[Cite as *State v. Harper*, 2022-Ohio-4357.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 21CA3965
	:	
v.	:	
	:	DECISION AND
JELANI ADISA HARPER,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Jane Timonere, Timonere Law Offices, LLC, Jefferson, Ohio, for Appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Jay S. Willis, Assistant Prosecuting Attorney, Portsmouth, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Jelani Harper, appeals the judgment of the Scioto County Court of Common Pleas convicting him of one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2) and (C)(1)(e), a first-degree felony; one count of aggravated possession of drugs in violation of R.C. 2925.11(A) and (C)(1)(d), a first-degree felony; one count of possessing criminal tools in violation of R.C. 2923.24(A) and (C), a fifth-degree felony; and one count of conspiracy in violation of R.C. 2923.01(A)(1) and (J)(2), a second-degree felony. His convictions were entered after he pled no contest to each of the charges. On

appeal, Harper contends 1) that the trial court erred in finding the initial basis for the stop of his vehicle was valid; and 2) that the trial court erred in finding the search of the vehicle which rendered discovery of contraband was the result of a legal detention or was otherwise proper, considering the totality of the circumstances. For the following reasons, we find no merit to either of Harper's assignments of error. Accordingly, the judgment of the trial court is affirmed.

FACTS

{¶2} This matter stems from a traffic stop on U.S. Route 23 in Scioto County, Ohio on the evening of January 14, 2020. The record reflects that Ohio State Highway Patrol Trooper Anthony Day was traveling southbound near mile post #14 when he witnessed a white van in the right lane "travel across the white fog line [on] two occasions by at least a half tire width." Trooper Day initiated a stop of the vehicle where he encountered the driver, Jelani Harper, and Bryan Allen, who was a passenger in the car. The trooper initially noted that the license plate on the van didn't match the information in the system. The plate matched a Toyota, rather than the Dodge minivan that Harper was driving. Additionally, the two men gave what the trooper considered to be suspicious information, claiming that they were traveling to West Virginia for what one called "masonry" work and the other called "missionary" work. Trooper Day questioned why neither of them appeared to be dressed for that type of work and had no luggage or extra clothing

in the van. Additionally, the record reveals that Allen had no identification with him, which the trooper found suspicious considering the two men claimed they were driving to West Virginia to find work.

{¶3} Because Allen lacked identification, dispatch was not immediately able to confirm his information. During this time, Trooper Nick Lewis arrived as back-up. While waiting on information regarding Allen from dispatch, Trooper Day made the decision to walk his canine around the vehicle. After the canine alerted on the driver's side back door area of the van, both Harper and Allen were read their *Miranda* rights and placed in the back of Lewis's cruiser so that the troopers could search the van.

{¶4} The record reflects that the subsequent search of the van took just under three hours and was started and stopped three times. The troopers initially searched the interior of the van while Harper and Allen waited in the back seat of the cruiser. While in the cruiser, the men were being video and audio recorded as they watched the search take place. When the troopers failed to locate drugs hidden in the interior of the van during the initial part of the search, they removed the men from the cruiser, had them get back into their van, and the troopers then reviewed the video and audio footage from inside the cruiser. The troopers repeated this pattern twice: placing the men in the cruiser, searching the van, removing the men from the cruiser, reviewing video footage, and then resuming

the search. Based upon statements and body movements of the men, they then resumed their search of the van to areas that seemed to be of interest to the men based upon their conversation in the back of the cruiser. Finally, the troopers located a black package that contained eleven different baggies with a total of approximately 1000 pills that were later determined to be oxycodone. The package was hidden behind an interior panel located on the rear passenger side of the van near the wheel well.

{¶5} As a result, both men were placed under arrest. Harper was subsequently indicted on February 12, 2020, on one count of aggravated trafficking in drugs in violation of R.C. 2925.03(A)(2) and (C)(1)(e), a first-degree felony; one count of aggravated possession of drugs in violation of R.C. 2925.11(A) and (C)(1)(d), a first-degree felony; one count of possessing criminal tools in violation of R.C. 2923.24(A) and (C), a fifth-degree felony; and one count of conspiracy in violation of R.C. 2923.01(A)(1) and (J)(2), a second-degree felony. Harper pled not guilty to the charges and the matter proceeded through the discovery process.

