[Cite as *State v. Eggleston*, 2015-Ohio-958.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-T-0068**
- vs -	:	
DERRICK LAMAR EGGLESTON,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas.
Case No. 2013 CR 00061.

Judgment: Reversed; conviction vacated and remanded.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellee).

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Derrick Lamar Eggleston, appeals the judgment of the Trumbull County Court of Common Pleas denying his motion to suppress evidence from an alleged unconstitutional traffic stop and detention. For the reasons that follow, the judgment of the trial court is reversed.

{¶2} On April 18, 2013, appellant was stopped for a minor misdemeanor noise violation. Based on contraband seized during the traffic stop, the Trumbull County

Grand Jury indicted appellant on one count of possession of heroin and one count of trafficking in heroin, felonies of the third degree, with forfeiture specifications. On July 9, 2013, appellant filed a motion to suppress evidence obtained during the traffic stop, raising three arguments: (1) no probable cause existed for the traffic stop; (2) there was an excessive delay between the stop and the K-9 "sniff"; and (3) the K-9 was improperly trained and certified. A hearing was held, where the following relevant facts were adduced via testimony and a video/audio recording of the stop.

{¶3} Officer Weber was on duty in Warren, Ohio, on January 3, 2013. At approximately 11:30 p.m., while parked in his marked cruiser at the Hot Dog Shoppe, he heard music from a vehicle travelling on an adjoining street. He stated he could hear the music because his window was rolled down. Determining the music came from a red Jaguar, Officer Weber pulled out of the parking lot to effectuate a traffic stop regarding a possible noise violation. Officer Weber's cruiser was equipped with a video and audio recording system, and the pursuit and stop were recorded.

{¶4} Officer Weber pursued the Jaguar through two traffic lights, eventually catching up after the vehicle turned left onto a side street. Officer Weber stated he again heard the music as he approached the vehicle to effectuate the stop, however no music can be heard on the audio recording. According to the video time counter, which shows the elapsed time, not the actual time, at 1:55 from the time he left the parking lot, Officer Weber stopped the vehicle. Before exiting the cruiser, he called in the temporary tag number to dispatch.

{¶5} Officer Weber approached the passenger side of the vehicle. He testified that at this time he knew there were at least two occupants in the vehicle—the driver

(appellant herein) and a front-seat passenger. Officer Weber testified that he identified appellant when the front passenger window was rolled down. However, Officer Weber tapped on the rear passenger window and instructed the occupants to "roll down the back window." The passenger stated he "can't control it," and Officer Weber stated, "I'm telling the driver. He obviously can't hear me. The music must be too loud." One of the occupants stated, "No, the music ain't even on," and Officer Weber replied, "Not now, but it was when you went past me."

{¶6} Appellant rolled down the back window, and Officer Weber requested his driver's license. Appellant immediately produced it, and after looking at the license, Officer Weber stated, "Come on, Derrick, you know better than that." During his testimony, Officer Weber stated at this point he recognized appellant from previous traffic stops. Officer Weber then asked for registration and insurance. Appellant responded, "I don't got it. It ain't my car." He told the officer it was his girlfriend's car and gave Officer Weber her name. Officer Weber testified that appellant initially reached for the glove box, but then quickly pulled his hand away. Officer Weber then told the passenger to "keep your hand out of your pocket, you know the rules." The passenger is heard denying that his hand was in his pocket, but Officer Weber testified the passenger was reaching into his left front pants pocket.

{¶7} At this time, 3:42 on the tape, dispatch verified that the vehicle indeed was owned by the individual whom appellant identified as his girlfriend. At 4:00, Officer Weber requested backup and provided dispatch with the information on appellant's license to determine if he was "valid," although he admitted at the hearing that he had access to this information via the computer in his cruiser. At 4:30, Officer Weber

specifically requested “33,” the K-9 unit. At 5:40, the officer is heard saying to himself, “C’mon Pratt, what the hell.” Pratt is a dispatcher with the police department.

