

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-081024
	:	TRIAL NO. B-0802817
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
ALLEN COX,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Allen Cox appeals from the trial court’s judgment convicting him on one count of carrying a concealed weapon.

The police recovered an unloaded handgun and ammunition during a canine assisted, warrantless search of Cox’s vehicle after a traffic stop. Cox orally moved to suppress evidence of the gun and ammunition. The trial court denied the motion. Cox waived his right to a jury trial, and the parties agreed that the court could determine Cox’s guilt based upon the testimony offered at the suppression hearing. The court then found Cox guilty of carrying a concealed weapon. In his sole assignment of error, Cox now argues that the court erred in denying his motion to suppress.

At the suppression hearing, Deputy Thomas Lange testified that he had stopped Cox for speeding. During the traffic stop, Lange detected the odor of marijuana coming from Cox’s vehicle. For safety reasons, he arranged for the vehicle to be searched by a

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

canine unit and removed Cox and his passengers from the vehicle and performed pat-down searches.

The canine's handler, Corporal John Bise, testified that he had smelled marijuana in the vehicle also, and that his canine had alerted to the presence of contraband by scratching the center console of the vehicle. Bise testified that the canine was certified in patrol and drug sniffing, and this testimony on the canine's certification was not challenged.

Bise found an unloaded handgun in the unlocked center console. The officers found ammunition for the gun in the unlocked glove box and in the cargo area of the vehicle. Lange testified that the ammunition in the glove box was accessible to the driver of the vehicle.

Cox conceded at the suppression hearing that he had been speeding and that his vehicle had smelled like marijuana. He testified that he had not seen the canine alert inside the vehicle. But Cox and his passengers, who also testified that they had not seen an alert, were outside the vehicle at the time of the canine search.

Cox claimed that he had told Bise the location of the ammunition after Bise had questioned him about its location, and that he had not been given his *Miranda* rights before this questioning.

After hearing this testimony, the trial court found that the initial traffic stop was based upon a speeding violation. The court also found that Officer Lange had detected the odor of marijuana coming from the vehicle, that the canine had alerted to the center console, and that this alert was reliable. The court concluded that the extended seizure and search were supported by probable cause and denied the motion to suppress. The court did not make any findings as to whether Cox had been informed of his *Miranda* rights.

We apply a mixed standard of review in examining the trial court's denial of a motion to suppress: first, we accept the trial court's findings of fact if they are supported by competent, credible evidence, and then we independently determine whether those facts satisfied the applicable legal standard.<sup>2</sup>

As this case involved a warrantless search and seizure, the state had the burden to establish the reasonableness of the search and seizure.<sup>3</sup> The record supports the trial court's finding that the police had observed Cox speeding. The speeding violation justified the initial stop.<sup>4</sup> Further, the record supports the trial court's finding that the police had detected the odor of marijuana in the vehicle. Because the vehicle smelled of marijuana, the police had probable cause to further detain Cox and to conduct a canine search for drugs under the automobile exception to the warrant requirement.<sup>5</sup> To ensure their safety, the officers were also permitted to remove Cox from the vehicle and to perform a pat-down search for weapons.<sup>6</sup>

Finally, the record supports the trial court's finding that the canine had alerted inside the vehicle and that the alert was reliable.<sup>7</sup> The alert led to the discovery of the gun and provided further justification to continue the search of the vehicle,<sup>8</sup> including areas in the passenger compartment such as the glove box that could have logically concealed contraband.<sup>9</sup>

The trial court did not separately address the admissibility of the ammunition found in the cargo area of the vehicle. But the error, if any, in the admission of this

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<sup>2</sup> *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8.

<sup>3</sup> See *State v. Moore*, 90 Ohio St.3d 47, 49, 2000-Ohio-10, 734 N.E.2d 804.

<sup>4</sup> See *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769; *State v. Lopez*, 166 Ohio App.3d 337, 2006-Ohio-2091, 850 N.E.2d 781, at ¶14.

<sup>5</sup> *Moore*, 90 Ohio St.3d at 53.

<sup>6</sup> See *Terry v. Ohio* (1967), 392 U.S. 1, 88 S.Ct. 1868.

<sup>7</sup> See *Lopez*, supra, at ¶25.

<sup>8</sup> *Id.*

<sup>9</sup> *State v. Welch* (1985), 18 Ohio St.3d 88, 480 N.E.2d 384, syllabus, following *United States v. Ross* (1982), 456 U.S. 798, 102 S.Ct. 2157; *Michigan v. Long* (1983), 463 U.S. 1032, 103 S.Ct. 3469.

evidence was harmless beyond a reasonable doubt, where this evidence did not contribute to the conviction, which was based solely upon the gun and the ammunition found in the glove box.<sup>10</sup>

As we have noted, the trial court did not expressly address the issue of a *Miranda* violation. But even if we assume that there was a *Miranda* violation that rendered Cox's statements—the ones Cox offered at trial—inadmissible, the ammunition in the glove box was not subject to exclusion where the police had independent justification to search the glove box.<sup>11</sup>

We do not find any of Cox's arguments on appeal meritorious. The warrantless search and seizure were not unreasonable, and thus the trial court did not err by denying the motion to suppress. Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 16, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>10</sup> See Crim.R. 52(A); *State v. Brown*, 65 Ohio St.3d 483, 1992-Ohio-61, 605 N.E.2d 46.

<sup>11</sup> See *Moore*, supra; *Long*, supra. See, also, *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶50.