{¶6} Harper filed a motion to suppress on May 4, 2020, asking that all evidence that was obtained as a result of the arrest, search, and seizure be suppressed. The motion argued that after the troopers initially searched the vehicle and found nothing, they illegally prolonged the search and wrongfully and illegally detained him while they then conducted two additional searches of his vehicle.

Harper argued that after the troopers completed the initial search of his vehicle without discovering drugs or other contraband, they lacked reasonable suspicion to further detain him and continue searching. Harper also challenged the troopers' practice of moving the men back and forth from the cruiser to their van while they reviewed the audio and video recordings from the cruiser. Harper argued that the practice "was a ruse, and thereby a further illegal detention, to gain information of whether there was contraband in the vehicle."

{¶7} A hearing was held on the motion to suppress where the State presented testimony from Trooper Day. Five different videos from both Day's and Lewis's cruisers were played and admitted into evidence during the hearing. Trooper Day testified regarding the fog line violation that led to the initial stop, the alert of the canine, as well as the process used to obtain clues from Harper and Allen to assist in the search of the van. Trooper Day testified that upon reviewing the video, he was able to hear Allen ask Harper "if they found it," to which Harper replied "no but they're close." The trial court noted that it could not hear that on the video.[1] The trial court ultimately denied the motion to suppress on August 4, 2020, and the matter proceeded.

[1] This Court reviewed the video as well and shares in the trial court's inability to hear the alleged statement on the video. However, between the static, radio interruptions and passing road traffic noise, it was very difficult to decipher most of the conversation between the men while they were in the cruiser. However, some statements were ascertainable, as were the men's demeanor and hand motions.

{¶8} Harper subsequently filed a supplemental motion to suppress on May 11, 2021. The supplemental motion challenged the initial stop of the vehicle in light of a new case released by the Supreme Court of Ohio addressing whether a fog line violation constitutes reasonable, articulable suspicion to initiate a traffic stop.[2] A second suppression hearing was held on August 6, 2021. Harper argued the initial stop was based on Trooper Day's "uncorroborated observation that Mr. Harper's tires had crossed one half tire width onto the fog line at the side of southbound Route 23" and that "the Ohio Supreme Court [had] recently determined that the facts relied on by Trooper Day to make a stop are not a violation of the motor vehicle code." In his motion, Harper maintained that he only drove "onto" the fog line and that he did not cross it, and thus, that he did not violate R.C. 4511.33 in light of the recent Supreme Court holding. A second suppression hearing was held where Trooper Day once again testified. The trial court ultimately found, based upon its review of the video and testimony by Trooper Day, that the tire crossed the outside portion of the line and that a violation occurred. Thus, the trial court denied the supplemental motion to suppress.

{¶9} Thereafter, Harper entered into a plea agreement whereby he agreed to plead no contest to all four of the charges contained in the indictment. A

[2] *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842

sentencing hearing was held on August 20, 2021, and the trial court issued a judgment entry of sentence on September 16, 2021. In total, Harper was sentenced to a mandatory minimum prison term of 9 years to an indefinite maximum prison term of up to 14 years. It is from this final order that Harper now brings his timely appeal, setting forth two assignments of error for our review.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED IN FINDING THE INITIAL BASIS FOR THE STOP OF MR. HARPER'S VEHICLE WAS VALID.

II. THE TRIAL COURT ERRED IN FINDING THE SEARCH OF THE VEHICLE WHICH RENDERED DISCOVERY OF CONTRABAND WAS THE RESULT OF AN ILLEGAL DETENTION OR OTHERWISE IMPROPER, CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES.

ASSIGNMENT OF ERROR I

{¶10} In his first assignment of error, Harper contends that the trial court erred in finding the initial basis for the stop of his vehicle was valid. In support of his assignment of error, Harper's sole argument is that the marked lanes statute, R.C. 4511.33, and a recent decision by the Supreme Court of Ohio are void for vagueness. Harper essentially argues that between the statute and the recent decision, ordinary citizens can only guess at what the law prohibits and thus, the law cannot survive "an attack of vagueness." In response, the State contends that this Court just recently considered the Supreme Court of Ohio's recent

interpretation of R.C. 4511.33 in *State v. Wilds*, 4th Dist. Scioto No. 19CA3894, 2021-Ohio-2554 and "found the statute specific enough to distinguish it."[3] The State argues that "inasmuch as this court was able to render such a distinction then the statute cannot be considered void for vagueness."

