[Cite as *State v. Brazil*, 2014-Ohio-995.]

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

State of Ohio	Court of Appeals No. WD-13-040
Appellee	Trial Court No. 2012CR340
v.	
Demar Alexander Brazil	**DECISION AND JUDGMENT**
Appellant	Decided: March 7, 2014

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, Gwen Howe-Gebers, Chief Assistant Prosecuting Attorney, and Thomas A. Matuszak, Assistant Prosecuting Attorney, for appellee.

J. Scott Hicks, for appellant.

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SINGER, J.

{¶ 1} Appellant appeals his conviction for drug possession and trafficking entered on a no contest plea in the Wood County Court of Common Pleas. Because we conclude that the trial court's decision to deny appellant's motion to suppress was proper, we affirm.

{¶ 2} Shortly before 11:30 p.m. on June 14, 2012, an Ohio Highway Patrol lieutenant was southbound on Interstate 75 near Perrysburg when he observed a white Nissan with Michigan plates make an abrupt lane change in front of a semi-truck. The patrol officer later testified that it appeared that the passing car was less than a car length ahead of the truck when it moved into the lane in front of the truck. According to the patrol officer, he observed the truck brake and the truck driver's hand come out of the window in a gesture of frustration.

{¶ 3} The patrol officer initiated a traffic stop. As the officer approached the car, he noted a barcode on the window suggesting that the vehicle was a rental. The driver of the Nissan was appellant, Demar A. Brazil. When asked, appellant produced a valid Michigan operator's license and a rental agreement from Hertz.

{¶ 4} The officer examined the rental agreement and noted that the car was due to have been turned in 12 hours earlier. Moreover, appellant was not listed as the renter or a secondary driver on the document. Appellant told the officer that a friend of his cousin had rented the car and loaned it to him. Suspecting the rental car may have been stolen, the patrol officer attempted to contact Hertz.

{¶ 5} While this was happening, a Perrysburg Township K-9 unit officer who had observed the stop came to the scene. After some discussion with the patrol officer, the K-9 officer asked the patrol officer if he wanted him to "take his dog for a walk." The township officer and his dog circled the rental car. On the driver's side of the car, the dog alerted, indicating the presence of drugs.

{¶ 6} As this was occurring, the patrol officer continued to attempt to contact the appropriate person at Hertz. The township officer searched the rental car, discovering a bag in the trunk containing marijuana, a large quantity of prescription drugs and a set of scales.

{¶ 7} Appellant was arrested and eventually named in a seven count indictment charging marijuana possession and trafficking, two counts of drug possession, two counts of drug trafficking and possession of criminal tools.

{¶ 8} Appellant pled not guilty and moved to suppress the drugs. Appellant argued that the 17 minutes between the time he was stopped and the time the patrol officer first ran his operator's license was unreasonably long.

{¶ 9} At the suppression hearing, the patrol officer testified that an ordinary traffic stop normally takes between 15 and 20 minutes. The officer continued, however, noting that once he discovered that the car rental agreement had expired and that appellant was neither the person who rented the car nor a secondary driver on the agreement, he suspected that the car might be stolen. A call to Hertz was required to investigate this suspicion. By the time he finally reached the appropriate person to verify that the contract had been extended, the drug dog had alerted. It was later determined that appellant had permission from the renter to use the car.

{¶ 10} The state argued that, given these circumstances, the duration of the stop was not unreasonable. The state also argued that appellant lacked standing to contest the search because he was not the renter of the vehicle.

{¶ 11} The court concluded that because appellant was a proper permissive user of the vehicle he had standing to contest the search. Nevertheless, the court found that, given the circumstances, the length of the stop was not unreasonable. The court denied appellant's suppression motion, following which appellant withdrew his not guilty plea and entered a plea of no contest to the indictment.

{¶ 12} The court accepted appellant's plea and found him guilty as charged. Following a presentence investigation, the court merged charges in the indictment into four counts and sentenced appellant to 30 days jail time and three years community control.

{¶ 13} Appellant now brings this appeal, setting forth a single assignment of error:

> The trial court committed prejudicial error by denying appellant's motion to suppress by finding that the search was not improper.

{¶ 14} In its reply brief, the state reiterates its argument that appellant lacked standing to challenge the search. The state, however, did not file a cross appeal, so we need not consider this issue. App.R. 3(C)(1); *State v. Oke*, 6th Dist. Wood No. WD-04-083, 2005-Ohio-6525, ¶ 54.

> Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of

> fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. (Citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

{¶ 15} The Fourth Amendment to the United States Constitution and Section 14, Article I, Ohio Constitution, prohibit unreasonable searches and seizures of persons or their property. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Andrews*, 57 Ohio St.3d 86, 87, 565 N.E.2d 1271 (1991). Warrantless searches or seizures are generally unreasonable. Traffic stops, however, may be made if the officer views the offense or has a reasonable and articulable suspicion that an offense is being committed. *Delaware v. Prouse*, 440 U.S. 648, 654-655, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

{¶ 16} The scope and duration of a traffic stop must nonetheless "be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed. 229 (1983). The lawfulness of the stop will not support a "fishing expedition" for evidence of crime. *State v. Gonyou*, 108 Ohio App.3d 369, 372, 670 N.E.2d 1040 (6th Dist.1995). The permissible time to detain a motorist during a traffic stop is that amount of time sufficient to investigate the suspicion for which the vehicle was initially stopped and includes the time necessary to run a computer check on the driver's license,

registration and vehicle plates. *State v. Brown*, 183 Ohio App.3d 337, 2009-Ohio-3804, 916 N.E.2d 1138, ¶ 22 (6th Dist.).

{¶ 17} The patrol officer testified that it ordinarily took him 15 to 20 minutes to complete a traffic stop. This testimony is in conformity with our prior cases. *See id.* at ¶ 13. It is undisputed that it was not until 17 minutes into the stop that the patrol officer began to run appellant's license. If this was an ordinary traffic stop, that amount of time would border on the threshold of being unreasonable.

{¶ 18} This was not an ordinary stop. Once appellant produced a rental car agreement that on its face indicated the car should have already been returned and did not list appellant as the renter or other listed driver, the patrol officer had a reasonable, articulable suspicion that the rental car was stolen. This prompted an intervening investigation, the resolution of which had not been reached by the time the K-9 dog alerted. Indeed the patrol officer testified that he was still attempting to make contact with an appropriate representative of Hertz while the K-9 officer conducted the search and found contraband.

{¶ 19} Both officers testified that they were not working in concert. Even if they had been, the initial stop was based on the patrol officer's direct observation of a traffic violation and any extension of the time of the stop was the result of a reasonable, articulable suspicion of other criminal activity. Viewing the totality of these circumstances, the traffic stop at issue was constitutionally reasonable. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 20} On consideration, the judgment of the Wood County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE