**[Cite as *State v. Massenburg*, 2013-Ohio-324.]**

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

State of Ohio — Court of Appeals No. WD-11-076

Appellee — Trial Court No. 2011CR218

v.

Darnell Massenburg — **DECISION AND JUDGMENT**

Appellant — Decided: February 1, 2013

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney,
for appellee.

J. Scott Hicks, for appellant.

* * * * *

**YARBROUGH, J.**

## I. Introduction

**{¶ 1}** Appellant, Darnell Massenburg, appeals from his conviction following a plea of no contest to one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(d), a felony of the second degree. Appellant argues that the trial court erred

by denying his motion to suppress incriminating statements obtained from him. For the following reasons, we reverse.

## A. Facts and Procedural Background

**{¶ 2}** The Wood County Grand Jury indicted appellant on one count of possession of cocaine in violation of R.C. 2925.11(A) and (C)(4)(d), a felony of the second degree. Appellant entered an initial plea of not guilty. Thereafter, appellant moved to suppress as evidence incriminating statements that he made.

**{¶ 3}** The record from the suppression hearing reveals the following undisputed facts. On April 26, 2011, appellant was the sole passenger in a Chevy Cruze driven by Cassandra Caffie. On that day, Deputy Sheriff Robert Myerholtz stopped the vehicle because its license plate was registered to a Volkswagen owned by Hertz Rental Company. Upon request, Caffie provided her driver's license. She also provided a rental agreement from Hertz, which listed the renter as Sam Caffie, her brother. Myerholtz also requested identification from appellant, who provided him with his Michigan identification card. Caffie's license was found to be suspended.

**{¶ 4}** At that point, Myerholtz asked Caffie to step out of the car, and he began to ask her routine questions such as where she was coming from, where she was going, and what the purpose of her trip was. Caffie responded that she was coming from Detroit on her way to Virginia Beach for four days. Myerholtz asked her if there were any drugs or guns in the car. After looking at the car and then back at Myerholtz, Caffie replied "no." Myerholtz then asked for, and was granted, permission to search the car. Myerholtz

placed Caffie in the back of his cruiser and approached the passenger side of the car where appellant was sitting.

**{¶ 5}** Myerholtz asked appellant the same questions he had asked Caffie, i.e., where he was coming from, going to, etc. Appellant responded that they were coming from Detroit on their way to West Virginia for five to six days. Myerholtz then asked appellant to step out of the car, and Myerholtz began to search the car. At some point, Hertz was contacted, and it requested that the vehicle be towed since the renter was not present.

**{¶ 6}** Myerholtz testified that around the time he began his search, traffic on the roadway started to increase, and out of concern for appellant's safety, he asked appellant to sit in the back of his cruiser. Myerholtz also testified that due to the increased traffic it was necessary to transport the Chevy Cruze to a different location. Nothing was discovered during this roadside search, although Myerholtz did testify to noticing a strong aroma of dryer sheets.

**{¶ 7}** Meanwhile, Deputy Sheriff Rudy Santibanez, Jr. had arrived on the scene to assist Myerholtz. One of the first things Santibanez did was move appellant from the back of Myerholtz's cruiser to the back of his cruiser. Santibanez testified that this was done because appellant's and Caffie's stories conflicted over where they were going and for how long. Santibanez did not tell appellant that he was free to leave if he wanted, but he also did not tell appellant that he could not leave. Before placing appellant in his cruiser, Santibanez patted him down and discovered a cell phone. Santibanez did not

recall whether he advised appellant that he could call someone to come pick him up. Santibanez testified that appellant was not under arrest at that time.

**{¶ 8}** Subsequently, the tow truck arrived and towed the Chevy Cruze approximately 15 miles back to the sheriff's station. Myerholtz and Santibanez followed the tow truck, transporting Caffie and appellant in their respective cruisers. Upon their arrival at the station, Caffie and appellant were placed in separate interrogation rooms. Caffie was in handcuffs and under arrest for operating a motor vehicle without a license. Appellant was not handcuffed nor under arrest, according to Santibanez. Myerholtz and Santibanez then conducted an inventory search of the vehicle. During this search, Myerholtz observed that a rear seat cushion was loose from the mounts, and upon lifting it up, he found a plastic shopping bag that had a very strong odor of dryer sheets. The shopping bag contained a bundle that was wrapped in cellophane, with baby powder in between each layer of cellophane. As the deputies unwrapped the bundle, they discovered a small bag of marijuana, and after further unwrapping, discovered a bag of cocaine. The entire inventory search lasted approximately 15 to 20 minutes.