Legal Analysis

{¶11} Although Harper couches his assignment of error in terms of the trial court erring in denying his motion to suppress, we find his argument is actually limited to a legal challenge to the constitutionality of both R.C. 4511.33, as well as the Supreme Court of Ohio's recent decision in *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842. Thus, the typical standard of review and framework for reviewing the denial of motions to suppress is not appropriate in analyzing this assignment of error. Instead, we begin with a review of the language of R.C. 4511.33 and Supreme Court of Ohio's recent holding in *State v. Turner, supra*.

{¶12} R.C. 4511.33 governs rules for driving in marked lanes and provides in pertinent part as follows:

> (A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

[3] The *Wilds* case involved the crossing of the center line, as opposed to the fog line, and we distinguished it from *Turner* in that regard.

> (1) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

{¶13} Further, the Supreme Court of Ohio recently held as follows with regard to what exactly R.C. 4511.33 prohibits when it comes to the outer white edge line, commonly referred to as the fog line:

> We hold, based on the plain language of R.C. 4511.33(A)(1), the definitions set forth in R.C. 4511.01, and the statutory scheme as a whole, that the single solid white longitudinal line on the right-hand edge of a roadway—the fog line—marks the edge of the roadway and that such a marking merely "discourages or prohibits" a driver from crossing it, not driving on or touching it. MUTCD Section 3A.06(B).

State v. Turner, *supra*, at ¶ 37.

{¶14} In reaching its decision, the Court stated that "[t]his interpretation of R.C. 4511.33(A)(1) is consistent with the greater weight of authority in jurisdictions across the nation that touching the single solid white longitudinal line on the right-hand side of the roadway does not constitute a violation of R.C. 4511.33(A)(1)." (Citations omitted.) *Id.* at ¶ 36. Importantly, in rendering its decision, the Court expressed no concerns regarding any ambiguity in the statute.

{¶15} Here, the trial court found that the right side tires on Harper's vehicle crossed the outer edge of the fog line by half a tire width on two separate occasions. On the first occasion, Harper's tires crossed the outer edge of the fog

line for about 50 to 75 feet, and on the second occasion they traveled over the fog line for about 50 feet. The trial court found that this conduct constituted a violation of R.C. 4511.33 in light of the holding in *State v. Turner*, supra. The trial court also found that Harper's crossing of the fog line on these two occasions was an "additional danger" that constituted "unsafe conduct," which is prohibited by the statute.

{¶16} Harper now argues, for the first time on appeal, that both the *Turner* holding and R.C. 4511.33 are void for vagueness because they do not put ordinary citizens on notice of exactly what conduct is prohibited. However, the Sixth District Court of Appeals recently held that an appellant's failure to challenge the validity of a statute based upon a void for vagueness argument was waived because the appellant failed to raise the arguments in the trial court. *State v. Bui*, 6th Dist. Lucas No. L-19-1028, 2021-Ohio-362, ¶ 33 (involving a challenge to the validity of R.C. 4511.34), citing *In re M.D.*, 38 Ohio St.3d 149, 527 N.E.2d 286, syllabus (1988). Thus, the court declined to consider the arguments for the first time on appeal. *Id*. The Seventh District Court of Appeals recently reached the same conclusion regarding a void for vagueness argument in *State v. Mieczkowsk*, 2018-Ohio-2775, 115 N.E.3d 758, ¶ 20 (7th Dist.), where it reasoned as follows:

> Implicit in those arguments is this void-for-vagueness argument. The Second Appellate District has indicated a void-for-vagueness argument is waived if it is not raised to the trial court. *Dayton v. Smith*, 2d Dist., 2018-Ohio-675, 106 N.E.3d 901, ¶ 29,

> [quoting] *State v. Awan*, 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986) (" 'An appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.' " * * * "[T]he question of the constitutionality of a statute must generally be raised at the first opportunity and, in a criminal prosecution, this means in the trial court."). Thus, the issue is waived.

{¶17} Further, in *State v. Awan*, the Supreme Court of Ohio held that questions regarding the constitutionality of a statute must be raised at the first opportunity, which is at the trial court level in a criminal prosecution. *Awan* at 122-123 (explaining that waiver applies to arguments that a statute is unconstitutionally vague on its face, as well as to an argument that a trial court interpreted the statute in such a way as to render the statute unconstitutionally vague), citing *State v. Woodards*, 6 Ohio St.2d 14, 21, 215 N.E.2d 568 (1966).

{¶18} As explained in *Awan*,

> The general rule is that "an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court."

