IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

THE STATE OF OHIO	)	CASE NO. 08CR000196
	)	
Plaintiff	)	JUDGE EUGENE A. LUCCI
	)	
vs.	)	OPINION AND ORDER
	)	DENYING MOTION TO
JASON B. MELONE	)	SUPPRESS EVIDENCE AND
	)	SETTING CASE FOR
Defendant	)	JURY TRIAL

INTRODUCTION

[¶1] This case comes on for consideration, upon the motion to suppress filed by the defendant on October 14, 2008, the state's response filed November 19, 2008, the supplement to the state's response filed November 25, 2008, the evidentiary hearing held on November 25, 2008, and the state's supplemental response filed December 2, 2008. For the reasons set forth in this opinion, the motion is denied.

POSITIONS OF THE PARTIES

[¶2] The defendant moves the court to issue an order suppressing all evidence which the state seeks to introduce against him on the charge of possession of crack cocaine on the grounds that the evidence was illegally obtained by officers of the state in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 14 of the Ohio Constitution. Specifically, the defendant contends the officer had no right to stop his motor vehicle or to search it, as there existed no probable cause or reasonable articulable suspicion of any traffic violation or the presence of contraband.

[¶3] The state alleges the officer had probable cause to stop the vehicle because the defendant made an illegal and dangerous left turn in front of the officer's patrol car and that any continued or further detention to conduct a canine sniff test of the defendant's motor vehicle was reasonable in scope and duration, and did not violate any constitutional provision.

ISSUES

[¶4] The issues raised by the defendant's motion to suppress are:

1. Whether the officer had reasonable articulable suspicion or probable cause to stop the

defendant's motor vehicle;

2. Whether the continued detention of the defendant to conduct a canine sniff test of the defendant's motor vehicle was reasonable.

FACTS

[¶5] The facts are clear and largely undisputed. On Friday, February 1, 2008, at about 7:32 p.m., K-9 Officer Brenda McNeely of the Painesville Police Department drove her marked cruiser southbound in the curb lane of N. State Street and stopped for a red traffic signal at E. Erie Street at the stop bar in front of the Sunoco gasoline station at 265 E. Erie Street, located at the northwest corner of Erie and State Streets. The defendant drove his car westbound on E. Erie Street in the curb lane, and approached the intersection of Erie and State Streets on a green traffic light with the intention of entering the Sunoco gasoline station using the curb cut (ingress and egress) located on N. State Street a few feet north of Erie Street, between the stop bar where the officer was stopped and the intersection of Erie and State Streets. The defendant had his right-hand turn signal on as he entered the intersection and drove directly to the Sunoco station in front of the officer's patrol car. The officer, relying on the defendant's right-hand turn signal and the movement of his vehicle to N. State Street, had started moving her vehicle toward the intersection with the intention of turning right on Erie Street on the red signal, but suddenly braked to avoid a collision with the defendant's vehicle passing in front of her.

[¶6] As a result of the defendant's illegal and unsafe traffic maneuver, the defendant's vehicle and the officer's patrol car nearly collided. Officer McNeely then stopped the defendant on the station property. Officer McNeely approached the vehicle and requested the defendant's operator's license and proof of insurance card. The defendant requested permission to open his door to retrieve his insurance card, which the officer allowed. Once the defendant opened his door, Officer McNeely saw a wadded up $20.00 bill tucked in the driver's door arm rest. Officer McNeely suggested that the defendant move the money elsewhere to prevent it from blowing away in the wind. The defendant then put the $20.00 bill in the glove compartment. Officer Donald Ticel arrived as a back up.

[¶7] Officer McNeely, the sole officer to witness the traffic violation, did not immediately begin to write the traffic citation. Officers McNeely and Ticel removed the defendant and his passenger from the vehicle and requested consent to search their persons for contraband. The

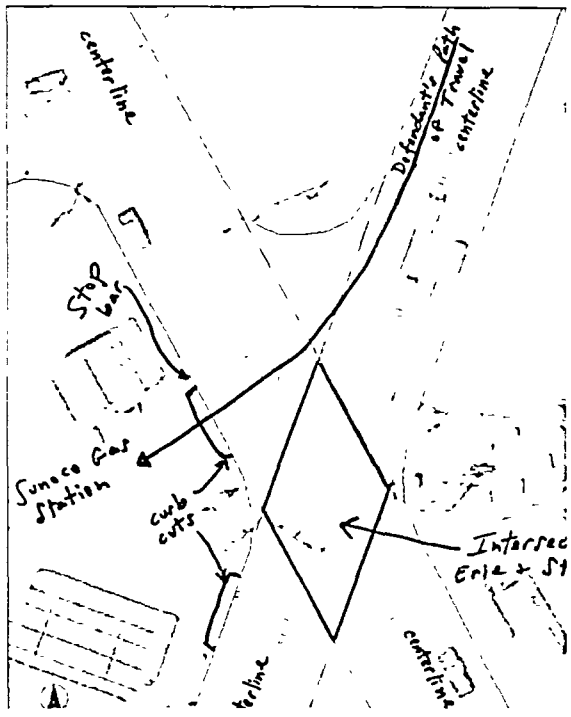
defendant gave consent to search and no contraband was found. Then Officer McNeely advised the defendant that she would be utilizing her police canine to check the exterior of his vehicle for contraband. The defendant told the officers not to go inside his vehicle. As the officer's attention must be focused on the K-9, and the dog's breathing, scratching, and aggression, the defendant and his passenger had to remain out of the vehicle.