**{¶ 9}** Myerholtz and Santibanez then went into appellant's interrogation room and informed him, "[they] found something in the vehicle." Myerholtz and Santibanez both testified that appellant then started to say, "It is mine." At that point, Myerholtz stopped appellant, and read him his *Miranda* rights. After being *Mirandized*, appellant again offered, "It is mine. She has nothing to do with it. It is mine." Appellant was

subsequently arrested. In total, approximately 70 to 90 minutes elapsed between the initial traffic stop and appellant's incriminating statements.

**{¶ 10}** Following the hearing, the trial court denied appellant's motion to suppress. The court found that the initial traffic stop was valid because the license plates did not match the car. Further, the court found that the continued detention of appellant was proper due to the unfolding circumstances, and that appellant was not subject to physical intimidation or mental duress. Thus, the court concluded that appellant's statements were voluntarily made, and that appellant was properly informed of his *Miranda* rights.

### B. Assignments of Error

**{¶ 11}** Appellant now presents two assignments of error for our review:

> I. THE TRIAL COURT ERRED IN DENYING DEFENDANT/APPELLANT'S MOTION TO SUPPRESS AS DEFENDANT/APPELLANT WAS UNREASONABLY DETAINED BY INVESTIGATING AUTHORITIES WHEN IT WAS CLEAR TO THE INVESTIGATING OFFICERS, UPON INITIALLY STOPPING THE VEHICLE THE DEFENDANT/APPELLANT HAD COMMITTED NO CRIME AND THAT THERE WAS NO OTHER LEGITIMATE REASON TO DETAIN DEFENDANT/APPELLANT.
>
> II. THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT/APPELLANT IN FAILING TO SUPPRESS THE STATEMENTS OBTAINED BY POLICE AS A RESULT OF A

UNCONSTITUTIONAL, ILLEGAL, AND UNDULY AGGRESSIVE INVESTIGATION.

## II. Analysis

**{¶ 12}** The Ohio Supreme Court has set forth the appropriate standard of review of a motion to suppress as follows:

> Appellate review of a motion to suppress presents a mixed question of law and fact. 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. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583. Accepting these facts as true, the 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*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

**{¶ 13}** In his first assignment of error, appellant argues that he was unconstitutionally detained. Thus, he concludes that his incriminating statements, which resulted from that detention, should have been suppressed.

**{¶ 14}** The Fourth Amendment to the United States Constitution, and Article I, Section 14 of the Ohio Constitution, protects citizens from unreasonable searches and seizures. Regarding seizures of the person, the United States Supreme Court has held that law enforcement officers may briefly stop and/or temporarily detain an individual for investigation if a reasonable, articulable suspicion exists that criminal activity may be afoot. *State v. Martin*, 2d Dist. No. 20270, 2004-Ohio-2738, ¶ 10, citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). However, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Where an investigatory detention is unnecessarily long or overly intrusive, it constitutes a de facto arrest, thereby requiring probable cause. *See id*.

**{¶ 15}** In this case, appellant does not contest the initial stop of the vehicle. Nor does he contest being detained while Myerholtz determined that Caffie was driving on a suspended license. It is the subsequent continued detention that appellant argues is constitutionally offensive. We note that where circumstances attending an otherwise proper stop give rise to a reasonable suspicion of other illegal activity, different from the suspected illegal activity that triggered the stop, the individual may be detained under that new reasonable, articulable suspicion, even if the officer is satisfied that the initial

suspicion justifying the stop has dissipated. *State v. Myers*, 63 Ohio App.3d 765, 771, 580 N.E.2d 61 (2d Dist.1990).

**{¶ 16}** Appellant argues that no circumstances existed that gave rise to a separate reasonable suspicion of other criminal activity. We disagree. The conflicting stories between appellant and Caffie about where they were going and Caffie's glance back at the car when asked whether there were guns or drugs in the vehicle were sufficient to create a reasonable suspicion that other criminal activity was afoot. This reasonable suspicion justified temporarily detaining appellant beyond the initial stop. During this detention, a roadside search of the car was conducted based on Caffie's consent. This search, however, failed to uncover any contraband, although Myerholtz did detect the strong aroma of dryer sheets.