Awan at 122, quoting *State v. Childs*, 14 Ohio St.2d 56, 236 N.E.2d 545, paragraph three of the syllabus (1968); *State v. Glaros*, 170 Ohio St. 471, 166 N.E.2d 379, paragraph one of the syllabus (1960); *State v. Lancaster*, 25 Ohio St.2d 83, 267 N.E.2d 291, paragraph one of the syllabus (1971); *State v. Williams*, 51 Ohio St.2d

112, 117, 364 N.E.2d 1364 (1977) (judgment vacated in part on other grounds by *Williams v. Ohio*, 98 S.Ct. 3137, 438 U.S. 911 (1978). *See also State v. Payton*, 4th Dist. Scioto No. 17CA3788, 2017-Ohio-7865, ¶ 15.

{¶19} Because Harper failed to argue that R.C. 4511.33 and the holding of *State v. Turner*, *supra*, were void for vagueness at the trial court level, and because it is well-established that an appellate court will not consider an issue raised for the first time on appeal, we decline to consider the arguments raised under Harper's first assignment of error. Accordingly, Harper's first assignment of error is hereby overruled.

ASSIGNMENT OF ERROR II

{¶20} In his second assignment of error, Harper contends that the trial court erred in finding the search of the vehicle, which resulted in the discovery of contraband, was the result of a legal and proper detention considering the totality of the circumstances. Harper argues that the initial search of the van was based upon the probable cause afforded to the troopers as a result of the canine alert, but that once the initial search of the van was concluded without finding any contraband, "there was no constitutional basis to further detain him or search the vehicle again and that subsequent searches of the vehicle were the result of an illegally prolonged detention." Harper challenges the troopers' search methods, specifically the practice of transferring defendants from car to car while reviewing

the in-car cruiser cam footage to discover clues about where contraband might be concealed. Further, rather than describing the search at issue as one long search, Harper argues that the troopers actually conducted three separate searches of the van, having probable cause to conduct only the first search. Harper argues that the alleged second and third searches were only based upon the troopers' hunch that there was contraband in the vehicle, rather than reasonable, articulable suspicion, or probable cause.

{¶21} The State responds by arguing that law enforcement had probable cause to search Harper's van in light of the canine alert and that the search was conducted pursuant to the automobile exception, which is an exception to the warrant requirement. The State argues that once the canine alerted on the vehicle, the traffic stop shifted "to an illegal narcotic investigation and duration [was] no longer an issue." The State further argues that the searches that were conducted were simply a continuation of the initial search, not multiple different searches requiring separate probable cause.

Standard of Review

{¶22} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Gurley*, 2015-Ohio-5361, 54 N.E.3d 768, ¶ 16 (4th Dist.), citing *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 100. At a suppression hearing, the trial court acts as the trier of fact and is in the

best position to resolve factual questions and evaluate witness credibility. *Id.*; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Thus, when reviewing a ruling on a motion to suppress, we defer to the trial court's findings of fact if they are supported by competent, credible evidence. *Gurley* at ¶ 16; citing *State v. Landrum*, 137 Ohio App.3d 718, 722, 739 N.E.2d 1159 (4th Dist. 2000). However, "[a]ccepting those facts as true, we must independently determine whether the trial court reached the correct legal conclusion in analyzing the facts of the case." *Id.*, citing *Roberts* at ¶ 100.

Fourth Amendment

{¶23} " 'The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures.' " *State v. Shrewsbury*, 4th Dist. Ross No. 13CA3402, 2014-Ohio-716, ¶ 14, quoting *State v. Emerson*, 134 Ohio St.3d 191, 2012-Ohio- 5047, 981 N.E.2d 787, ¶ 15. "This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion of the evidence obtained from the unreasonable search and seizure at trial." *Id.*, citing *Emerson* at ¶ 15. *See also State v. Lemaster*, 4th Dist. Ross No. 11CA3236, 2012-Ohio-971, ¶ 8 ("If the government obtains evidence through actions that violate an accused's Fourth Amendment rights, that evidence must be excluded at trial").

