

HEAR



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# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO  
Plaintiff

EDWIN A VEGA  
Defendant

Case No: CR-15-599025-A

Judge: DICK AMBROSE

INDICT: 2925.03 TRAFFICKING OFFENSE /FORS  
2925.11 DRUG POSSESSION /FORS  
2925.03 TRAFFICKING OFFENSE /FORS  
ADDITIONAL COUNTS...

## JOURNAL ENTRY

OSJ: JOURNAL ENTRY AND OPINION

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Judge Signature

Date

CLERK OF COURTS  
CUYAHOGA COUNTY

2016 JAN 25 P 1:19

FILED

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STATE OF OHIO,

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CASE NO. CR-15-599025

vs.

JUDGE DICK AMBROSE

EDWIN A. VEGA

JOURNAL ENTRY & OPINION

CLERK OF COURTS  
CUYAHOGA COUNTY

January 25, 2016

{¶1} Before the Court is the Motion of defendant, Edwin Vega, to Suppress Evidence ("Defendant's Motion"), filed on 12/02/2015. Defendant's Motion asks the Court to suppress all evidence confiscated by the Cleveland State University ("CSU") Police Department in connection with a traffic stop of defendant's vehicle on 3/28/2015. Defendant asserts that his rights under the Fourth Amendment to the U.S. Constitution were violated when he was stopped without probable cause, unlawfully detained and subjected to a warrantless search of sealed envelopes inside his vehicle.

{¶2} The matter was set for a hearing on 1/11/2016 and before the commencement of the hearing, the State responded to Defendant's Motion with a written brief (Response to Defendant's Motion to Suppress, hereinafter "State's Response") that was provided to the Court and defense counsel. In its Response, the State asserted that CSU police had probable cause to stop the defendant's vehicle and to further detain defendant to investigate the officer's reasonable suspicion that the defendant was involved in illegal drug activity due to a strong odor of raw marijuana coming from defendant's vehicle.

The State further argues that officers had probable cause for a warrantless search of sealed envelopes found within the vehicle based on the exigent circumstances associated with the stop of an automobile.

{¶3} As previously stated, the hearing on Defendant's Motion was held on 1/11/2016. The State provided the testimony of Officer Jeffrey Madej who was involved in the initial stop, detention and arrest of the defendant. The State also introduced photos from the scene, physical evidence taken from defendant's vehicle and a copy of officer Madej's "body cam" (State's "Exhibit 1") which was played for the Court. At the conclusion of the hearing, counsel for the State and for the defense addressed the Court in closing arguments. Due to the fact that defense counsel did not have time to review the State's Response before the hearing, the Court gave counsel the opportunity to file post-hearing briefs with the Court, on or before 1/15/2016. Both the State and defendant filed supplemental briefs as suggested by the Court.

#### **Testimony of Officer Madej**

{¶4} Officer Jeffrey Madej was the only witness to testify at the hearing. Officer Madej stated that he has been a police officer with the CSU Police Department for 9 years and that on 3/28/2015, at 11:00 A.M., he observed a grey Toyota Camry run a red light at the intersection of E. 18<sup>th</sup> and Euclid Ave. Officer Madej then initiated a traffic stop at E. 18<sup>th</sup> and Payne Ave. As he approached the car, he noticed a strong odor of marijuana coming from the driver's side window. The defendant, Edwin Vega, was the only occupant. Officer Madej asked the defendant if he had any marijuana in the vehicle and he said "no." Due to the strong odor of marijuana, Officer Madej asked the defendant to

exit the vehicle after which he and Officer Nolasco, who had arrived on scene, conducted a contraband search of the passenger compartment of the vehicle. Officer Madej observed three marijuana buds along with particles of loose marijuana that he referred to as "shake weed" in the center console of the vehicle. He also found an open package of Sweet Stone Gourmet Medicated Fruit Loop Flavored Candy ("Sweet Stone Candy"). Having found evidence of illegal drugs in the defendant's car, officers Madej and Nolasco then further searched the passenger compartment of the vehicle.

{¶5} The State introduced photos of the inside of the defendant's car (Exhibits 15–22) which showed a vehicle cluttered with boxes, papers, bags, wrappers, bottles, a hat, shoes and envelopes. In the backseat, the officers located rolling papers and several aerosol cans of "Spray 420" odor eliminator. They also found two large, sealed but unaddressed, U.S. Postal Service Priority Mail envelopes (depicted in State's Exhibits 23–25) inside a previously opened U.S. Mail shipping box. Defendant was asked what was in the envelopes. He told the officers "stickers". Officer Madej then asked defendant if he could open the packages. Defendant declined consent. Officer Madej questioned why defendant would not consent to a search of the packages if they only contained stickers. He also informed the defendant that the envelopes could be seized as contraband and then opened after obtaining a warrant. Defendant was not persuaded and continued his refusal to consent to a search of the envelopes.