[¶8] There was no delay in deploying the dog, as K-9 Freddy was already on scene, being in Officer McNeely's squad car. The K-9 search took place immediately after the defendant was told that the K-9 would be utilized, about three to four minutes after the officer stopped the defendant. The officer used the K-9 to check the exterior of the vehicle for narcotics. The K-9 alerted to the passenger's front door at the hinges, twice, and nowhere else. This signal indicated to Officer McNeely that narcotics were inside the vehicle, likely near that location. Officer McNeely opened the passenger door, and had the K-9 check the interior of the vehicle, at which time the dog alerted to the glove compartment. This signal indicated to the officer that narcotics were inside the glove compartment. Inside the glove compartment, Officer McNeely picked up the wadded $20.00 bill which she had seen the defendant place at the beginning of the stop. Inside the $20.00 bill was another $20.00 bill, one rock of suspected crack cocaine, and another small piece of suspected crack cocaine. At about 7:47 p.m., the defendant was arrested and transported to the Lake County jail. The suspected crack cocaine was field tested and tested positive for crack cocaine. The officer issued a citation to the defendant for the improper left turn. The entire stop up until the moment of arrest, including the K-9 search, lasted 15 minutes and 8 seconds.

[¶9] The defendant contends that the stop of his motor vehicle was unreasonable because the defendant committed no violation of a traffic ordinance or statute and the defendant was not a threat to the safety of himself or others. The state contends that Officer McNeely observed the defendant's vehicle make an "improper left turn into a private drive" in violation of Painesville City Ordinance 332.21(c)(2), and as a result of the defendant's maneuver in failing to yield, the patrol car and the defendant's vehicle nearly collided. Officer McNeely stopped the defendant with probable cause, or at least a reasonable articulable suspicion, of a traffic violation or hazardous driving maneuvers. The defendant insists that he did not make a left turn at all, and that the officer failed to yield the right-of-way to him.

[¶10] Defendant also contends that the officer had no reasonable, articulable suspicion to continue to detain him for further investigation beyond the initial traffic stop. The defendant argues that he was detained for an unreasonable length of time from the initial stop to the time the officers found the crack cocaine and the defendant was formally arrested. The state contends that reasonable suspicion is not needed to justify walking a dog around a stopped vehicle when an officer had probable cause to stop that vehicle, and argues that 15 minutes and 8 seconds is not an unreasonable length of time for detention on a traffic stop.

[¶11] The parties at the hearing on the motion hand drew a diagram of the scene of the traffic stop, using the courtroom's SmartBoard, to show the movement of the motor vehicles. There was no disagreement as to the scene or movement of the vehicles. Before the court could save the file or print out the drawing, the software "crashed," losing the data and the drawing. The court has recreated the drawing/exhibit, using the Lake County GIS web site, printed out scale drawings of an aerial view and a street view, and labeled them Court's Exhibits "A" and "B," respectively. Exhibit "A" appears at right.



[¶12] E. Erie Street and N. State Street meet at roughly a 50-degree angle, each street having three lanes at the intersection – the curb lane for turning right and straight through travel, a center turning lane, and one lane in the opposing direction. The Sunoco gasoline station at 265 E. Erie Street is located at the northwest corner of the intersection. There are two curb cuts for ingress and egress to and from the gas station on each of E. Erie Street and N. State Street – four curb cuts.[1] The curb cuts nearest the intersection are located (1) on N. State Street a few feet north of E. Erie Street (defendant used this one), and (2) on E. Erie Street

[1]There are two more curb cuts on E. Jackson Street (around the block from E. Erie Street), making six total entryways/exits for the gasoline service station.

a few feet west of N. State Street. The other two curb cuts are about five or six car lengths from the intersection, one on N. State Street and one on E. Erie Street.

[¶13] The defendant entered the gasoline station using the curb cut on N. State Street nearest the intersection, between the stop bar where the officer had been stopped for the red traffic light and the intersection. The defendant, in his maneuver, drove from E. Erie Street onto N. State Street, without ever entering the intersection as defined by statute. The defendant was able to accomplish this because of the acute angle at which the two streets intersect and the large area provided in the "V" at the northern angle to allow vehicles turning right onto N. State Street from E. Erie Street plenty of room to make the turn without having to turn at a acute angle or run over a curb. The defendant's movement of his vehicle, therefore, actually consisted of executing a right turn onto N. State Street followed by an immediate left turn across two oncoming lanes of traffic and into the private drive of the gasoline station. The officer had the right-of-way, and the defendant violated it.

[¶14] The defendant contends that he had the right-of-way because he had a green traffic signal, and the stop bar was behind and to the north of the curb cut which he intended to use for entry into the gas station. The defendant argues that the stop bar, being located where it is, enlarges the intersection so that he was making a right turn into the gas station from the intersection, rather than making a right turn onto State Street followed by an immediate left turn, and that the curb cut entry into the gas station abuts the intersection. It does not, and the defendant is wrong.[2]

LAW

Warrantless searches and seizures

[¶15] The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .." Section 14, Article I, Ohio Constitution provides that

[2]Instead of using the curb cut on N. State Street nearest the intersection, had the defendant gone straight through the intersection and used the first or second curb cut on E. Erie Street, his right turn signal would have been appropriate, and he would have retained the right-of-way, to which the officer would have had to yield; but the officer also would not have been misled into thinking the defendant would be turning right onto N. State Street by the movement of the defendant's car onto N. State Street. Of the six curb cuts available to use, the defendant improvidently chose the one which required the most hazardous maneuver.

"[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated . . .." The Ohio constitutional provision is substantially the same as the Fourth Amendment of the United States Constitution.[3] The Supreme Court of Ohio has held that where the provisions are similar and there is no persuasive reason for a differing interpretation, the protections afforded by the Ohio Constitution are coextensive with those provided by the United States Constitution.[4]

[¶16] The Ohio and United States constitutions protect the people against searches and seizures which are unreasonable. "A 'search' occurs when a subjective expectation of privacy that society is prepared to consider reasonable is infringed." The reasonableness of the expectation of privacy depends on "a location's connection to concepts of intimacy, personal autonomy, and privacy."[5] "A 'seizure' of property occurs when there is some meaningful interference with an individual's possessory interest in that property."[6] A person is "seized" when in view of all the circumstances, a reasonable person would believe that he was not free to leave.[7] Whether a search or seizure is reasonable "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.'"[8] Determination of the constitutionality of searches and seizures "involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[9]

[¶17] The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.[10] Stopping an automobile and detaining its occupants constitutes a "seizure" within the meaning of the Fourth and Fourteenth Amendments, even though the purpose of the stop is limited and the resulting detention is quite

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[3] *Cochran v. State* (1922), 105 Ohio St. 541, 543, 138 N.E. 54.

