

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JAMES JOSEPH FOTI,

Defendant-Appellant.

**CASE NOS. 2023-L-071
2023-L-072**

Criminal Appeals from the
Court of Common Pleas

Trial Court Nos. 2023 CR 000073
2020 CR 000267

OPINION

Decided: January 8, 2024

Judgment: Affirmed

Charles E. Coulson, Lake County Prosecutor, and *Kristi L. Winner*, Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Adam Parker, The Goldberg Law Firm, LLC, 323 West Lakeside Avenue, Suite 450, Cleveland, OH 44113 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, James Foti, appeals the denial of his Motion to Suppress in the Lake County Court of Common Pleas. For the following reasons, we affirm the decision of the lower court.

{¶2} In *State v. Foti*, Lake County Court of Common Pleas No. 20-CR-000267, Foti pled “no contest” to Illegal Conveyance of Drugs of Abuse Onto the Grounds of a Specified Governmental Facility, a felony of the third degree in violation of R.C. 2921.36(A)(2), with a Contraband/Instrumentalities Forfeiture Specification as set forth in

R.C. 2941.1417 and 2981.04, and was sentenced to 24 months in prison. Prior to the entry of the plea, the trial court, on March 20, 2023, denied Foti's Motion to Suppress "all evidence * * * and the arrest and observations obtained by law enforcement officials on or about March 1, 2020." Foti filed a timely Notice of Appeal (Court of Appeals No. 2023-L-072).

{¶3} In *State v. Foti*, Lake County Court of Common Pleas No. 23-CR-000073, Foti pled "guilty" to Failure to Appear, a felony of the fourth degree in violation of R.C. 2937.99, subject to R.C. 2929.13(B), and was sentenced to 12 months in prison concurrent to the sentence in Lake County Court of Common Pleas No. 20-CR-000267. Foti filed a timely Notice of Appeal (Court of Appeals No. 2023-L-071).

{¶4} On appeal, Foti raises the following assignment of error: "The Trial Court Erred in Denying Appellant's Motion to Suppress."

{¶5} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. "[A]n appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence," but, "must then independently [i.e., de novo], without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*

{¶6} In the present case, the trial court made the following factual findings:

This case arose after a Wickliffe Police officer [David Cook] observed a silver BMW with its high beam headlights illuminated driving eastbound on Euclid Avenue near Bishop Road. While passing several vehicles, the BMW failed to dim its high beams. The officer conducted a traffic stop. The driver, Emilie Deir, explained that her driver's side headlight was not functioning so she used her high beam headlights. Ms. Deir had a passenger in the front seat. Neither individual had identification on them.

The passenger identified himself as Jon Allen Foti and provided the correct social security number for this individual. He appeared to be unsure of his birth date, providing one date but then quickly correcting it. The officer returned to his cruiser to verify the identities of the driver and the passenger. The Bureau of Motor Vehicle[s] (BMV) photo for Jon Foti did not closely match that of the passenger. The BMV record indicated that Jon Foti was 6 feet tall and 175 pounds. The passenger did not appear to be 6 feet tall and seemed lighter. The officer returned to the car and asked both occupants to step out. Once the passenger exited the car, it became immediately apparent to the officer that the passenger was not 6 feet tall, as he was shorter than the officer who is well under 6 feet tall. The officer also noted that the passenger had two black folding knives, one clipped in each of his jean pockets. The zipper on the passenger's pants was unzipped. The officer immediately handcuffed the passenger and patted him down. The officer testified he handcuffed the passenger due to the presence of the folding knives and his suspicion that the passenger provided a false identity. When questioned, the passenger was adamant that he was Jonathan Foti. The officer decided to continue the detention of the passenger in order to verify or determine his true identity.

{¶7} Foti asserts that “Officer Cook[']s investigation into [his] identity measurably prolonged the seizure in the this case.” When Deir and Foti failed to produce identification, Cook obtained Deir's name, birthdate, phone number, and social security number and then the same information from Foti. According to Foti, about fortyseconds lapsed while he was being questioned. Cook returned to his vehicle and ran Deir's information through MTD and LEADS and then ran the information provided by Foti. According to Foti, running his information took another forty seconds. Cook noted that the information returned for Jon Foti did not match Foti's appearance. He returned to Deir's vehicle and ordered them out. Foti was handcuffed and placed in the back of Cook's vehicle where he was questioned about his identity. Foti maintains this questioning took at least six minutes. He argues: “Because Officer Cook extended the traffic stop by a measurable duration, over seven minutes in total, to complete tasks

unrelated to the stop's original purpose, his detention of Mr. Foti violated the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution, unless these unrelated actions were supported by independent reasonable suspicion of criminal activity by Appellant." Assignment of Error and Brief of Appellant at 5-6.

{¶8} "When a lawfully stopped vehicle contains passengers, the Fourth Amendment permits law enforcement officers to detain those passengers for the duration of the lawful detention of the driver." (Citation omitted.) *State v. Haynes*, 2018-Ohio-607, 106 N.E.3d 342, ¶ 12 (2d Dist.); *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009) ("[t]he temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop").

