

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

State of Ohio

Court of Appeals No. H-12-022

Appellee

Trial Court No. CRI-2011-0591

v.

Glenn Brown

DECISION AND JUDGMENT

Appellant

Decided: November 8, 2013

* * * * *

Russell V. Leffler, Huron County Prosecuting Attorney, for appellee.

David J. Longo, Huron County Public Defender, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶1} Defendant-appellant, Glenn Brown, appeals the August 20, 2012 judgment of the Huron County Court of Common Pleas which, following the court's denial of his motion to suppress and after entering no contest pleas to possession of hydrocodone and

possession of heroin, fourth degree felonies, sentenced appellant to a total of 12 months of imprisonment. Because we find that the detention preceded by a valid traffic stop was not unconstitutionally prolonged, we affirm.

{¶2} On June 27, 2011, complaints were filed in Norwalk Municipal Court charging appellant with possession of drugs and possession of heroin. The complaints stemmed from the June 24, 2011 traffic stop in Huron County, Ohio, which, following a canine walk-around uncovered suspected illegal narcotics. The case was transferred to the Huron County Court of Common Pleas and on November 11, 2011, appellant was indicted on possession of hydrocodone and possession of heroin. Appellant entered not guilty pleas to the charges.

{¶3} On April 23, 2012, appellant filed a motion to suppress arguing that the warrantless search was unreasonable because it lacked probable cause or reasonable suspicion of criminal activity. Specifically, although appellant admitted that the initial reasons for the stop were justified, he was speeding, weaving, and his license plate was expired, he argued that the stop outlasted its original scope and purpose and, thus, the fruits of the unreasonable search and seizure should be suppressed.

{¶4} A hearing on the motion was held on May 16, 2012, and the following evidence was presented. Huron County Sheriff's Deputy and Canine Handler, Joshua Querin, testified that on June 24, 2011, he was driving a marked police vehicle on State Route 13, after picking up Special Deputy Ted Evans, and noticed appellant make several

traffic violations. Specifically, appellant was paced at 56 m.p.h. in a 45 m.p.h. zone and his driver's side tires crossed the center line on multiple occasions. Further, the license plate had expired in March 2011. Deputy Querin activated his overhead emergency lights; he stated that appellant pulled over within a "decent" amount of time.

{¶5} Once stopped and due to a large volume of vehicular traffic, Deputy Querin approached appellant's vehicle from the passenger side. Querin asked appellant for his registration, license, and proof of insurance. Appellant gave Deputy Querin his Enterprise car rental agreement which was expired. Appellant telephoned the rental company and Deputy Querin spoke with an individual who confirmed that the rental agreement had been extended and that the company erred in putting the wrong license plates on the vehicle.

{¶6} Deputy Querin testified that while he was speaking with appellant he noticed an open container of Budweiser beer in the back seat of the car. No odor of alcohol was detected on appellant and he had not engaged in any suspicious activity following the stop. Appellant admitted that he was driving erratically and stated that he had been having a "heated" telephone argument with his girlfriend. Contemporaneous with Querin speaking with appellant, Deputy Evans ran a license and background check on appellant and determined that his license was valid and that there were no outstanding warrants for his arrest.

{¶7} At that point, Deputy Querin informed appellant that Huron County has a significant drug problem and that he tries to utilize his canine during every traffic stop. Querin testified that he removed appellant from his vehicle, patted him down, and placed him in the cruiser. Querin stated that at this point, approximately five minutes had elapsed since he stopped appellant's vehicle. Deputy Querin then walked the canine around the vehicle. The dog alerted to the driver's side door by sitting down. Based on the alert, Deputy Querin informed appellant that they were going to search the vehicle. Ninety hydrocodone pills and two bags of heroin were found in the center console.

{¶8} During cross-examination, Deputy Querin agreed that appellant was polite and cooperative during the stop. Querin reiterated that the duration from the time of the stop to the canine walk around was about five minutes. Deputy Querin again stated that he tried to use the canine at every traffic stop, but that sometimes he is precluded by another call.

{¶9} Following the hearing and post-hearing memoranda, the trial court denied the motion to suppress finding that because the duration of the detention was only five minutes prior to the walk around, which is less time than it takes to issue either a warning or a citation, the investigation was not impermissibly prolonged and the resulting search and seizure were valid. Thereafter, appellant entered pleas of no contest to the charges and the court made findings of guilt. On August 20, 2012, appellant was sentenced to a total of 12 months in prison; the term was stayed pending appeal. This appeal followed.