[4] *State v. Robinette* (1997), 80 Ohio St.3d 234, 238, 1997-Ohio-343, 685 N.E.2d 762.

[5] *State v. Finnell* (1996), 115 Ohio App.3d 583, 588, 685 N.E.2d 1267.

[6] *United States v. Jacobsen* (1983), 466 U.S. 109, 113, 104 S.Ct. 1652, 80 L.Ed.2d 85.

[7] *State v. Gonsior* (1996), 117 Ohio App.3d 481, 485, 690 N.E.2d 1293.

[8] *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331, quoting *U.S. v. Brignoni-Ponce* (1975), 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed2d 607.

[9] *Brown v. Texas* (1979), 443 U.S. 47, 50-51, 99 S.Ct. 2637, 61 L.Ed.2d 357.

[10] *United States v. Brignoni-Ponce* (1975), 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed2d 607.

brief.[11] The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes "seizure" of persons within the meaning of the Fourth Amendment.[12]

[¶18] Warrantless searches and seizures are per se unreasonable unless they fall into one of the few recognized exceptions.[13] "The courts must suppress evidence obtained in the course of a warrantless search and seizure upon a proper motion seeking that relief, unless the state demonstrates that an exception to the warrant requirement applies to the facts and circumstances involved in a way that renders the search and seizure constitutionally reasonable. The standard of proof applicable to that proposition is the preponderance of the evidence standard."[14]

Consent

[¶19] One exception to the warrant requirement is the voluntary consent exception.[15] A voluntary encounter, in which an officer approaches an individual and asks questions, does not constitute a seizure, so long as the officer does nothing to convey to the defendant that he is not free to leave or to refuse the officer's requests or refuse to answer.[16] However, the detention preceding the consent must be lawful. "[C]onsent given during an investigatory detention is only valid if the police officer had reasonable suspicion to detain the person."[17] The state has the burden of proving voluntary consent by clear and convincing evidence.[18] The state must show that there was no duress or coercion, and that the consent was freely and intelligently given.[19] Courts must look to the totality of the circumstances.[20] Submission to a claim of lawful authority does not constitute consent.[21]

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[11] *Delaware v. Prouse* (1979), 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660.

[12] *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769.

[13] *State v. Gonsior* (1996), 117 Ohio App.3d 481, 485, 690 N.E.2d 1293.

[14] *State v. Botkin* (March 21,1997), Montgomery App. No. 15843.

[15] *State v. Miller* (1997), 117 Ohio App.3d 750, 759, 691 N.E.2d 703.

[16] *Schneckloth v. Bustamonte* (1973), 412 U.S. 218, 98 S.Ct. 2041, 36 L.Ed.2d 854; *United States v. Peters* (C.A. 6, 1999), 194 F.3d 692, 698.

[17] *State v. Shepherd* (1997), 122 Ohio App.3d 358, 370, 701 N.E.2d 778.

[18] *State v. Jackson* (1996), 110 Ohio App.3d 137, 142, 673 N.E.2d 685.

[19] *United States v. Tragash* (S.D. Ohio, 1988), 691 F.Supp. 1066, 1072.

[20] *State v. Dettling* (1998), 130 Ohio App.3d 812, 815, 721 N.E.2d 449.

[21] *State v. Jackson* (1996), 110 Ohio App.3d 137, 1426, 73 N.E.2d 685.

Investigatory Detention - Reasonable Articulable Suspicion

[¶20] Another exception to the warrant requirement is the investigatory detention, commonly referred to as a *Terry*[22] stop, which permits an officer to briefly stop an individual when the officer has a reasonable suspicion that the person is involved in criminal behavior.[23] Reasonable suspicion is something more than a hunch, but less than the level of suspicion required for probable cause.[24] The officer must be able to point to specific, articulable facts, and the rational inferences from those facts, that reasonably warrant the intrusion.[25] The court must consider the totality of the circumstances "viewed through the eyes of a reasonable and prudent police officer who must react to events as they unfold."[26]

[¶21] Deference must be given to the officer's training and experience.[27] Facts must be judged against an objective standard of whether the facts available to the officer at the moment of the seizure or search would warrant a man of reasonable caution in the belief that the action taken was appropriate.[28] The investigative detention must last no longer than necessary to effectuate the purpose of the stop and the scope of the detention must be narrowly tailored to its underlying justification.[29]

[¶22] Where there is a reasonable and articulable suspicion to believe that a motor vehicle or its occupants are in violation of the law, stopping the vehicle and detaining its occupants will not violate the Fourth Amendment. But, the lawfulness of the initial traffic stop by police will not support a fishing expedition for evidence of crime.[30]

Noninvestigatory Detention - Probable Cause

[¶23] An investigatory *Terry* stop is proper so long as the stopping officer has "reasonable articulable suspicion" of criminal activity. By contrast, a noninvestigatory traffic stop must be

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[22] *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868 20 L.Ed.2d. 889.
[23] *State v. Miller* (1997), 117 Ohio App.3d 750, 756, 691 N.E.2d 703.
[24] *State v. Shepherd* (1997), 122 Ohio App.3d 358, 364, 701 N.E.2d 778.
[25] *State v. Miller* (1997), 117 Ohio App.3d 750, 757, 691 N.E.2d 703.
[26] *State v. Ratcliff* (1994), 95 Ohio App.3d 199, 204, 642 N.E.2d 31.
[27] *State v. Miller* (1997), 117 Ohio App.3d 750, 757, 691 N.E.2d 703.
[28] *Terry v. Ohio* (1968), 392 U.S. 1, 21, 88 S.Ct. 1868 20 L.Ed.2d. 889.
[29] *Florida v. Royer* (1983), 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229.
[30] *State v. Rusnak* (1997), 120 Ohio App.3d.24, 696 N.E.2d 633.