{¶9} "During a legitimate traffic stop, a request for identification from a passenger, followed by a computer check of that information, does not constitute an unreasonable search and seizure, so long as the traffic stop is not extended in duration beyond the time reasonably necessary to effectuate its purpose." *State v. Matheny*, 5th Dist. Licking No. 21CA0088, 2022-Ohio-3447, ¶ 37 (cases cited); *Haynes* at ¶ 12 ("[a] police officer also may request and obtain identification from a passenger"); *State v. Kremer*, 12th Dist. Warren No. CA2015-11-101, 2016-Ohio-3399, ¶ 16 ("officers are permitted to request identification from passengers and may order drivers and passengers to exit the vehicle"); *State v. Gartrell*, 2014-Ohio-5203, 24 N.E.3d 680, ¶ 56 (3d Dist.) ("an officer may request identification from a passenger and order passengers to exit a vehicle pending completion of the stop").

{¶10} “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop * * * and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S.Ct. 1609, 191 L.E.2d 492 (2015). “Beyond determining whether to issue a traffic ticket, * * * such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* at 355. In addition to inquiries in furtherance of the “mission,” the Supreme Court has recognized “that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention.” *Id.* at 354. “An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop.” *Id.* at 355. However, “he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.” *Id.*

{¶11} Foti maintains that, subsequent to *Rodriguez*, any extension of the time to complete a traffic stop for reasons unrelated to the purpose of the stop unconstitutionally prolongs the stop. According to Foti, *Rodriguez* does not allow for de minimis or reasonable extensions to inquire into unrelated matters. “The seizure remains lawful only ‘so long as [unrelated] inquiries do not measurably extend the duration of the stop.’” *Id.* citing *Johnson*, 555 U.S. at 333, 129 S.Ct. 781, 172 L.Ed.2d 694.

{¶12} There is support for Foti’s application of *Rodriguez* among the federal courts. The Eleventh Circuit construed *Rodriguez* to mean that “a stop is unlawfully prolonged when an officer, without reasonable suspicion, diverts from the stop’s purpose

and adds time to the stop in order to investigate other crimes.” *United States v. Campbell*, 26 F.4th 860, 884 (11th Cir.2022). For authority, the Eleventh Circuit cited the following:

Most circuits that have addressed *Rodriguez* have reached a similar conclusion. See *United States v. Stewart*, 902 F.3d 664, 674 (7th Cir.2018) (suggesting that seventy-five seconds used to call for backup might unlawfully prolong the stop, but the record was inadequate to determine if the officer’s purpose was for safety or a dog sniff), *reh’g en banc denied* (Oct. 26, 2018); *United States v. Clark*, 902 F.3d 404, 410-11 (3d Cir.2018) (finding that twenty seconds of unrelated questioning prolonged the stop); *United States v. Bowman*, 884 F.3d 200, 219 (4th Cir.2018) (finding that an officer did not have consent or reasonable suspicion to question a passenger after the mission was completed); *United States v. Gomez*, 877 F.3d 76, 88-93 (2d Cir.2017) (rejecting a reasonableness test, instead determining whether the unrelated inquiry adds time to the stop at all, and ultimately finding that asking a few questions about drugs prolonged the stop); *United States v. Gorman*, 859 F.3d 706, 715 (9th Cir.2017) (holding that unrelated questioning prolonged the stop). *But see United States v. Collazo*, 818 F.3d 247, 257-58 (6th Cir.2016) (using language suggesting an overall reasonableness standard).

Id., fn. 20.

{¶13} Since some measurable amount of time passed while Officer Cook obtained Foti’s information and ran it through the computer, the determinative question, then, is whether asking Foti for identification was related to the traffic violation and attendant safety concerns or whether the inquiry amounted to an unrelated investigation into other potential crimes. We are unaware of any Ohio authority directly on point. Ohio appellate courts consistently hold that it is not a violation of the Fourth Amendment to ask a passenger in a lawfully stopped vehicle for identification. *State v. Hale*, 5th Dist. Licking No. 2022 CA 00043, 2023-Ohio-1057, ¶ 14 (“[a]n officer may request identification from the passengers of a vehicle lawfully stopped for a traffic violation without running afoul of the Fourth Amendment”). Typically, questioning of the passenger is constitutionally

justified on the grounds that such questioning is consensual and/or a de minimis imposition upon the passenger's expectation of privacy. See, e.g., *Matheny*, 2022-Ohio-3447, at ¶ 37 (“[a] request for identification * * * is ordinarily characterized as a consensual encounter, not a custodial search”) (citation omitted); *State v. Isles*, 5th Dist. Stark No. 2019 CA 00121, 2020-Ohio-3061, ¶ 17 (“requesting identification from a passenger is merely ‘routine questioning’ that is ‘but a minimal intrusion’”) (citation omitted); *State v. Lawson*, 180 Ohio App.3d 516, 2009-Ohio-62, 906 N.E.2d 443, ¶ 39 (2d Dist.) (“[r]outine questioning of passengers, such as a request for identification, is generally considered a consensual encounter and constitutes a minimal intrusion”). These cases, however, do not discuss the issue of whether asking a passenger for identification is permissible and related to the “mission” or permissible but unrelated thereto.