{¶8} Two minutes later, at 6:30, a deputy sheriff arrived at the scene, the first of what would eventually be five back-up officers. Officer Weber is heard telling the deputy sheriff, “I’m gonna get a K-9 over here.” By this time, Officer Weber testified he knew the vehicle was not stolen and that it belonged to appellant’s girlfriend. At 7:30, a second back-up officer arrived; Officer Weber told him, “If he’s valid, we’ll do a K-9 sniff.” At 8:17, a third back-up officer arrived and parked facing appellant’s vehicle on the other side of the street. At 9:20, dispatch responded with information on appellant’s license, and Officer Weber replied, “You can disregard. I already ran it. I’m just standing by for 33 [the K-9 unit].” It is unclear when exactly Officer Weber ran the license through the computer in his cruiser, but it would have to be sometime between 5:40 and 9:20. Although not evident from the recording, Officer Weber testified that he began to fill out a summons for the noise violation at 9:41 on the video counter, approximately eight minutes after effectuating the stop for loud music, five minutes after returning to his cruiser, and over three minutes after the first backup officer arrived.

{¶9} Two minutes later, at 11:30 on the video, the K-9 unit arrived on the scene. Officer Weber approached appellant’s door and instructed him to turn off and exit the vehicle for the K-9 to do a walk-around. When appellant asked the officer what reason he had to do this, Officer Weber replied, “I don’t need a reason.” Officer Weber again instructed appellant to get out of the vehicle or he would “place [him] under arrest and search it anyway.” During the next few moments of the encounter, appellant refused to exit the vehicle or unlock the doors, stating he was “scared for [his] life right

now." Officer Weber instructed the other cruisers to block in the vehicle and, while wielding his baton, threatened to "bust through" appellant's window. Appellant turned off the car and unlocked the doors. Officer Weber warned the other officers that there would be "a gun in the car." Officer Weber then pulled appellant out of the vehicle and handcuffed him. While appellant was still insisting the officer had no reason to pull him over and search him, Officer Weber repeatedly shouted, "loud music." Officer Weber frisked appellant and placed him in the back of the cruiser. No illegal substances or weapons were found on appellant's person. At the instruction of another officer, the passenger also exited the vehicle; he was frisked and allowed to stand with his mother, who had arrived on the scene, on the sidewalk. No illegal substances or weapons were found on the passenger's person. No firearm was found in the vehicle.

{¶10} At 17:45, Officer Weber asked appellant for his current address, presumably to fill out the summons form. At 18:15, the K-9 walk-around was performed by Officer Krafcik. The dog was not walked around the passenger side of the vehicle; it was walked at the rear and driver side of the vehicle. On the recording, Officer Krafcik is heard telling Officer Weber that the dog alerted at the trunk. At the hearing, Officer Krafcik testified that the dog passively alerted three times by sitting down when he smelled a narcotic odor—twice at the trunk and once on the driver side.

{¶11} The officers then performed a search of the interior compartment of the vehicle, including the locked glove box, and the trunk. The search of the interior compartment revealed a large amount of cash and what was later determined to be bindles of heroin; no illegal substances or weapons were found in the trunk. Appellant was placed under arrest and issued a summons for the noise violation.

{¶12} Officer Weber testified that it generally takes 8-10 minutes to issue a summons or citation for a traffic violation. When a stop results in criminal charges, he testified, it generally takes 10-15 minutes to complete a summons.

{¶13} The trial court denied appellant's motion to suppress the evidence of the search on February 18, 2014. The matter proceeded to a jury trial where appellant was found guilty, under an amended indictment, of one count of possession of heroin and one count of trafficking in heroin, felonies of the third degree, minus the initial forfeiture specifications. On July 11, 2014, the trial court suspended appellant's license for six months and sentenced him to twelve months imprisonment on each count, to run concurrent to each other.

{¶14} Appellant timely appealed and assigns one assignment of error for our review:

{¶15} "The trial court committed reversible error by denying the appellant's motion to suppress evidence, in violation of the appellant's rights pursuant to the Fourth Amendment to the United States Constitution."

{¶16} On appeal, appellant assigns error only with regard to the first two arguments of his motion to suppress: (1) lack of probable cause as to the initial stop and (2) excessive delay when he was detained for the arrival of the K-9 unit.