supported by probable cause, which arises when the stopping officer witnesses a traffic violation.[31]

[¶24] Another exception exists when an officer has probable cause to believe that an individual has committed a traffic violation.[32] An automobile stop is subject to the constitutional imperative that it not be unreasonable under the circumstances. As a general matter, though, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.[33] Once an officer has validly stopped a vehicle, he or she may order the suspect to exit the vehicle.[34] Additionally, once an officer has made a valid traffic stop, even after the initial justification for the stop has ended, the officer may briefly detain the suspect to ask questions regarding contraband pursuant to a drug interdiction policy.[35]

[¶25] The constitutional reasonableness of traffic stops does not depend on the actual motivations of the individual officers involved.[36]

[¶26] The temporary detention of a motorist who the police have probable cause to believe has committed a civil traffic violation is consistent with the Fourth Amendment's prohibition against unreasonable seizures regardless of whether a "reasonable officer" would have been motivated to stop the automobile by a desire to enforce the traffic laws.[37]

[¶27] Determining whether a traffic stop violates the Fourth Amendment requires an objective assessment of the police officer's actions in light of facts and circumstances then known to the officer; the question does not depend upon the officer's actual, subjective state of mind. 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, even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity. Where a police officer has probable cause to stop a motorist

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[31] *State v Moeller* (Oct. 23, 2000), Butler App. No. CA99-07-128.

[32] *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576; *State v. Vest*, Ross App. No. 00CA2576, 2001-Ohio-2394.

[33] *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769; *Bowling Green v. Goodwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698.

[34] *Pennsylvania v. Mimms* (1977), 434 U.S. 106, 110-112, 98 S.Ct. 330, 54 L.Ed.2d 331.

[35] *State v. Robinette* (1997), 80 Ohio St.3d 234, 1997-Ohio-343, 685 N.E.2d 762.

[36] *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769.

[37] *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769.

based on a traffic violation such as a failure to signal a turn, the stop is constitutionally valid, regardless of the officer's reason for making the stop.[38]

[¶28] The establishment of probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." Thus, probable cause is defined in terms of "facts or circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense.'"[39] A noninvestigatory stop is reasonable under the Fourth Amendment where an officer has probable cause to believe a traffic violation has occurred.[40] Probable cause exists when an objectively reasonable police officer would believe that appellant's conduct constituted a traffic violation, based on the totality of the circumstances known to the officer at the time of the stop.[41] The focus, therefore, is not on whether an officer could have stopped appellant because a traffic violation had in fact occurred, but on whether the arresting officer had probable cause to believe that a violation had occurred.[42]

[¶29] Probable cause is determined by examining the historical facts, *i.e.*, the events leading up to a stop or search, viewed from the standpoint of an objectively reasonable police officer. The determination of probable cause that a traffic offense has been committed, like all probable cause determinations, is fact-dependent and will turn on what the officer knew at the time she made the stop. Probable cause supporting a traffic stop does not require the officer to correctly predict that a conviction will result.[43]

[¶30] The South Dakota Supreme Court[44] held that:

> No Fourth Amendment violation occurred when defendant's detention at valid traffic stop was briefly extended for a canine sniff of the vehicle's exterior, given that officer had drug canine at his immediate disposal; officer had dog at hand in his vehicle, defendant conceded that the sniffing activity was of a short duration, the delay to defendant would have been a matter of seconds had there been no "hits," officer did not complete the traffic stop and then objectively foreclose any further investigation by telling defendant he was free to leave, and defendant was

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[38] *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, 665 N.E.2d 1091.

[39] *State v. Moeller* (Oct. 23, 2000), Butler App. No. CA99-07-128.

[40] *Dayton v. Erickson*, 76 Ohio St.3d, 3, 11, 1996-Ohio-431, 665 N.E.2d 1091.

[41] *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶16.

[42] *State v. McGeorge*, Warren App No. CA2007-02-022, 2008-Ohio-1480.

[43] *Bowling Green v. Goodwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698.

[44] *State v. DeLaRosa* (2003), 657 N.W.2d 683.

> no more inconvenienced or delayed by dog sniff than he would have been by a roadblock checkpoint for detecting illegal aliens.

[¶31] The Nebraska Supreme Court[45] held that a traffic violation, no matter how minor, creates probable cause to stop the driver of a vehicle. A traffic stop investigation may include asking the driver for an operator's license and registration, requesting that the driver sit in the patrol car, and asking the driver about the purpose and destination of his or her travel; also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether there are outstanding warrants for any of its occupants. However, the Nebraska Supreme Court parted company with the majority of the South Dakota Supreme Court in *State v. DeLaRosa*,[46] and opted to agree with the two dissenting justices to further hold that in order to expand the scope of a traffic stop and continue to detain the motorist for the time necessary to deploy a drug detection dog, an officer must have a reasonable, articulable suspicion that the person is involved in criminal activity beyond that which initially justified the interference.[47]

Canine Sniffs

[¶32] Further, warrantless searches of automobiles are permitted when probable cause that the vehicle contains contraband exists.[48] Probable cause to search exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place."[49] In determining whether probable cause existed, courts must look to the totality of the circumstances.[50] The justification for this exception is based on both the mobility of automobiles, which creates an exigency, and the lesser expectation of privacy which results from both the mobility of automobiles and from the pervasive regulation of automobiles.[51] Thus, "the justification to conduct a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case

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[45] *State of Nebraska v. Louthan* (2008), 275 Neb. 101, 744 N.W.2d 454.

[46] *State v. DeLaRosa* (2003), 657 N.W.2d 683.

[47] *State of Nebraska v. Louthan* (2008), 275 Neb. 101, 108-109, 744 N.W.2d 454, 462.

[48] *United States v. Carroll* (1925), 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed.2d 543; *State v. Welch* (1985), 18 Ohio St.3d 88, 91, 480 N.E.2d 384.

