¶ 15} Later, Deputy Simon walked the drug dog around the pickup. The dog alerted at the vehicle doors indicating the presence of drugs.

{¶ 16} In the November 10, 2010 judgment, the trial court found that "[t]he time elapsed from the time of Defendant's initial 'stop,' to the time of his arrest was approximately forty-five minutes." The trial court did not make a finding as to the time that elapsed between the initial vehicle stop and when Sergeant Roof was told by dispatch that there were no outstanding warrants against any occupant of the pickup. The court did not make a finding of the duration of time from the initial stop and appellant's statement that there was a roach in the pickup.

{¶ 17} A "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons'" within the meaning of guarantees of the Fourth Amendment of the United States Constitution against unreasonable searches and seizures. *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). Probable cause to believe that a traffic violation has occurred provides a constitutional basis for a traffic stop. *Id.*; *Dayton v. Erickson*, 76 Ohio St.3d 3, 11, 665 N.E.2d 1091 (1996). Appellant does not challenge the legality of the vehicle stop based upon an equipment violation.

{¶ 18} The Ohio Supreme Court has held that "[w]hen detaining a motorist for a traffic violation, an officer may delay the motorist for a time period sufficient to issue a

ticket or warning. * * * This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates." *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, ¶ 12, *quoting with approval*, *State v. Howard*, 12th Dist. Nos. CA2006-02-002 and CA2006-02-003, 2006-Ohio-5656, ¶ 15. (Citations omitted.)

{¶ 19} The Ohio Supreme Court has recognized that "the detention of a stopped driver may continue beyond [the normal] time frame when additional facts are encountered that give rise to a reasonable, articulable suspicion of criminal activity beyond that which prompted the initial stop." *Batchili* at ¶ 15, *quoting State v. Howard* at ¶ 16. (Citations omitted.) *See State v. Robinette*, 80 Ohio St.3d 234, 685 N.E.2d 762 (1997), paragraph one of the syllabus.

{¶ 20} Officer Coopman testified that in his experience it takes 10 to 15 minutes to issue either a citation or a warning for an equipment violation. This court has recognized that on average a police officer should complete the necessary checks and be ready to issue a traffic citation in approximately 15 minutes. *State v. Brown*, 183 Ohio App.3d 337, 2009-Ohio-3804, 916 N.E.2d 1138, ¶ 23; *State v. Jones*, 187 Ohio App.3d 478, 2010-Ohio-1600, 932 N.E.2d 904, ¶ 38.

{¶ 21} Initially appellant argued that the traffic stop including issuance of a citation or warning should have lasted 15 minutes but lasted nearly an hour. Later appellant argued that each stop is to be judged under its own facts and that a period of detention on a traffic stop can be unreasonable even when it is for less than 15 minutes.

{¶ 22} The state argues that the duration of the stop was extended beyond the normal time frame for a traffic stop for an equipment failure because additional facts were encountered creating a reasonable, articulable suspicion of criminal activity beyond what prompted the original stop. The state contends that appellant's statement to Deputy Simon provided probable cause to believe that appellant violated Section 512.03(c)(2) of the Codified Ordinances of the City of Wauseon. The ordinance prohibits possession of marijuana and makes the offense a fourth degree misdemeanor where the amount of the drug involved does not exceed 200 grams.

{¶ 23} The state distinguishes the ordinance from R.C. 2925.11(C)(3) in that the state statute makes possession of marijuana a minor misdemeanor unless the amount exceeds 100 grams and is less than 200 grams. The distinction is significant, because R.C. 2935.26(A) requires a law enforcement officer to issue a citation rather than arrest persons for commission of a minor misdemeanor except in specified circumstances listed under R.C. 2935.26(A). *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, ¶ 8-15. The Ohio Supreme Court has held that municipalities have authority to raise by local ordinance the penalty for possession of marijuana from a minor misdemeanor to a misdemeanor of a higher degree. *Niles v. Howard*, 12 Ohio St.3d 162, 165, 466 N.E.2d 539 (1984)(upheld ordinance making the offense a first degree misdemeanor).

{¶ 24} Based on this analysis, the state contends the statement by Ruffer that there was a roach in the ashtray extended the permitted duration of the traffic stop due to evidence of criminal activity.

Timeline

{¶ 25} The trial court found that Sergeant Roof ran appellant's license and plates and determined the vehicle was properly registered in appellant's father's name and that appellant had a valid driver's license. It also found that Sergeant Roof also ran the names of appellant and the other occupants of the pickup through LEADS for warrants and that it was determined there were none.

{¶ 26} The trial court made no finding as to when the search for these records was completed. No police dispatch record or time log was placed in evidence. The trial court found that the time from the initial stop to the time of appellant's arrest was approximately 45 minutes.

{¶ 27} At the hearing, Sergeant Roof was asked when he received a response from dispatch about whether there were active warrants. He responded that "I'm not sure exactly when we received it. I'm not sure. I'm not exactly sure whether it was prior to searching the vehicle or after searching the vehicle."

{¶ 28} The state argues that that the evidence demonstrates that probable cause to arrest arose within 10-15 minutes after the stop. The state contends that the timeframe is established by reference to when the three passengers were asked to step out of the pickup.

{¶ 29} Two of the three passengers in the pickup testified at the hearing. Passenger Simon Champada testified that he exited the pickup when asked to do so "maybe ten minutes" after the vehicle was pulled over. Passenger Ryan Gainor testified

that he was seated in the bed of the pickup for "about ten or fifteen minutes" from the time they were pulled over until asked to step out of the pickup bed. Both Sergeant Roof and Deputy Simon testified that the passengers were not removed from the pickup until after appellant made his statement that there was a roach in the ashtray of the pickup. Both the search of the vehicle and the patdown of appellant were conducted after the statement.

{¶ 30} The state also argues that the 10 to 15 minute estimate is supported by adding other time estimates in a timeline. The state added time estimates of (1) the time from the stop until arrival of Officer Coopman, (2) the time Deputy Simon arrived after Coopman, and (3) the time from Simon's arrival to the statement about the roach. Using this method, the state calculated an estimated time of as low as 7 1/2 minutes to as high as 17 minutes for the period from the vehicle stop until appellant's statement to Deputy Simon.

{¶ 31} The trial court upheld the legality of the traffic stop. It concluded that the detention was related to the purpose of the original stop or based upon articulable facts and circumstances that gave rise to a reasonable suspicion of violation of Ohio drug laws. In our view, the evidence at the hearing on the motion to suppress provided competent, credible evidence that the duration of the stop for purposes of an equipment violation was of average duration for such stops. Evidence is lacking to support a claim that the purpose of the original stop had been met prior to appellant's statement to Deputy Simon.

{¶ 32} We agree with the state that appellant's statement concerning a roach in the ashtray of the pickup provided additional facts giving rise to a reasonable, articulable suspicion of criminal activity. Appellant's admission as to marihuana acted to extend the reasonable duration of the vehicle stop for further investigation and the arrest of appellant on drug charges.

{¶ 33} We conclude that the trial court did not err in its determination that appellant's detention on June 12, 2010, was lawful and that the stop did not constitute an illegal seizure in violation of the Fourth Amendment to the United States Constitution or Article I, Section 14 of the Ohio Constitution.

{¶ 34} We find appellant's assignment of error not well-taken.

{¶ 35} Justice having been afforded the party complaining, we affirm the judgment of the Fulton County Court of Common Pleas. We order appellant to pay the court costs of this appeal pursuant to App.R. 24.

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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

JUDGE