{¶17} "While the Fourth Amendment of the U.S. Constitution does not explicitly state that the violation of its provisions against unlawful search and seizure will result in suppression of the evidence obtained as a result of the violation, the U.S. Supreme Court held that the exclusion of evidence is an essential part of the Fourth Amendment." *State v. Casey*, 12th Dist. Warren No. CA2013-10-090, 2014-Ohio-2586, ¶29, citing

Weeks v. United States, 232 U.S. 383, 394 (1914) and *Mapp v. Ohio*, 367 U.S. 643, 649 (1961). "The primary purpose of the exclusionary rule is to remove incentive from the police to violate the Fourth Amendment." *Id*. at ¶29, citing *State v. Baughman*, 192 Ohio App.3d 45, 2011-Ohio-162, ¶29 (12th Dist.).

{¶18} An appellate court's review of a decision on a motion to suppress involves issues of both law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. During a suppression hearing, the trial court acts as trier of fact and sits in the best position to weigh the evidence and evaluate the credibility of the witnesses. *Id*., citing *State v. Mills,* 62 Ohio St.3d 357, 366 (1992). Accordingly, an appellate court will uphold the trial court's findings of fact provided they are supported by competent, credible evidence. *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). Once an appellate court determines whether the trial court's factual findings are supported by the record, the court must then engage in a de novo review of the trial court's application of the law to those facts. *State v. Lett*, 11th Dist. Trumbull No. 2008-T-0116, 2009-Ohio-2796, ¶13, citing *State v. Djisheff,* 11th Dist. Trumbull No. 2005-T-0001, 2006-Ohio-6201, ¶19.

{¶19} Upon review of the record, we determine the trial court's factual findings are indeed supported by competent, credible evidence. Thus, we accept the court's factual findings as accurate and proceed to determine whether, as a matter of law, the applicable legal standard was properly applied in the case.

{¶20} Police action of stopping an automobile and detaining its occupant is a seizure under the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648 (1979), paragraph two of the syllabus. Thus, an automobile stop is "subject to the constitutional

imperative that it not be 'unreasonable' under the circumstances." *Whren v. United States*, 517 U.S. 806, 810 (1996); *see also Dayton v. Erickson*, 76 Ohio St.3d 3, 11 (1996). An officer may constitutionally stop a motorist if the seizure is premised upon either a reasonable suspicion or probable cause. *See, e.g., State v. Lisac*, 11th Dist. Geauga No. 2012-G-3056, 2012-Ohio-5224, ¶14. Probable cause is defined in terms of those facts and circumstances sufficient to warrant a prudent law enforcement officer in believing that a suspect committed or was committing an offense. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). It is well-settled that an officer's observance of a traffic violation furnishes probable cause to stop a vehicle. *See, e.g., Lisac*, *supra*, at ¶14*; State v. Korman*, 11th Dist. Lake No. 2004-L-064, 2006-Ohio-1795, ¶17-18.

{¶21} "'[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 a warning.'" *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶12, quoting *State v. Howard*, 12th Dist. Preble Nos. CA2006-02-002 & CA2006-02-003, 2006-Ohio-5656, ¶15. "This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates." *Id.,* citing *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184, ¶17, citing *Prouse*, *supra*, at 659. Further, "'[i]n 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 (9th Dist.1995), citing *State v. Cook*, 65 Ohio St.3d 516, 521-522 (1992) and *U.S. v. Sharpe*, 470 U.S. 675 (1985), syllabus. The circumstances must be "'viewed through the eyes of the reasonable and prudent police officer on the scene

who must react to events as they unfold.'" *State v. Colby*, 11th Dist. Portage No. 2002-P-0061, 2004-Ohio-343, ¶21, quoting *State v. Andrews*, 57 Ohio St.3d 86, 87-88 (1991). The subjective thoughts of the officer are not relevant, and an inarticulate hunch is not enough. *State v. Aguirre*, 11th Dist. Portage No. 2010-P-0057, 2012-Ohio-644, ¶32; *State v. Carter,* 11th Dist. Portage No. 2003-P-0007, 2004-Ohio-1181, ¶35.