[49] *United States v. Rodriguez* (C.A. 6, 1995), 52 F.3d 120, 123, quoting *Illinois v. Gates* (1983), 462 U.S. 213, 238.

[50] *United States v. Rodriguez* (C.A. 6, 1995), 52 F.3d 120, 123.

[51] *United States v. Haynes* (C.A. 6, 2002), 301 F.3d 669, 677.

that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant."[52]

[¶33] 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. Ohio courts, along with the United States Supreme Court, have determined "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." Therefore, a canine sniff of a vehicle may be conducted during the time period necessary to effectuate the original purpose of the stop. Further, 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."[53] After a trained dog alerts officers, the officers have sufficient probable cause to continue to search the vehicle for contraband and the detention of the vehicle continues to be lawful.[54]

[¶34] Once a driver is lawfully detained for a traffic violation, an officer does not need reasonable suspicion of drug related activity to request that another officer bring his or her drug dog to the scene and neither officer needs reasonable suspicion of drug related activity in order to conduct a dog sniff while the driver is lawfully detained.[55]

[¶35] An Ohio court[56] has held that the actions of a police officer, who had stopped a motorist after observing his vehicle drive off the roadway, in continuing the detention while awaiting receipt of information regarding the motorist's driving record and status, and having a drug dog perform a "sniff" test around the vehicle while awaiting the information, were reasonable under the totality of circumstances and did not impermissibly expand the scope of the traffic stop in violation of the Fourth Amendment.

[¶36] While purely manipulative police procedures must not be tolerated, police officers must be permitted to perform routine procedures after lawfully detaining a motor vehicle, including a check of drivers' licenses and registrations; and the use of a narcotics dog for a simple "walk

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[52] *Michigan v. Thomas* (1982), 458 U S. 259, 261, 102 S.Ct. 3079, 73 L.Ed.2d 750.

[53] *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353; see also *United States v. Reed* (C.A.6, 1998), 141 F.3d 644.

[54] *State v. Harris* (Jul 7, 2008), Butler App. No. CA2007-04-089; *State v. Rusnak* (1997), 120 Ohio App. 3d.24, 696 N.E.2d 633; *Illinois v. Caballes* (2005) 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842.

[55] *State v. Carlson* (1995), 102 Ohio App.3d 585, 657 N.E.2d 591.

around" of a vehicle may under certain circumstances be part of those procedures, but the facts of each case must be individually evaluated based upon a totality of the circumstances test.[57]

[¶37] The United States Court of Appeals, Eighth Circuit, has held that a vehicle's crossing of a fog line provides a police officer with probable cause to stop the vehicle, given the state statute requiring drivers to stay as near as practicable within one traffic lane. Although a pretextual traffic stop violates the Fourth Amendment, any traffic violation provides a police officer with probable cause to stop a vehicle. A police officer's continued detention of a driver and passenger, for the purpose of questioning them about their citizenship, calling Border Patrol, and conducting a dog sniff, after the officer makes a lawful traffic stop, does not violate the Fourth Amendment.[58]

[¶38] The United States Court of Appeals, Eighth Circuit, also held that even a minor traffic violation provides probable cause for a traffic stop. The use of the drug-sniffing dog on the exterior of a vehicle during a valid traffic stop does not infringe upon any Fourth Amendment rights. A police officer does not need probable cause or reasonable suspicion before calling for a drug dog unit after a stop of a vehicle for a traffic violation, since the dog sniff of the exterior of a vehicle is not a search. A traffic stop is not unreasonably prolonged where the wait for a drug-sniffing dog is only five to six minutes.[59]

[¶39] In another case,[60] the United States Court of Appeals, Eighth Circuit, held that a canine sniff of the exterior of a car conducted during a traffic stop that is lawful at its inception and otherwise executed in a reasonable matter does not infringe upon a constitutionally protected interest in privacy; such a dog sniff may be the product of an unconstitutional seizure, however, if the traffic stop is unreasonably prolonged before the dog is employed. Once an officer has decided to permit a routine traffic offender to depart with a ticket, a warning, or an all clear, the Fourth Amendment applies to limit any subsequent detention or search. Dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only *de minimis* intrusions on the defendant's Fourth Amendment rights. Even if

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[56] *State v. Rusnak* (1997), 120 Ohio App.3d 24, 696 N.E.2d 633.

[57] *State v. Rusnak* (1997), 120 Ohio App.3d 24, 696 N.E.2d 633.

[58] *United States v. Herrera Martinez* (2004), 354 F.3d 932.

[59] *United States v. Williams* (2005), 429 F.3d 767.

a lawfully initiated traffic stop terminated at the point at which the police officer told the defendant that he would receive only a warning, a subsequently conducted dog sniff was a *de minimis* intrusion on defendant's Fourth Amendment rights; at most, the defendant's detention was extended some four minutes from the point at which he was notified that he would receive a warning ticket to the point at which the dog sniff was completed. A drug dog's identification of drugs in the defendant's car provided probable cause that drugs were present, which entitled the officers to search the vehicle forthwith pursuant to the automobile exception to the warrant requirement.

Robinette

[¶40] In *State v. Robinette*,[61] the Ohio Supreme Court addressed the validity of a search where the defendant was initially stopped for a speeding violation, but the officer continued to detain the defendant to ask questions pursuant to a drug interdiction policy, and then further detained the defendant to seek consent to search the vehicle. The officer, after issuing a verbal warning for the traffic violation, returned the defendant's driver's license, and, pursuant to a drug interdiction policy, asked, "One question before you get gone [sic]: are you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?" The defendant responded in the negative. The officer then asked if he could search the vehicle. The defendant testified that he was shocked by the question, automatically answered yes, and that he did not believe he was at liberty to refuse the request. The officer found a small amount of marijuana, put the defendant in the back seat of the cruiser, and continued the search. The officer then discovered a methylenedioxymethamphetamine (MDMA or Ecstacy) pill. The Supreme Court of Ohio found that the initial stop was justified because the defendant was speeding. However, once the warning was issued, the reason for the stop ended. The court then found that the additional questioning pursuant to the drug interdiction policy was permissible, pursuant to *Royer*[62] and *Brown*,[63] because such a policy promotes the public interest in quelling the drug trade. Regarding the further detention to request to search the defendant's car, the court noted

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[60] *United States v. Alexander* (2006), 448 F.3d 1014.