**{¶ 17}** Assuming for the purposes of this analysis that reasonable suspicion existed to further detain appellant based on the strong aroma, the next question is whether this detention lasted no longer than was necessary. "What constitutes a permissible detention is not based simply on time, but on whether the officer acted diligently under the circumstances." *State v. Serrano*, 6th Dist. No. L-03-1096, 2004-Ohio-1640, ¶ 14, citing *United States v. Sharpe*, 470 U.S. 675, 686, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985). In this case, we hold that the detention exceeded the bounds of a *Terry* investigative stop, and because probable cause did not exist at the time to arrest appellant, his detention was unconstitutional.

**{¶ 18}** We find the present situation to be analogous to *Florida v. Royer*. In that case, Royer was stopped in an airport concourse for suspected drug trafficking. *Royer*, 460 U.S. at 494, 103 S.Ct. 1319, 75 L.Ed.2d 229. Upon request, Royer produced his driver's license and airline ticket. *Id.* The officers informed Royer that they were narcotics agents, and, without returning his identification and airline ticket, asked him to accompany them to a room 40-feet away. *Id.* There, Royer consented to the search of his luggage, which was found to contain drugs. *Id.* Once the drugs were found, Royer was told that he was under arrest. *Id.* at 495. The entire encounter lasted approximately 15 minutes. *Id.* Based on these facts, the United States Supreme Court concluded that, "the officers' conduct was more intrusive than necessary to effectuate an investigative detention otherwise authorized by the *Terry* line of cases." *Id.* at 504.

**{¶ 19}** The same conclusion must be reached in this case. Here, appellant was placed in the back of Myerholtz's cruiser, and then transferred to the back of Santibanez's cruiser. Neither deputy told him that he was free to leave. During that time, a search of the vehicle was conducted, but no drugs were found. At that point, probable cause did not exist to arrest appellant. Nevertheless, he was detained in the back of Santibanez's cruiser for an indeterminate amount of time between when the roadside search was concluded and when the tow truck arrived. Appellant was then transported approximately 15 miles to the sheriff's station, where he was placed in an interrogation room in the interior of the police station. Although the state maintains he was not arrested, appellant remained in the interrogation room, with a jail staff member standing

outside in the hallway, for approximately another 15 to 20 minutes before Myerholtz and Santibanez entered following the inventory search.

**{¶ 20}** Like the court in *Royer*, we conclude that the officers' conduct in this case was more intrusive than reasonably necessary to effectuate an investigative detention as contemplated by *Terry*; rather, it constituted a de facto arrest. *Compare State v. Serrano*, 6th Dist. No. L-03-1096, 2004-Ohio-1640 (requesting defendant to follow officer one mile during traffic stop was reasonable investigatory detention where the purpose was to reunite defendant's car with the one he was believed to be travelling in tandem with). Our conclusion is further bolstered by the United States Supreme Court's comments, following *Royer*, that,

> There is no doubt that at some point in the investigative process, police procedures can qualitatively and quantitatively be so intrusive with respect to a suspect's freedom of movement and privacy interests as to trigger the full protection of the Fourth and Fourteenth Amendments. * * * And our view continues to be that the line is crossed when the police, without probable cause or a warrant, forcibly remove a person from his home or other place in which he is entitled to be and transport him to the police station, where he is detained, although briefly, for investigative purposes. We adhere to the view that such seizures, at least where not under judicial supervision, are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable

cause. *Hayes v. Florida*, 470 U.S. 811, 815-816, 105 S.Ct. 1643, 84 L.Ed.2d 705 (1985).

**{¶ 21}** Therefore, because probable cause did not exist to arrest appellant until after the drugs were discovered during the inventory search, we hold that his detention was unconstitutional. Further, because his statements were made as a result of the illegal detention, they are inadmissible and should have been suppressed. *Royer*, 460 U.S. at 501, 103 S.Ct. 1319, 75 L.Ed.2d 229, citing *Dunaway v. New York*, 442 U.S. 200, 218-219, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), and *Brown v. Illinois*, 422 U.S. 590, 601-602, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) ("[S]tatements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will.")

**{¶ 22}** Accordingly, appellant's first assignment of error is well-taken. That disposition renders his second assignment moot, thus it need not be addressed. *See* App.R. 12(A)(1)(c).

## III. Conclusion

**{¶ 23}** For the foregoing reasons, the judgment of the Wood County Court of Common Pleas is reversed. The cause is remanded to the trial court for further proceedings from the point at which the error occurred, i.e., prior to appellant entering a plea of no contest. *See State ex rel. Stevenson v. Murray*, 69 Ohio St.2d 112, 113, 431

N.E.2d 324 (1982). The state is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE