

[Cite as *State v. Carter*, 2019-Ohio-2404.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellant

-vs-

LEE B. CARTER

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2018 AP 11 0038

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Tuscarawas County
Court of Common Pleas, Case No. 2017
CR 08 0192

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

June 10, 2019

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Hoffman, J.

{¶1} Appellant the state of Ohio appeals the judgment entered by the Tuscarawas County Common Pleas Court granting Appellee Lee B. Carter's motion to suppress cocaine seized during a traffic stop.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 28, 2016, Trooper Scott Bayless, a K9 handler with the Ohio State Highway Patrol, was parked in a crossover on Interstate 77 in Tuscarawas County, just south of the Stark County line. A vehicle in which Appellee was the passenger passed him traveling southbound. Trooper Bayless noticed the vehicle changed its pace, and "crept up on the vehicle in front of it." Tr. 5. Tpr. Bayless pulled out of the crossover and began to follow the vehicle. After following the vehicle for the better part of a mile, Tpr. Bayless stopped the car in which Appellee was traveling for following too closely.

{¶3} The trooper approached the vehicle on the passenger side. Tpr. Bayless asked the driver for a driver's license. He was informed the vehicle was a rental car, and he asked for the rental agreement. Appellee also provided identification to the officer. Tpr. Bayless noted Appellee seemed very nervous, as he could see Appellee's carotid pulse by looking at his neck.

{¶4} Sgt. Joel Smith arrived on the scene to help with the traffic stop. Sgt. Smith was parked in the crossover with Tpr. Bayless prior to the stop. Tpr. Bayless returned to his patrol car to run the licenses of both the driver and Appellee through LEADS to check for outstanding warrants. He informed Sgt. Smith he intended to run his dog Alex around the car. Sgt. Smith asked the driver to step out of the vehicle and come back to his patrol car.

{¶15} Tpr. Bayless ran both licenses through LEADS and found no outstanding warrants. At this time, the driver was still looking for the rental agreement on her phone with Sgt. Smith. Tpr. Bayless proceeded to walk Alex around the vehicle. The dog first alerted by a “hard stop” on the passenger side. When the dog approached the open window on the driver’s side, he alerted by scratching the door. The time elapsed from the time the car pulled to the berm until the dog alerted on the car was approximately six minutes.

{¶16} Appellee told the trooper he had marijuana in the glove box. However, a search of the car uncovered crack cocaine in the vehicle. Appellee was indicted by the Tuscarawas County Grand Jury with one count of possession of drugs, a second degree felony, in violation of R.C. 2925.11(A), (C)(4)(d).

{¶17} Appellee moved to suppress evidence on the grounds the stop of the vehicle was invalid, and the stop was unlawfully prolonged to allow the dog to walk around the vehicle. Following an evidentiary hearing, the trial court found the stop was pretextual, but nonetheless legal.¹ However, the court found the stop was unlawfully prolonged for the canine sniff of the vehicle, and granted Appellee’s motion to suppress.

{¶18} It is from the November 14, 2018 judgment the State prosecutes this appeal, assigning as error:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN
GRANTING THE APPELLEE’S MOTION TO SUPPRESS EVIDENCE AS

¹ Appellee has not assigned error to this ruling.

THE CANINE SNIFF OF THE VEHICLE OCCURRED WITHIN [SIC] THE TIME PERIOD NECESSARY TO CONDUCT THE TRAFFIC STOP.

{¶19} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486, 597 N.E.2d 1141(1991); *State v. Guysinger*, 86 Ohio App.3d 592, 621 N.E.2d 726 (1993). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams*, 86 Ohio App.3d 37, 619 N.E.2d 1141 (1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 641 N.E.2d 1172 (1994); *State v. Claytor*, 85 Ohio App.3d 623, 620 N.E.2d 906 (1993); *Guysinger, supra*. As the United States Supreme Court held in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911 (1996), "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶10} Appellant argues the court erred as a matter of law in finding the stop was unlawfully prolonged to allow the canine sniff of the vehicle. We must therefore independently determine, without deference to the trial court's conclusion, whether the undisputed facts in this case meet the appropriate legal standard.

{¶11} When detaining a motorist for a traffic violation, an officer may delay a motorist for a time sufficient to issue a ticket or a warning. *State v. Batchili*, 113 Ohio St.3d 403, 2007–Ohio–2204, 865 N.E.2d 1282, ¶ 12. This measure includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates. *Id.* Further, 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.*

{¶12} However, “[a]n officer may not expand the investigative scope of the detention beyond that which is reasonably necessary to effectuate the purposes of the initial stop unless any new or expanded investigation is supported by a reasonable, articulable suspicion that some further criminal activity is afoot.” *Batchili* at ¶ 34; *United States v. Brignoni–Ponce*, 422 U.S. 873, 881–882, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). “In determining whether a detention is reasonable, the court must look at the totality of the circumstances.” *State v. Bobo*, 37 Ohio St.3d 177, 178, 524 N.E.2d 489 (1988).

{¶13} The use of a drug detection dog does not constitute a “search” and an officer is not required, prior to a dog sniff, to establish either probable cause or a reasonable suspicion that drugs are concealed in a vehicle. See *Illinois v. Caballes*, 543 U.S. 405, 409, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *United States v. Place*, 462 U.S. 696, 707, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). The officer needs no suspicion or cause

to “run the dog around” the stopped vehicle if he or she does so contemporaneously with the legitimate activities associated with the traffic violation. See *Caballes*, 543 U.S. at 409, 125 S.Ct. at 837–38. A canine walk-around of a vehicle, which occurs during a lawful stop and does not go beyond the period necessary to effectuate the stop and issue a citation does not violate the individual's constitutional rights. *Caballes*, *supra*. This is so because the detention was not illegally prolonged in order to make the walk-around. See, *State v. Batchili*, 113 Ohio St.3d 403, ¶ 19. However, a traffic stop may not be extended in order to conduct a dog sniff absent a reasonable suspicion of drug-related activity. *Rodriguez v. United States*, 575 U.S. ___, 135 S. Ct. 1609, 1616-17, 191 L.Ed.2d 492 (2015).

{¶14} In the instant case, Trooper Bayless had not yet completed the purpose of the stop when the canine walked around the vehicle. Although he ultimately did not issue a traffic citation for following too closely, he did ask for the driver's licenses of the driver and Appellee, and for the rental agreement for the vehicle. Although the licenses had been run through LEADS at the time he ran the dog around the vehicle, Trooper Bayless testified the driver of the vehicle was still looking through her phone for the rental agreement with Sgt. Smith at the time he conducted the canine sniff of the vehicle. Tr. 9. Thus, the stop was not prolonged to conduct the dog sniff, as the driver of the vehicle had not yet produced the rental agreement for the vehicle.

{¶15} Trooper Bayless testified from the time he pulled the vehicle over to the berm until the dog alerted on the car, only six minutes had passed. His testimony is confirmed by the video of the traffic stop, which shows the vehicle pulling to the berm at approximately 14:37, and the dog alerting on the car at approximately 14:43. We find as

a matter of law, the stop in this case was not unlawfully prolonged for the canine sniff, as the officers had not yet concluded the check of the rental agreement for the vehicle, and a mere six minutes had passed from the time the vehicle had been stopped until the dog alerted, during which time the officer spoke with the occupants of the vehicle and ran the identification of both occupants through LEADS to check for outstanding warrants.

{¶16} The assignment of error is sustained. The judgment of the Tuscarawas County Common Pleas Court is reversed, and this case is remanded for further proceedings according to law, consistent with this opinion.

By: Hoffman, J.
Gwin, P.J. and
Delaney, J. concur