Initial Stop

{¶24} A police officer may stop the driver of a vehicle after observing a de minimis violation of traffic laws. *State v. Debrossard,* 4th Dist. Ross. No. 13CA3395, 2015-Ohio-1054, ¶ 13, citing *State v. Guseman*, 4th Dist. Athens No. 08CA15, 2009-Ohio-952, ¶ 20, citing *State v. Bowie*, 4th Dist. Washington No. 01CA34, 2002-Ohio-3553, ¶ 8, 12, and 16, in turn citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996). *See also Dayton v. Erickson*, 76 Ohio St.3d 3, 655 N.E.2d 1091, syllabus (1996). Further, the Supreme Court of Ohio has clearly stated: "Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop[.]" *Dayton* at paragraph one of the syllabus.

{¶25} "An officer's temporary detention of an individual during a traffic stop constitutes a seizure of a person within the meaning of the Fourth Amendment * * *." *State v. Lewis*, 4th Dist. Scioto No. 08CA3226, 2008-Ohio-6691, ¶ 14. *See also State v. Eatmon*, 4th Dist. Scioto No. 12CA3498, 2013-Ohio-4812, ¶ 13 (quoting *Lewis*). "To be constitutionally valid, the detention must be reasonable under the circumstances." *Lewis* at ¶ 14. "While probable cause 'is certainly a

complete justification for a traffic stop,' it is not required." *Eatmon* at ¶ 13, quoting *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 23. "So long as 'an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid.' " *Eatmon* at ¶ 13, quoting *Mays* at ¶ 8. "Reasonable and articulable suspicion is a lower standard than probable cause." *Eatmon* at ¶ 13, *Mays* at ¶ 23.

{¶26} In light of our disposition of Harper's first assignment of error, we are proceeding under the premise that the stop of Harper's vehicle was constitutionally valid based upon Trooper Day's observation of a de minimis traffic violation, i.e., specifically twice driving across the fog line in violation of R.C. 4511.33(A)(1), as well as the recent decision by the Supreme Court of Ohio in *State v. Turner, supra*. Thus, we turn our attention to the subsequent investigative detention that ensued after the initial stop.

Canine Sniff and Duration of Stop

{¶27} Generally, "[w]hen a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and to perform routine procedures such as a computer check on the motorist's driver's license, registration and vehicle plates." *State v. Aguirre*, 4th Dist. Gallia No. 03CA5, 2003-Ohio-4909, ¶ 36, citing *State v.*

Carlson, 102 Ohio App.3d 585, 598, 657 N.E.2d 591 (9th Dist. 1995). *See also Rodriguez v. United States*, 575 U.S. 348, 135 S.Ct. 1609 (2015) (ordinary inquiries incident to a traffic stop include "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance"). " '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.' " *Aguirre* at ¶ 36, quoting *Carlson* at 598, in turn citing *State v. Cook*, 65 Ohio St.3d 516, 521-522, 605 N.E.2d 70 (1992) (fifteen-minute detention was reasonable). *See also United States v. Sharp*, 470 U.S. 675, 105 S.Ct. 1568 (1985) (twenty-minute detention was reasonable).

{¶28} Additionally, once a driver has been lawfully stopped, an officer may order the driver to get out of the vehicle without any additional justification. *State v. Kilbarger*, 4th Dist. Hocking No. 11CA23, 2012-Ohio-1521, ¶ 16, citing *State v. Huffman*, 2nd Dist. Clark No. 2010-CA-104, 2011-Ohio-4668, ¶ 8; *See Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, fn. 6 (1977). *See also State v. Alexander-Lindsey*, 2016-Ohio-3033, 65 N.E.3d 129, ¶ 14 ("Officers can order a driver and a passenger to exit the vehicle, even absent any additional suspicion of a criminal violation"). However, "the officer must 'carefully tailor'

the scope of the stop 'to its underlying justification,' and the stop must 'last no longer than is necessary to effectuate the purpose of the stop.' " *State v. Marcinko*, 4th Dist. Washington No. 06CA51, 2007-Ohio-1166, ¶ 26, quoting *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319 (1983). "An officer may lawfully expand the scope of the stop and may lawfully continue to detain the individual if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *Marcinko* at ¶ 26, citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and *State v. Robinette*, 80 Ohio St.3d 234, 241 685 N.E.2d 762 (1997).