[61] *State v. Robinette* (1997), 80 Ohio St.3d 234, 1997-Ohio-343, 685 N.E.2d 762.

[62] *Florida v. Royer* (1983), 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229.

[63] *Brown v. Texas* (1979), 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357.

that the officer was not justified in detaining the defendant to request to search his car because he did not have any reasonably articulable facts or individualized suspicion to justify further detention. The court noted that voluntary consent could validate an otherwise unlawful detention and search. However, the court found that the defendant had not voluntarily consented to the search, finding that under the totality of the circumstances, the defendant merely submitted to a claim of lawful authority.

[¶41] In *City of Mentor v. Bitsko*,[64] the Eleventh District Court of Appeals addressed a situation similar to that faced by the court in *Robinette*. The officer observed the defendant walking down the driveway of a known drug house. The officer then followed the defendant, but was unable to read the defendant's license plate. The officer stopped the defendant's vehicle to advise him that his plate was unreadable and that he was required to have a readable license plate. Before returning the defendant's license and insurance information, the officer asked if he could search the defendant's vehicle. The officer testified that the defendant consented, although he could not remember exactly how the defendant consented. The defendant testified that he never responded at all. The officer then ordered the defendant to exit the vehicle. The officer testified that at this point the defendant requested his jacket. When the officer retrieved the defendant's jacket, he discovered a cloth pouch in the jacket which contained drug paraphernalia. The court found that the initial stop of the defendant for a traffic violation was valid. The court noted that it had previously held that an officer may expand the scope of a detention beyond the purposes of the initial stop if the new or expanded investigation is supported by a reasonable, articulable suspicion that other criminal activity is occurring. However, the court found that the continued detention to ask permission to search was not valid because the initial detention did not lead to new facts giving rise to a reasonable suspicion of other criminal activity (beyond the traffic violation). Further, the court found that the trial court had erred in finding voluntary consent. The court found that the trial court had applied a preponderance of the evidence standard instead of a clear and convincing evidence standard, which is required pertaining to the validity of consent to search. The court, noting that the officer could not remember how the defendant

[64] *City of Mentor v. Bitsko* (June 5, 1998), Lake App. No. 97-L-098, 97-L-106.

consented, but only that he believed the defendant verbally consented, found that the state had not met its burden of proof.

[¶42] In *State v. House*,[65] the Eleventh District Court of Appeals again addressed a situation similar to that in *Robinette*. The defendant was stopped for driving a vehicle without a light illuminating the rear license plate. As the officer approached the defendant, he detected an odor of an alcoholic beverage, and noticed that his eyes were bloodshot. The defendant successfully completed several field sobriety tests. The officer decided to issue a warning for the license plate violation, but before returning the defendant's driver's license and administering the warning, began questioning the defendant as to whether he had any alcohol, drugs, or guns. Eventually, the defendant admitted he had a "bowl." A search of the vehicle resulted in the discovery of the drug paraphernalia. The court found that once the officer decided to issue a warning, the reason for the stop had ended. Further, the court found that there was no objective reason to continue the detention. Finally, the court held that where there is no testimony presented that the officer was questioning pursuant to a drug interdiction policy, further questioning after the reason for a stop has ended is an unconstitutional fishing expedition.

[¶43] In *State v. Carter*,[66] the Eleventh District Court of Appeals once again addressed a situation similar to that in *Robinette*. The defendant was stopped for speeding. The officer, upon approaching the vehicle, noticed a heavy odor of air fresheners, a large group of air fresheners attached to the driver's side door, a cell phone in the center console, and a backpack at the passenger's feet. The officer obtained identification from both the defendant and his passenger. The officer observed that the defendant's license was from California, and the passenger's was from New York. The officer learned that the defendant had prior drug convictions. The officer questioned both the defendant and the passenger and noticed a conflict in their stories. The officer then questioned the defendant pursuant to a drug interdiction policy. The defendant denied having drugs, but exhibited signs of nervousness. The officer then obtained consent to search the vehicle and found 2.25 kilograms of cocaine. The court found that the officer did not unlawfully detain the defendant when he questioned the defendant regarding contraband because the questions were asked pursuant to a drug interdiction policy promoting the public interest.

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[65] *State v. House*, Lake App. No. 2000-L-172, 2001-Ohio-4342.

Duration of Detention

[¶44] In conducting a stop of a motor vehicle for a traffic violation, an "officer may detain an automobile for a time sufficient to investigate the reasonable, articulable suspicion for which the vehicle was initially stopped." An investigative stop, however, may last no longer than is necessary to effectuate the purpose of the stop.[67] A seizure that is justified solely by an interest in issuing a warning ticket to a driver can become unlawful, in violation of the Fourth Amendment, if it is prolonged beyond the time reasonably required to complete that mission.[68]

[¶45] "When 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." This time period also "includes the period of time sufficient to run a computer check on the driver's license, registration, and vehicle plates." "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." The detention of a stopped motorist, however, "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."[69]

[¶46] Courts have found that an up-to-30-minute period of detainment from the time of an initial stop to the time a canine alerts is reasonable.[70]

[¶47] A police officer who detained a motorist due to an obscured license plate and who discovered that the car's validation sticker was current was nonetheless authorized to further detain the motorist while checking the status of his driver's privileges, where the length of the detention was not excessive and the evidence tended to establish a violation of the license plate obstruction ordinance, for which the officer could have detained the motorist long enough to issue a citation.[71]

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[66] *State v. Carter*, Portage App. No. 2003-P-0007, 2004-Ohio-1181.

[67] *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353.