{¶22} Regarding appellant's first issue, the trial court found that Officer Weber heard loud music emanating from appellant's vehicle as appellant drove near the area where the officer was parked. He executed the initial traffic stop based on appellant's violation of Warren Codified Ordinance 509.14, which provides for imposition of a fine not to exceed $200 for a first offense ("No person shall play any radio, music player or an audio system in a motor vehicle at such volume as to disturb the quiet, comfort or repose of other persons or at a volume which is plainly audible at a distance of fifty feet from such vehicle."). This violation was sufficient to justify the initial traffic stop, but insufficient to detain appellant in order to conduct a K-9 "sniff." *See State v. Simmons*, 11th Dist. Lake No. 2011-L-029, 2011-Ohio-6339, ¶18. "The initial lawfulness of a traffic stop will not support a 'fishing expedition' for evidence of a crime." *State v. Elliott*, 7th Dist. Mahoning No. 11 MA 182, 2012-Ohio-3350, ¶27; *Casey*, *supra*, at ¶24.

{¶23} On that issue, "[t]he pivotal inquiry * * * is whether [the officer] was justified in his continued detention of appellant. Once the suspicion which gave rise to the initial stop evaporated, any additional intrusion or detention had to have been supported by specific and articulable facts demonstrating the reasonableness of the continued detention." *Colby*, *supra*, at ¶22, citing *State v. Chatton*, 11 Ohio St.3d 59, 63 (1984); *see also State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶17 ("[T]he

officer must limit both the scope and duration of the stop to the matter at hand, namely, writing the citation, and any expanded investigation unrelated to the traffic violation must be based upon reasonable articulable suspicion."). If the officer does encounter additional articulable facts that give rise to a reasonable suspicion of criminal activity, beyond that which prompted the stop, the officer may lengthen the duration of the stop to investigate these suspicions. *See Colby*, *supra*, at ¶25; *State v. Brooks*, 3d Dist. Hancock No. 5-11-11, 2012-Ohio-5235, ¶27; *Batchili*, *supra*, at ¶16.

{¶24} In *State v. Henry*, this court applied Ohio Supreme Court precedent and cautiously held that the prolonged detention of the defendant was constitutional under the totality of the circumstances. *See generally State v. Henry*, 11th Dist. Lake No. 2007-L-082, 2007-Ohio-6732 (applying *Batchili*, *supra*). However, our guarded opinion in *Henry* also "remind[ed] law enforcement officers of the dangers of engaging in a pretextual stop in which a traffic citation is issued in a dilatory manner." *Id*. at ¶44.

{¶25} We find that the circumstances of this case clearly fall on the other side of the line drawn in *Henry*. Here, before the K-9 unit even arrived on the scene, Officer Weber had verified all of the following: appellant's license was valid; the vehicle was not reported stolen; the vehicle belonged to appellant's girlfriend, as appellant stated; and appellant had no outstanding warrants. Nevertheless, Officer Weber waited a period of time, surrounded by at least four other officers, before beginning to issue a summons for the alleged noise violation—solely, and admittedly, because he was waiting for the K-9 unit to arrive. Once the K-9 unit arrived, Officer Weber approached appellant and ordered him out of the car so that the K-9 could walk around the vehicle. When

appellant inquired as to what reason the officer had for conducting a K-9 walk-around, Officer Weber replied, "I don't need a reason."

{¶26} These facts are very reminiscent of *Henry*, where we observed that "it does appear that the officers prolonged the stop so that [the K-9] could arrive on the scene." *Id*. at ¶41. Even so, we upheld the denial of the motion to suppress in *Henry*:

> [I]n this case when the 'collection' of factors cited by the officer underlying his suspicion of drug activity and decision to call for a K-9 officer are viewed as a whole and the law of *Batchili* is applied, we are compelled to give due weight to the inferences drawn by the officer and the trial court that 'crime was afoot' in this case and uphold the continued detainment.

Id. at ¶43, citing *Terry v. Ohio*, 392 U.S. 1 (1968). The "law of *Batchili*" to which the *Henry* Court refers is as follows: "[A]ssuming the detention was actually prolonged by the request for a dog search, '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*, *supra*, at ¶15, quoting *Howard*, *supra*, at ¶16 (emphasis added).