{¶14} Federal precedents strongly support the position that asking a passenger for identification should be treated as an attendant safety concern relating to the stop itself. The precedent was surveyed by a District Court in Pennsylvania which concluded:

A review of district court and circuit court decisions from around the country reveal that the majority of decisions concluding that passenger checks are permissible do so on the basis that such action ensures officer safety and therefore is within the mission of the traffic stop. There are significantly less cases that conclude that asking a passenger for identification (and/or conducting a warrant check) is permissible during a traffic stop as a matter of course, separate from officer safety. Finally, some courts conclude that a police officer may not ask for a passenger's identification and run a warrant check during a valid traffic stop.

(Footnotes omitted.) *United States v. Eddings*, W.D.Pa. No. 21-117, 2023 WL 1775705, *10 (cases cited); *United States v. Reynolds*, 729 Fed.Appx. 639, 643 (10th Cir.2018) (“[w]hile a traffic stop is ongoing, * * * an officer has wide discretion to take reasonable precautions to protect his safety,’ including ‘ask[ing] for identification from passengers

and run[ning] background checks on them”) (citation omitted); *United States v. Fernandez*, 600 F.3d 56, 62 (1st Cir.2010) (“[b]ecause passengers present a risk to officer safety equal to the risk presented by the driver, an officer may ask for identification from passengers and run background checks on them as well”); *United States v. Soriano-Jarquin*, 492 F.3d 495, 500 (4th Cir.2007) (“[i]f an officer may ‘as a matter of course’ and in the interest of personal safety order a passenger physically to exit the vehicle, * * * he may surely take the minimally intrusive step of requesting passenger identification”); *United States v. Burrus*, 402 F.Supp.3d 116, 124 (W.D.Pa.2019) (“[s]ome courts have held that checking a passenger’s identification during a traffic stop is appropriate because it is necessary to ensure officer safety, which is part of the “mission” of a traffic stop,’ while ‘[o]ther courts have determined that checking a passenger’s license is permissible because it is a normal inquiry related to addressing a traffic violation”) (citation omitted).

{¶15} In describing those tasks that may be deemed as part of the traffic stop, the Supreme Court has stated: “Unlike a general interest in criminal enforcement, * * * the government’s officer safety interest stems from the mission of the stop itself.” *Rodriguez*, 575 U.S. at 356, 135 S.Ct. 1609, 191 L.E.2d 492. Because “traffic stops are ‘especially fraught with danger to police officers,’ * * * an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely.” (Citation omitted.) *Id.* “On-scene investigation into other crimes, however, detours from that mission.” *Id.* A request for the passenger’s identification, especially in situations such as the present one where the request is made simultaneously with a request for the driver’s identification, constitutes a negligibly burdensome precaution stemming from the mission of the stop itself rather than an on-scene investigation into other crimes. Therefore, any measurable

extension of the stop occasioned by such inquiry does not constitute a constitutional violation.

{¶16} Foti further argues that Officer Cook did not have a reasonable suspicion that he had committed a seatbelt violation and that, without such suspicion, he could not ask him for identification.

{¶17} At the suppression hearing, Officer Cook testified that he was prompted to ask Foti for his identification because he was not wearing a seatbelt. We note that Cook also testified that he would have “likely” asked Foti for identification even if he had been wearing his seatbelt. The video from Cook’s body camera was played at the hearing. Foti maintains that the video shows him wearing his seat belt when ordered out of the vehicle. At the hearing, Cook testified that the video was unclear whether Foti was wearing a seatbelt when ordered out of the vehicle. Cook also stated that, regardless of whether Foti was wearing a seatbelt when he was ordered out of the vehicle, he was not wearing one when Cook first approached the vehicle, spoke with Deir, and requested his identification.

{¶18} We need not resolve the issue of whether Officer Cook had probable cause to believe that Foti was not wearing a seatbelt for two reasons. First, it is a disputed factual issue that was not addressed by the trier of fact. It is the role of this court to accept the lower court’s factual findings when duly supported by the evidence, not to make those findings in the first instance. Second, the foregoing discussion establishes that Cook did not need probable cause to ask Foti for identification (the critical issue being whether that request related to the mission of the stop). When Cook ran Foti’s (false) information through the computer and the picture and physical description of Jon Foti did not match

James Foti's appearance, he acquired the reasonable suspicion to detain Foti to confirm his identity.

{¶19} The sole assignment of error is without merit.

{¶20} For the foregoing reasons, the denial of Foti's Motion to Suppress is affirmed.

Costs to be taxed against the appellant.

EUGENE A. LUCCI, P.J.,

ROBERT J. PATTON, J.,

concur.