{¶29} Further, a lawfully detained vehicle may be subjected to a canine check of the vehicle's exterior even without the presence of a reasonable suspicion of drug-related activity. *See State v. Dukes*, 4th Dist. Scioto Nos. 16CA3745, 16CA3760, 2017-Ohio-7204, ¶ 23, citing *State v. Rusnak*, 120 Ohio App.3d 24, 28, 696 N.E.2d 633 (6th Dist.1997). "Both Ohio courts and the United States Supreme Court have determined that 'the exterior sniff by a trained narcotics dog to detect the odor of drugs is not a search within the meaning of the Fourth Amendment to the Constitution.' " *Dukes* at ¶ 23, quoting *State v. Jones*, 4th Dist. Washington No. 03CA61, 2004-Ohio-7280, ¶ 24. *See also United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637 (1983). Thus, a canine check of a vehicle may be conducted

during the time period necessary to effectuate the original purpose of the stop. *Jones* at ¶ 24.

{¶30} This Court has observed that during the lawful detention of a vehicle, "officers are not required to have a reasonable, articulable suspicion of criminal activity in order to call in a canine unit to conduct a canine sniff on the vehicle." *Dukes* at ¶ 24, citing *State v. Feerer*, 12th Dist. Warren No. CA2008-05-064, 2008-Ohio-6766, ¶ 10. "Because the 'exterior sniff by a trained narcotics dog is not a search within the meaning of the Fourth Amendment to the Constitution,' a canine sniff of a vehicle may be conducted even without the presence of such reasonable, articulable suspicion of criminal activity so long as it is conducted during the time period necessary to effectuate the original purpose of the stop." *Id. See also United States v. Place, supra*. "A drug sniffing dog used to detect the presence of illegal drugs in a lawfully detained vehicle does not violate a reasonable expectation of privacy and is not a search under the Ohio Constitution." *State v. Waldroup*, 100 Ohio App.3d 508, 514, 654 N.E.2d 390 (12th Dist. 1995).

{¶31} Further, "[a]n officer may expand the scope of the stop and may continue to detain the vehicle without running afoul of the Fourth Amendment if the officer discovers further facts which give rise to a reasonable suspicion that additional criminal activity is afoot." *State v. Rose*, 4th Dist. Highland No. 06CA5,

2006-Ohio-5292, ¶ 17, citing *State v. Robinette*, *supra*, at 240. The *Robinette* court explained at paragraph one of the syllabus:

> When a police officer's objective justification to continue detention of a person * * * is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure.

{¶32} Conversely, "if a law enforcement officer, during a valid investigative stop, ascertains 'reasonably articulable facts giving rise to a suspicion of criminal activity, the officer may then further detain and implement a more in-depth investigation of the individual.' " *Rose* at ¶ 17, quoting *Robinette* at 241.

{¶33} However, the United States Supreme Court in *Rodriguez v. United States*, *supra*, has held that while a police officer "may conduct certain unrelated checks during an otherwise lawful traffic stop * * * he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual." *Rodriguez* at 1615. Accordingly, the Court concluded that police officers may not extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. *Id.* at 1614-1617.

{¶34} Finally, "[i]n determining whether a detention is reasonable, the court must look at the totality of the circumstances." *State v. Matteucci*, 11th Dist. Lake No. 2001-L-205, 2003-Ohio-702, ¶ 30. The totality of the circumstances approach "allows officers to draw on their own experience and specialized training to make

inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.' " *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744 (2002), quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). *See also Dukes, supra*, at ¶ 27 and *State v. Ulmer*, 4th Dist. Scioto No. 09CA3283, 2010-Ohio-695, ¶ 23. "Thus, when an appellate court reviews a police officer's reasonable suspicion determination, the court must give 'due weight' to factual inferences drawn by resident judges and local law enforcement officers." *Ulmer* at ¶ 23, citing *Arvizu* at 273, in turn quoting *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). However, as explained above, in the absence of reasonable suspicion, a canine sniff cannot serve to extend an otherwise completed traffic stop. With respect to the duration of the stop, it has been noted that a timeframe of approximately 15 minutes should be sufficient, on average, to complete the necessary checks and be ready to issue a traffic citation. *See Dukes* at ¶ 30, citing *State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 22, and *State v. Brown*, 183 Ohio App.3d 337, 2009-Ohio-3804, 91 N.E.2d 1138, ¶ 23 (6th Dist.). *But see State v. Alexander-Lindsey, supra*, (approving the deployment of K-9 twenty-two minutes into the stop).

{¶35} Here, as set forth above, Trooper Day's initial information-gathering encounter with Harper and Allen was slowed down due to the fact that the license

plate on the Dodge van the men were driving was registered to a Toyota. Additionally, the trooper testified that the information he was given by the men regarding their destination and purpose was suspicious in that one of the men claimed they were driving to West Virginia to seek "masonry" work while the other stated they were looking for "missionary" work. The trooper clarified that it was masonry work they were seeking, but noted that they were not dressed for that type of work and had no luggage or change of clothes with them in their van. Further, Allen had no identification with him, which Trooper Day testified was unusual considering he was going to West Virginia to find work.