[68] *Illinois v. Caballes* (2005) 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842.

[69] *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353.

[70] See *State v. Bolden*, Preble App. No. CA2003-03-007, 2004-Ohio-184, ¶19-25; *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353.

[71] *State v. Keathley* (1988), 55 Ohio App.3d 130, 562 N.E.2d 932.

[¶48] The duration of a traffic stop does not exceed that necessary to effectuate the purpose of the stop, where the issuance of a traffic citation ordinarily takes the arresting officer 20 to 30 minutes, and a canine sniff of vehicle occurs within that time.[72]

[¶49] Detention of a defendant for no more than 15 minutes pending the arrival of an officer able to confirm the defendant's identity in connection with a murder investigation, did not violate the defendant's Fourth Amendment rights.[73]

[¶50] The Ohio Court of Appeals held[74] that the defendant, who was stopped for a traffic violation, was not detained longer than constitutionally permitted, where the officer and his drug-sniffing dog arrived at the scene of the stop and began to walk around the defendant's vehicle twenty minutes after the defendant was first stopped by a trooper for driving too closely to the vehicle in front of him, the dog alerted to the presence of drugs in the defendant's vehicle, the trooper testified that issuing a traffic citation ordinarily took him twenty to thirty minutes, and the initial canine sniff occurred within this time frame.

Continued Detention

[¶51] As stated in ¶31 above, the Supreme Court of Nebraska[75] opted in favor of the reasonable suspicion test as the standard for resolving the question of whether an officer has an appropriate basis upon which to detain a motorist after concluding a routine traffic stop, for the time necessary to deploy a drug detection dog, rather than the *de minimis* rule, which held that when a police officer makes a traffic stop and has at his immediate disposal the canine resources to employ this uniquely limited investigative procedure, it does not violate the Fourth Amendment to require that the offending motorist's detention be momentarily extended for a canine sniff of the vehicle's exterior. However, Nebraska is in the minority on the issue of requiring reasonable suspicion to deploy the canine for a sniff.

[¶52] The Supreme Court of Ohio[76] held that a traffic stop is not unconstitutionally prolonged when permissible background checks have been diligently undertaken and not yet completed at

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[72] *State v. Bolden*, Preble App. No. CA2003-03-2007, 2004-Ohio-184.

[73] *State v. Cook* (1992), 65 Ohio St. 3d 516, 605 N.E.2d 70.

[74] *State v. Cahill*, Shelby App. No. 17-01-19, 2002-Ohio-4459.

[75] *State of Nebraska v. Louthan* (2008), 275 Neb. 101, 744 N.W.2d 454.

[76] *State of Ohio v. Batchili* (2007), 113 Ohio St.3d 403; 2007-Ohio-2204; 865 N.E.2d 1282; 2007 Ohio LEXIS 1268.

the time a drug dog alerts on the vehicle. The "reasonable and articulable" standard applied to a prolonged traffic stop encompasses the totality of the circumstances, and a court may not evaluate in isolation each articulated reason for the stop.[77] The constitutionality of a prolonged traffic stop does not depend on the issuance of a citation.

Mistake & Good Faith

[¶53] In *Illinois v. Rodriguez*,[78] the Supreme Court of the United States held that a warrantless entry is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably, but mistakenly believe has common authority over the premises. The court noted that the Fourth Amendment only protects against "unreasonable" searches, and that probable cause only requires a proper assessment of probabilities. The court cited examples of situations where mistakes did not invalidate a search, such as: when a magistrate issues a warrant based on seemingly reliable, but factually inaccurate information; when an officer conducts a search based on an overbroad warrant where the failure to realize the overbreadth of the warrant was reasonable; and when an officer conducts a search incident to arrest even when the wrong person had been arrested, where the belief that the person was the suspect was reasonable. The court stated "[i]t is apparent that in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government – whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of the exceptions to the warrant requirement – is not that they always be correct, but that they always be reasonable."[79]

[¶54] In *United States v. Miguel*,[80] the Ninth Circuit Court of Appeals addressed the question of whether the officer had reasonable suspicion to stop the defendant's vehicle where the stop was pursuant to the officer's mistaken belief that the vehicle's registration had expired. The court found that the evidence showed that the officer's mistake was both reasonable and in good faith,

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[77] *United States v. Arvizu* (2002), 534 U.S. 266, 274, 122 S.Ct. 744, 151 L.Ed.2d 740, applied.

[78] *Illinois v. Rodriguez* (1990), 497 U.S. 177, 110 S.Ct. 2793, 111 L.Ed.2d 148.

[79] *Illinois v. Rodriguez* (1990), 497 U.S. 177, at 185, 110 S.Ct. 2793, 111 L.Ed.2d 148.

[80] *United States v. Miguel* (C.A. 9, 2003), 368 F.3d 1150.

and, therefore, held that the officer had reasonable suspicion to stop the vehicle based on that belief.

Traffic Statutes and Ordinances

[¶55] R.C. §4511.30(A) provides, in pertinent part:

> No vehicle . . . shall be *driven upon the left side of the roadway* . . . (w)hen approaching *within one hundred feet of or traversing any intersection* . . . (emphasis added).

[¶56] R.C. §4511.33(A) provides, in pertinent part:

> Whenever any roadway has been divided into two or more clearly marked lanes for traffic, . . . (a) vehicle . . . shall be *driven, as nearly as is practicable, entirely within a single lane* . . . and *shall not be moved* from such lane . . . until the driver has first ascertained that such movement can be made with safety (emphasis added).

[¶57] R.C. §4511.36(A) provides, in pertinent part:

> The driver of a vehicle intending to turn at an intersection shall . . . (a)pproach for a *right turn* and a right turn shall be made *as close as practicable to the right-hand curb* or edge of the roadway . . . and . . . an approach for a *left turn* shall be made *in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line* where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered (emphasis added).