{¶10} Appellant raises the following assignment of error for our consideration:

I. The trial court erred to the prejudice of the Defendant-Appellant when it overruled his motion to suppress evidence, where such evidence was obtained through a warrantless, unreasonable seizure, in violation of his rights under the U.S. and Ohio Constitutions.

{¶11} Appellant's sole assignment of error argues that the trial court erroneously denied his motion to suppress. In particular, appellant argues that the court improperly focused on the duration of the stop rather than the "whole picture." Appellant asserts that, unlike other cases involving drug-sniffing canines used at traffic stops, the officer in this case had completed the license and registration checks and that the only thing that remained was the issuance of the citation. Thus, the delay was not caused by anything related to the traffic violations but, rather, the drug investigation. Conversely, the state argues that because dog sniffs are not searches implicating Fourth Amendment protection and that, unlike cases where the stop was determined to have been unconstitutionally prolonged, the dog at issue was present at the scene and the walk around took approximately 25 seconds.

{¶12} We initially note that 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.” *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). 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.” *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist.1997).

{¶13} The parties do not dispute that the initial traffic stop was valid. As appellant concedes, the use of a certified “drug dog” to sniff the exterior of a vehicle that is lawfully detained is not a search within the meaning of the Fourth Amendment. *State v. Johnson*, 6th Dist. Lucas No. L-06-1035, 2007-Ohio-3961, ¶ 9, citing *State v. Bordieri*, 6th Dist. Lucas No. L-04-1321, 2005-Ohio-4727. A motorist is lawfully detained during a period of time sufficient to issue a citation or a warning. This computation includes the time needed 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. “In determining if an officer completed these tasks within a reasonable length of time, the court must evaluate the duration of the stop in light of the totality of the circumstances and consider whether the officer diligently conducted the investigation.”

Id., quoting *State v. Carlson*, 102 Ohio App.3d 585, 598-599, 657 N.E.2d 591 (9th Dist.1995).

{¶14} The Eleventh Appellate District examined a similar case where a dog sniff was conducted following the license, registration and record check but prior to the issuance of a citation. *State v. Melone*, 11th Dist. Lake No. 2009-L-047, 2009-Ohio-6710. In *Melone*, the motorist was stopped for a traffic violation and, subsequent to a dog sniff and search, was eventually charged with possession of cocaine. *Id.* at ¶ 13. Melone filed a motion to suppress the evidence seized during the search arguing, in part, that the officer lacked reasonable suspicion to conduct a canine sweep around the vehicle. *Id.*

{¶15} At the suppression hearing, the officer testified that on the date of the stop, it had previously been determined that the dog was going to be utilized on as many traffic stops as possible; the dog sniff would be employed regardless of the behavior of the motorist or the nature of the violation. *Id.* at ¶ 12.

{¶16} After confirming the validity of Melone's driver's license, registration, and proof of insurance, the officer testified that she had Melone and his passenger exit the vehicle and they were frisked for weapons. *Id.* at ¶ 7. The dog, which was already on the scene, was walked around the vehicle approximately four minutes after the initial stop. *Id.* at ¶ 8. The dog altered on the passenger side front-door. *Id.*

{¶17} Affirming the validity of the subsequent search and seizure, the court noted that the dog was deployed “a mere three or four minutes after initiating the traffic stop” and that the officer testified that usual traffic stop lasts about 15 minutes. Further, at the point of the dog sniff the officer “had yet to issue the citation” and, thus, occurred before the traffic stop had ended. *Id.* at ¶ 59-60. *See also State v. Roseberry*, 5th Dist. Licking No. 2009-CA-78, 2010-Ohio-1112.

{¶18} The facts of this case are similar to *Melone*. Although we are mindful of the threat that a police officer could simply delay the issuance of a warning or citation until after the canine walk-around, and then contend that the purpose of the traffic stop had not been completed, under the facts of this case there is no evidence that the stop was unconstitutionally prolonged. At the outset due to the expired license plates, a call was made to the rental company. Next, a run of appellant’s driver’s license and criminal record was completed. At that point, after securing appellant in the police cruiser, the on-site dog was walked around the vehicle. The testimony presented at the suppression hearing was that from the point of the initial stop until the walk-around, five minutes had elapsed. Accordingly, we find that the trial court did not err when it denied appellant’s motion to suppress. Appellant’s assignment of error is not well-taken.

{¶19} On consideration whereof, we find that appellant was not prejudiced or prevented from having a fair proceeding and the judgment of the Huron County Court of

Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

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

Arlene Singer, P.J.

JUDGE

James D. Jensen, J
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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