{¶27} In *Henry*, the officer offered the following facts in support of his decision to prolong the traffic stop:

> [He] observed an absurd amount of cherry air fresheners located around the car[;] . . . he noticed [one occupant] appeared very nervous, that his hands were shaking, and that he was having trouble speaking in that he could not complete sentences[;] . . . neither [a second occupant] nor [the defendant] would meet the officer's gaze and had their heads lowered. He further became suspicious when [one occupant] relayed conflicting stories as to the identification of the passengers.

Henry, *supra*, at ¶29. We held that, under the totality of the circumstances, the officer had a reasonable, articulable suspicion of drug activity to justify prolonging the detention for a K-9 "sniff." *See id*. at ¶43.

{¶28} Here, the trial court found there was "no undue delay between the stop and the time of the drug dog sniff." However, this is not a proper application of the law to the facts. Once it is determined that a delay occurred for the sole purpose of conducting a K-9 "sniff," the question is not whether the delay was undue, but whether the delay was supported by a reasonable, articulable suspicion of drug activity. At oral argument, appellee, the state of Ohio, conceded that in order to delay a traffic stop for the purpose of conducting a K-9 *drug* "sniff," the reasonable, articulable suspicion required must be of *drug* activity. In that respect, this case is distinguishable from *Henry*—Officer Weber did not articulate any facts establishing a reasonable suspicion of drug activity and his decision to call, and wait for, a K-9 officer.

{¶29} "The relevant inquiry in determining whether reasonable suspicion exists is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of non-criminal acts." *State v. Floyd,* 9th Dist. No. 11CA010033, 2012-Ohio-990, ¶18 (internal quotations and citations omitted). According to Officer Weber, the only facts that allegedly changed after he initiated the traffic stop were that (1) appellant reached for the glove box but did not open it, instead pulling his hand back and stating he did not have the requested documents because it was his girlfriend's car; and (2) he saw the passenger reach into his left front pants pocket. Appellant's recollection that it was not his vehicle as he reached for the glove box was confirmed. While the passenger contends his hand was not in his pocket, it

was never made clear why this act was considered suspicious. Further, although the officer testified to having encountered appellant in the past, those encounters did not involve drugs. There were also no furtive movements, air fresheners, or any other indicia of potential drug activity.

{¶30} The detention here was significant. The video reveals there was an extended verbal confrontation between appellant and Officer Weber. Appellant asked several times why he was stopped. The officer ordered him to turn off and exit the vehicle. Appellant was then subjected to a pat-down search of his person, which would not have been necessary for a citation for a minor misdemeanor noise violation. The passenger was also removed from the vehicle and subjected to a pat-down search. Appellant was then placed in Officer Weber's cruiser. This was all prior to the K-9 "sniff."

{¶31} Based on the totality of the circumstances, Officer Weber did not have information sufficient to create a reasonable suspicion of criminal drug activity to justify prolonging the detention. Officer Weber did not "limit both the scope and duration of the stop to the matter at hand, namely, writing the citation." *White*, *supra*, at ¶17. Instead, without reasonable suspicion of drug activity and with at least four other officers on site, Officer Weber delayed the traffic stop for the sole purpose of waiting for the K-9 unit to arrive.

{¶32} We recognize there are circumstances where "a lawfully detained vehicle may be subjected to a canine sniff of the vehicle's exterior even without the presence of a reasonable suspicion of drug-related activity." *State v. Stephenson*, 12th Dist. No. CA2014-05-073, 2015-Ohio-233, ¶21. "'If the officer conducts a canine sniff of the

vehicle *before* the reasonable completion of the traffic stop procedures, the officer does not need additional suspicion of criminal activity to conduct the sniff.'" *Id*., quoting *Casey*, *supra*, at ¶22 (emphasis added). "*However, if the officer extends the traffic stop* in order to conduct a canine sniff, *he must have reasonable suspicion* that the vehicle contains drugs in order to detain the driver while a canine unit is brought to the scene." *Id.*, quoting *Casey*, *supra*, at ¶22 (emphasis added); *see also Brooks*, *supra*, at ¶27; *Batchili*, *supra*, at ¶19; and *Ashland v. Zehner*, 5th Dist. No. 2012-CA-25, 2012-Ohio-5545, ¶15.