{¶6} Officer Madej then requested assistance from several law enforcement agencies for a K-9 unit to "sniff search" the envelopes for the presence of drugs. While waiting (approximately 35 minutes) to hear back regarding the availability of a "drug dog",

officers on scene debated the proper procedure to investigate the contents of the sealed envelopes found in the defendant's vehicle. After consulting with supervisors as well as the Ohio State Highway Patrol, officers Madej and Nolasco were told that since they had already located drugs in the vehicle, they had sufficient probable cause to open any sealed package found in the vehicle. Acting on that advice, the officers opened the envelopes. The contents of the envelopes revealed 150 individually wrapped packages of the Sweet Stone Candy which later tested positive for THC (the active ingredient in marijuana).

{¶7} On 9/9/2015, the defendant was indicted for Drug Trafficking, R.C. 2925.03(A) (2), a felony of the 3<sup>rd</sup> degree; Drug Possession, R.C. 2925.11(A), a felony of the 3<sup>rd</sup> degree; Drug Trafficking, R.C. 2925.03(A) (2), a felony of the 5<sup>th</sup> degree; Drug Possession, R.C. 2925.1(A), a minor misdemeanor; and Possessing Criminal Tools, R.C. 2923.24(A), a felony of the 5<sup>th</sup> degree.

### **Law and Analysis**

{¶8} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution secure the right of citizens to be free from unreasonable searches and seizures. This right also applies when police conduct a traffic stop. "It is a basic tenet of American constitutional law that a police stop of a motor vehicle, however brief, constitutes a "seizure" within the meaning of the Fourth and Fourteenth Amendments to the United States Constitution. *State v. Freeman (1980), 64 Ohio St.2d 291, at 299.*

{¶9} A traffic stop by a law enforcement officer must comply with the Fourth Amendment's reasonableness requirement. *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89. "[A] police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." *Rodriguez v. United States* (Apr. 21, 2015), \_\_\_ U.S. \_\_\_, 2015 WL 1780927, \* 3 citing *Illinois v. Caballes* (2005), 543 U.S. 405, 125 S.Ct. 834.

{¶10} When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and perform routine procedures such as a computer check on the motorist's driver's license, registration and vehicle plates. *State v. Thomas, Montgomery App. No. 22833, 2009-Ohio-3520*, ¶14. In determining whether an officer completed the tasks of a traffic 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. *State v. Batchili, 113 Ohio St.3d 403, 2007-Ohio-2204*, ¶17.

{¶11} When considering the "totality of the circumstances," police officers are permitted to "draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well

elude an untrained person." *U.S. v. Arvizu (2002)*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740. A court reviewing the officer's actions must give due weight to the officer's experience and training and must view the evidence as it would be understood by those in law enforcement. *State v. Andrews (1991)*, 57 Ohio St.3d 86, 87-88.

{¶12} In deciding whether a defendant's 4<sup>th</sup> Amendment rights have been violated in the context of a traffic stop, the Court is to determine whether the investigatory stop is "justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *United States v. Cortez (1981)*, 449 U.S. 411, 417.

"[R]easonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White (1990)*, 496 U.S. 325, 330.

Reasonable suspicion requires only that the officer "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." *Terry v. Ohio (1968)*, 392 U.S. 1, 21.

{¶13} "The Ohio Supreme Court has identified certain specific and articulable facts that would justify an investigatory stop by way of reasonable suspicion, factors which fall into four general categories: (1) location; (2) the officer's experience, training or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances. No single factor is dispositive; the decision must be viewed based on the totality of the circumstances." *State v. Bobo (1988)*, 37 Ohio St.3d 177, 178-80.

{¶14} Defendant challenges the initial stop of his vehicle for a violation of local traffic ordinances and questions the validity of his continued detention at the scene. Defendant also challenges whether the search of a sealed package located in the back seat of his

vehicle was constitutionally permissible. At the hearing on Defendant's Motion, Officer Madej testified that he was in his marked police vehicle on E. 18<sup>th</sup> St. facing North at the intersection with Euclid Ave. when he observed the Defendant's vehicle make a left turn through a red light from Euclid Northbound onto E. 18<sup>th</sup>. Although the Defendant was ultimately found not guilty of the red light violation in the Cleveland Municipal Court, this Court finds that Officer Madej had a reasonable and articulable suspicion that a traffic law was violated – i.e., that defendant ran a red light. Under these circumstances, the exclusionary rule may be avoided with respect to evidence obtained in an investigative stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law. *Wilmington v. Conner*, 144 Ohio App.3d 735, 2002-Ohio-474, 761 N.E.2d 663 (12<sup>th</sup> Dist. 2001) (citing: *State v. Greer*, 114 Ohio App.3d 299, 300-301, 683 N.E.2d 82, 83. (2<sup>nd</sup> Dist. 1996). Officer Madej's stop of the defendant's vehicle for a traffic violation was therefore justified.