[¶58] R.C. §4511.39(A) provides, in pertinent part:

> *No person shall turn* a vehicle . . . or move right or left upon a highway unless and until such person has exercised due care to *ascertain that the movement can be made with reasonable safety* nor without giving . . . a signal of *intention to turn or move right or left . . . continuously during not less than the last one hundred feet* traveled by the vehicle . . . before turning . . . (emphasis added).

[¶59] R.C. §4511.01(BB) defines "street" or "highway" as "the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel."

[¶60] R.C. §4511.01(EE) defines "roadway" as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder."

[¶61] R.C. §4511.01(KK) defines "intersection" as "(t)he area embraced within the prolongation or connection of the lateral curb lines . . . or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict."

[¶62] R.C. §4511.01(UU) defines "right-of-way" as "(t)he right of a vehicle . . . to proceed uninterruptedly in a lawful manner in the direction in which it . . . is moving in preference to another vehicle . . . approaching from a different direction into its . . . path."

[¶63] Codified Ordinances of the City of Painesville (PCO) §332.21(c), provides, in pertinent part:

> The driver of a vehicle intending to turn into a private . . . driveway . . . from a public street or highway shall . . . (a)pproach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway, and . . . (u)pon a roadway where traffic is proceeding in opposite directions, *approach for a left turn and a left turn shall be made from that portion of the right half of the roadway nearest the centerline thereof* (emphasis added).

[¶64] PCO §314.03 provides, in pertinent part:

> Whenever traffic is controlled by traffic-control signals . . . (v)ehicular traffic facing a circular green signal may proceed straight through or turn right or left . . ., (b)ut vehicular traffic, including *vehicles turning right or left, shall yield the right-of-way to other vehicles . . . lawfully within the intersection* at the time the signal is exhibited . . .. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line . . . and shall remain standing until an indication to proceed is shown (and) . . . *may cautiously enter the intersection to make a right turn after stopping* . . . (and) shall *yield the right-of-way to . . . other traffic lawfully using the intersection* (emphasis added).

ANALYSIS

[¶65] The defendant committed several traffic violations, in contravention of state code and city ordinances, namely:

> R.C. §4511.30(A), by driving his vehicle upon the left side of N. State Street when approaching within one hundred feet of or traversing the intersection of N. State Street and E. Erie Street;
>
> R.C. §4511.33(A), by not driving his vehicle, as nearly as is practicable, entirely within a single lane, and by moving from such lane without first ascertaining that such movement can be made with safety;

R.C. §4511.36(A), by failing to make his right turn from E. Erie Street onto N. State Street as close as practicable to the right-hand curb; and by failing to make his approach for his left turn on N. State Street in that portion of the right half of the roadway nearest the center line;

R.C. §4511.39(A), by turning his vehicle, or otherwise moving right or left upon N. State Street without exercising due care to ascertain that the movement can be made with reasonable safety; and by failing to give a signal of intention to move left continuously during not less than the last one hundred feet traveled by the vehicle before turning;

PCO §332.21(c), by driving his vehicle to turn left into a private driveway from a public street (N. State Street) and failing to approach for that a left turn and making that left turn from that portion of the right half of the N. State Street roadway nearest the centerline thereof; and

PCO §314.03, by failing to yield the right-of-way to the officer's vehicle which was lawfully proceeding on N. State Street, having first stopped at the clearly marked stop line just north of the curb cut (private entry/exit at the Sunoco gas station) and then proceeding to cautiously enter the intersection at E. Erie Street to make her right turn. The officer had a right to rely on the defendant's right turn signal, and the movement of his vehicle to the right onto N. State Street from E. Erie Street, that he would not suddenly turn left in front of her.

[¶66] The officer had probable cause to stop the defendant for several traffic violations. At the very least, Officer McNeely had reasonable, articulable suspicion that a traffic violation occurred, or that the motorist was engaging in hazardous or imprudent traffic maneuvers, if she was mistaken about having probable cause, giving her legal authorization to stop the defendant. The stop was lawful.

[¶67] The officer was authorized to have the defendant and his passenger exit the motor vehicle for further investigation or in pursuance of the probable cause to arrest or cite.

[¶68] The defendant consented to a search of his person, which was lawful.

[¶69] The officer was entitled to deploy her K-9 to sniff the exterior of the defendant's motor vehicle. The dog was deployed at most three or four minutes into the stop. This was not a "search" or an unlawful police practice. There was no unreasonable delay in deploying the dog, and it was not unreasonable for the officer to put writing the citation "on hold" pending the canine sniff.

[¶70] Once the dog alerted at the passenger door's front hinge (twice), the officer had probable cause, or at least reasonable, articulable suspicion of drug activity, to continue the detention and to continue the dog's sniff or the officer's search of the glove compartment.

[¶71] Once the apparent crack cocaine was located, the officer lawfully arrested the defendant.

[¶72] The entire stop lasting only about 15 minutes, the time elapsed was shorter than the usual uncomplicated traffic stop where a citation would be issued. The detention time was not unreasonable.

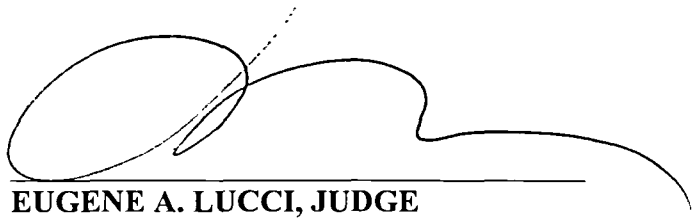
CONCLUSION

[¶73] The court finds no violation of the United States Constitution or the Ohio Constitution, and that the motion to suppress is not well-taken and should be denied.

ORDER

[¶74] ***WHEREFORE***, it is the order of this court that the motion to suppress be and is hereby denied, and that this case be set for jury trial on **Monday, March 2, 2009, at 8:30 a.m.**

[¶75] **IT IS SO ORDERED.**



EUGENE A. LUCCI, JUDGE

c: Paul E. Kaplan, Esq., Assistant Lake County Prosecuting Attorney
Justin M. Weatherly, Esq., Attorney for Defendant