{¶33} "We note that, unlike many other cases in which reasonable suspicion was found, here there was no testimony that [the occupants] provided conflicting statements, false information, had outstanding warrants, or had an inordinate number of air fresheners in the vehicle." *State v. Davenport*, 9th Dist. Lorain No. 11CA010136, 2012-Ohio-4427, ¶10, citing *State v. Polk*, 5th Dist. No. 11CAA010006, 2011-Ohio-4598, ¶23-24; *State v. Williams*, 9th Dist. No. 09CA009679, 2010-Ohio-3667, ¶18; *State v. Williams*, 12th Dist. No. CA2009-08-014, 2010-Ohio-1523, ¶20; *State v. Sherrod*, 11th Dist. No. 2009-L-086, 2010-Ohio-1273, ¶21; *State v. Graham*, 12th Dist. No. CA2008-07-095, 2009-Ohio-2814, ¶21; *State v. McDade*, 5th Dist. No. 2007CA00092, 2008-Ohio-4885, ¶34; *Henry, supra*, at ¶29.

{¶34} In *State v. Casey*, the Twelfth District held the defendant's prolonged detention was not "based on a new articulable reasonable suspicion" of drug activity, but that the officer was "'fishing' for evidence of a crime." *Casey*, *supra*, at ¶28. In *Casey*, the officer testified that he prolonged the detention because of the defendant's "sudden nervousness, furtive glances between the vehicle and the police cruiser, and

failure to make eye contact after being asked whether there was illegal contraband in the vehicle." *Id*. at ¶27. This is more than even Officer Weber alleges in the case sub judice. In fact, Officer Weber never testified that he was concerned the vehicle contained drugs; any suspicion he had was of a possible firearm.

{¶35} "[T]he touchstone of the Fourth Amendment analysis in determining the reasonableness of a governmental invasion in a citizen's personal security is based on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *State v. Troutman*, 3d Dist. No. 9-11-17, 2012-Ohio-407, ¶43. To that end, we find that the expanded detention unrelated to the noise violation was not based on a reasonable suspicion that there were drugs in the vehicle, and the motion to suppress should have been granted. Appellant's assignment of error is with merit.

{¶36} The judgment denying appellant's motion to suppress is hereby reversed. As a result, the sole evidence upon which appellant's conviction was based should have been suppressed. Therefore, the judgment of conviction entered by the Trumbull County Court of Common Pleas is hereby vacated. This matter is remanded for the trial court to carry this judgment into execution.

THOMAS R. WRIGHT, J., concurs,

DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

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DIANE V. GRENDELL, J., dissents with a Dissenting Opinion.

{¶37} I dissent from the majority's decision to reverse the judgment of the trial court, based on its conclusion that Eggleston was improperly detained for a canine drug sniff of his vehicle. As the detention and subsequent drug sniff were proper, based on the totality of the circumstances and a thorough review of the entire record, the trial court correctly denied the motion to suppress.

{¶38} Police officers are permitted to conduct a canine sniff of a vehicle "during the time period necessary to effectuate the original purpose of the stop." *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184, ¶ 18; *see State v. Corpening*, 11th Dist. Ashtabula No. 2007-A-0083, 2008-Ohio-6407, ¶ 27 ("'Ohio courts have held that police need not have a reasonable suspicion of drug-related activity prior to subjecting an otherwise lawfully detained vehicle to a canine sniff'") (citation omitted). Here, the stop for the noise violation and accompanying investigation had not been completed before the canine began to perform the drug sniff of Eggleston's vehicle. When the canine sniff began, Officer Weber had begun to fill out the summons for the noise violation, but it had not yet been completed. Although it is not clear when Officer Weber obtained the information regarding Eggleston's license status necessary to complete the stop, less than four minutes after he expressed to another officer that he had not yet received that information, the sound of the dog can be heard and Officer Weber began to remove Eggleston and his passenger from the car to begin the canine sniff. This provided him with little time to complete the summons for the noise violation. As Officer Weber testified, once he found out Eggleston had a valid license, he began to

write the summons. Since the stop for the initial violation had not come to an end, the canine sniff was an acceptable practice pursuant to the foregoing law.