{¶36} While Trooper Day was still waiting on the information he requested from dispatch regarding the occupants of the car, which took longer than necessary because Allen had no identification and the initial report from dispatch stated there was no information on him on file, he decided to walk his dog around the vehicle. Because Trooper Day was still awaiting the requested information, he had not begun to issue either a verbal or written warning or citation at the time the canine sniff was conducted. Further, at the time the trooper's dog alerted on the vehicle, only 14 minutes had elapsed from the time of the initial stop. Thus, the canine sniff did not impermissibly extend the traffic stop here.

The Automobile Exception

{¶37} Finally, under the "automobile exception" to the warrant requirement, police officers may perform a warrantless search of a vehicle so long as they have probable cause to believe the vehicle contains contraband or evidence of a crime. *See State v. Robinson*, 4th Dist. Lawrence No. 14CA24, 2016-Ohio-905, ¶ 26, citing *State v. Chaffins*, 4th Dist. Scioto No. 13CA3559, 2014-Ohio-1969, ¶ 18, and *State v. Williams*, 4th Dist. Highland No. 12CA7, 2013-Ohio-594, ¶ 25. " 'Moreover, if a trained narcotics dog "alerts to the odor of drugs from a lawfully detained vehicle, an officer has probable cause to search the vehicle for contraband." ' " *Robinson* at ¶ 26, quoting *State v. Cahill*, 3d Dist. Shelby No. 17-01-19, 2002-Ohio-4459, ¶ 22, in turn quoting *State v. French*, 104 Ohio App.3d 740, 749, 663 N.E.2d 367 (12th Dist. 1995). *See also Williams, supra*, at ¶ 25, quoting *State v. Johnson*, 6th Dist. Lucas No. L-06-1035, 2007-Ohio-3961, ¶ 9, in turn quoting *State v. Nguyen*, 157 Ohio App.3d 482, 2004-Ohio-2879, 811 N.E.2d 1180, ¶ 22 (6th Dist.) (" ' "when a [drug] dog alerts to the presence of drugs, it gives law enforcement probable cause to search the entire vehicle" ' ").

{¶38} Here, Trooper Day testified that the canine alerted to the presence or scent of illegal substances in the vehicle. Therefore, the law enforcement officers had probable cause to conduct a warrantless search of Harper's vehicle for contraband. This probable cause extended to the entire vehicle and there was no

time limit in conducting the search. For example, in *State v. Williams, supra*, this Court found that officers were permitted to stop a search in order to take the vehicle to an impound lot where they could resume their search under better and safer conditions without obtaining a warrant to do so, based upon the reasoning that the same probable cause that existed at the time of the initial search still existed at the impound lot. *Williams* at ¶ 26-27.

{¶39} Thus, we reject Harper's argument that the manner in which the troopers conducted the search resulted in three separate searches, each of which required its own separate reasonable suspicion or probable cause. Trooper Day testified at length regarding the normal process he employs when searching a vehicle, including the many tools at his disposal such as review of the in car cruiser cam footage. The trial court found that only one search took place and we conclude this finding by the trial court is supported by competent, credible evidence. Moreover, in addition to our reasoning set forth in *Williams, supra*, this Court has previously determined that once a trained drug dog alerts to the odor of drugs, police have probable cause to search the entire vehicle for drugs and may continue to search even if the passenger compartment contains no drugs. *State v. Baum*, 4th Dist. Ross No. 99CA2489, 2000 WL 126678, *3, citing *State v. Calhoun*, 9th Dist. Lorain No. 94CA5824, 1995 WL 255929 (May 3, 1995). *See also State v. White, supra*, at ¶ 23 and *State v. Gurley, supra*, at ¶ 28. Therefore,

the canine's positive indication on the vehicle provided the troopers with probable cause to search the entire vehicle.

{¶40} Because neither the initial traffic stop, investigatory detention, nor search of Harper's vehicle violated the Fourth Amendment, we conclude that the trial court did not err in overruling his motions to suppress evidence. Accordingly, Harper's second assignment of error is overruled. Furthermore, having found no merit to either of Allen's assignments of error, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.