{¶39} While the majority asserts that the detention extended beyond what was reasonable for the offense committed, regardless of the time it took to complete, a review of the entirety of the circumstances here reveals the opposite. It is necessary to take into consideration the complex nature of this traffic stop, where multiple factors contributed to the length of Eggleston's detention. As Officer Weber noted, he feared that Eggleston may have a firearm, due to his quick hand movement away from the glove compartment, as well as his past criminal history and a firearm charge. Based on this, Officer Weber requested backup, explaining that he did not feel comfortable completing the summons because he was "by [himself] * * * waiting for backup to arrive." He explained that, given the time of day and the high crime location, he did "not [have his] head down just writing the ticket," since he needed to observe his surroundings, and watch the occupants of the vehicle. He also had to wait a period of a few minutes for dispatch to provide information on Eggleston, although he ultimately retrieved this information himself, due to the delay.

{¶40} The canine sniff began within the time that Officer Weber testified a comparable stop usually lasted. The stop was conducted, and the sniff began, within a reasonable time under the circumstances present. *See State v. Sherrod*, 11th Dist. Lake No. 2009-L-086, 2010-Ohio-1273, ¶ 22-24 (a stop of 15 minutes in duration prior to a drug sniff was proper, given the existence of additional circumstances to be investigated); *State v. Williams*, 12th Dist. Clinton No. CA2009-08-014, 2010-Ohio-1523, ¶ 23 (where a drug sniff was conducted 12 minutes into a stop but the purposes

of the stop had been "interrupted" by suspicious behavior, the drug sniff was appropriate). The concern regarding the potentially dangerous situation was reasonable and caused a significant portion of any delay which occurred.

{¶41} The majority oversimplifies the foregoing circumstances based primarily on Officer Weber's statement that he was "waiting" for the canine to arrive. The fact that he wanted to wait for the canine to arrive does not mean that he purposely delayed the stop, especially given the surrounding circumstances and context that justify the delay of approximately 15 minutes from the time of the stop until the canine sniff occurred. *See Corpening*, 2008-Ohio-6407, at ¶ 33 ("[i]n determining if an officer completed" the tasks of running the computer check on the license, registration, and plates, as well as other responsibilities of concluding a stop, "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") (citation omitted).

{¶42} Even if the length of Eggleston's detention went beyond that permissible to complete the original stop, reasonable suspicion existed to justify the canine drug sniff. Officer Weber observed a passenger who placed his hands in his pockets upon encountering him. Eggleston was a known criminal in a high crime area. Most importantly, Eggleston, when asked for his registration, reached toward the glove box and then "quickly pulled his hand away," stating that the car was not his. Officer Weber elaborated that Eggleston had touched the glove box "like it was hot." Officer Weber indicated that the failure to at least search for the registration was not typical of how an individual generally responds in a traffic stop. While the majority does not view this as

significant, it is a highly suspicious act. A person in such circumstances would at least look for the registration and, if he did not believe it was in the glove compartment, would not jerk his hand away. This behavior is more indicative of someone trying to hide an illegal item from police.

{¶43} Although the majority contends that there was no reasonable suspicion of *drug-related* activity, it is clear from a review of the record that such activity was suspected by Officer Weber. As soon as the suspicious activity outlined above occurred, he entered his car and requested the canine unit. In speaking to another officer, Officer Weber noted that since Eggleston had quickly pulled away from the glove box, "I am gonna get a canine over here." He clearly reacted to the foregoing actions as suspicious and as justification for a conclusion that both a firearm and drugs may be present. When considering all of the facts collectively, Officer Weber's conclusion that a canine search was necessary was proper and justified the continued detainment in this case. *State v. Henry*, 11th Dist. Lake No. 2007-L-082, 2007-Ohio-6732, ¶ 43 ("we are compelled to give due weight to the inferences drawn by the officer and the trial court that 'crime was afoot' in this case and uphold the continued detainment"); *State v. Simmons*, 11th Dist. Lake No. 2011-L-029, 2011-Ohio-6339, ¶ 19 (nervousness and unusual behavior, such as not pulling over immediately and parking in an area not designated for parking, provided the officer "with an articulable reasonable suspicion to extend the detention and perform a K-9 sniff").

{¶44} For the foregoing reasons, I respectfully dissent and would affirm the judgment of the lower court, denying suppression of the heroin since the detention and canine drug sniff were valid in light of the totality of the circumstances.