{¶15} It is clear from Officer Madej's testimony at the suppression hearing, and the Court's review of footage from his body cam (State's Exhibit 1), that after stopping defendant's vehicle, the officer noticed a strong smell of marijuana coming from the passenger compartment. The "smell of marijuana, alone, by a person qualified to recognize the odor, is sufficient to establish probable cause to conduct a search." *State v. Gonzales*, 6<sup>th</sup> Dist., *Wood Cty., No. WD-07-060, 2004-Ohio-168*, ¶18. Subsequently, Officer Madej conducted an initial search of the vehicle and recovered three buds of marijuana and an amount of "shake weed" or loose particles of marijuana, in the center console (State's Exhibit 12). He also found an open package of Sweet Stone Candy. Defendant does not contest this initial search, but challenges his prolonged detention



after this search and what he alleges is an "arrest" for minor misdemeanor possession of marijuana. Defendant also disputes that officers on scene had probable cause to open the sealed envelopes recovered from the back seat of his car.

{¶16} "An overwhelming odor of raw marijuana creates probable cause to believe that a large quantity of raw marijuana will be found....If no large amount of raw marijuana is seen in the passenger compartment, the officer is justified in believing that a large amount of raw marijuana may be found in a container or compartment – including the trunk." *Id.*, at ¶22, ¶23. Officer Madej described the odor of raw marijuana as "billowing out" of defendant's vehicle, yet he was only able to recover 3 marijuana buds and "shake weed" from the center console of defendant's vehicle. The lack of correlation between the odor and the amount of marijuana actually recovered left the officers on scene to reasonably question whether there was more marijuana hidden somewhere in the vehicle. This fact, along with the discovery of a large amount of rolling papers and aerosol spray cans used to mask the odor of marijuana led officers to suspect the sealed envelopes that were found in the open, U.S. Postal service box in the back seat.<sup>1</sup> However, Officer Madej admitted that at the time the envelopes were seized, they did not smell like raw marijuana. Upon his feeling the contents of the envelopes, Officer Madej remarked that they did not feel like stickers (the explanation offered by the defendant), but felt like individually packaged drugs.

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<sup>1</sup> Regarding the status of the sealed envelopes found in the backseat, the Court does not subscribe to defendant's theory that these envelopes were U.S. Mail and therefore could neither be seized nor opened without a warrant. The envelopes were sealed but did not bear any address information, nor did they have any postage affixed. The box that they were taken from was a U.S. Priority Mail box that had apparently come through the mail, but was opened as it sat in the backseat and was simply serving as a container at the time it was recovered.

{¶17} Up to this point in time, defendant had only been detained for approximately 22 minutes. Given the officers observation of the strong smell of marijuana, the initial search and location of raw marijuana in the center console of the vehicle, the officers' painstaking attempts to place each particle of "shake weed in an evidence bag, and the subsequent search through the "clutter" of the backseat, the Court finds the length of this portion of defendant's detention to be reasonable.

{¶18} However, the detention of the defendant after the point in time where he refused to consent to officers opening the two envelopes found in the backseat is the critical determination that must be made by the Court in deciding whether or not the evidence contained in those envelopes should be suppressed.

{¶19} It is clear from the Court's review of State's Exhibit 1 that the after the defendant refused consent, Officer Madej called Dispatch to see if a drug sniffing dog could be transported to the scene to smell the envelopes to see if they contained illegal drugs. This occurred about 23 minutes into the stop. Several law enforcement agencies were contacted over approximately the next 38 minutes, but no K-9 units were available. While inquiries were being made about the availability of a K-9, Officers Madej and Nolasco were also contacting superiors and eventually the Ohio State Highway Patrol for advice on how to proceed with the sealed envelopes found in defendants vehicle. Near the end of the 38 minute period referenced above, Officer Nolasco received advice

from the Highway Patrol that as long as they had found drugs in the vehicle, they had probable cause to open any sealed container that might contain drugs.

{¶20} As previously stated, When a law enforcement officer stops a vehicle for a traffic violation, the officer may detain the motorist for a period of time sufficient to issue the motorist a citation and perform routine procedures such as a computer check on the motorist's driver's license, registration and vehicle plates. *State v. Thomas, Montgomery App. No. 22833, 2009-Ohio-3520, ¶14*. In determining whether an officer completed the tasks of a traffic 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. *State v. Batchili, 113 Ohio St.3d 403, 2007-Ohio-2204, ¶17*. Defendant maintains that after officers located the small amount of marijuana in the center console of his vehicle, they should have written him a ticket for a minor misdemeanor (which they did after approximately 53 minutes from the time of the initial stop and 42 minutes after discovering drugs in the center console) and then released him. However, despite being told that he was not under arrest, defendant was not free to leave the scene and his detention continued for another eight minutes after the citations were issued.

{¶21} The amount of raw cannabis that was found in defendant's vehicle was less than 100 grams (a non-arrestable, minor misdemeanor). Officer Madej's testimony that the smell of raw marijuana was "billowing out" of the vehicle combined with the discovery of only a small amount of marijuana certainly provided reasonable suspicion that there

was more marijuana elsewhere in the vehicle – justifying a more thorough search. However, without more, the smell of marijuana does not provide probable cause to open every container located during the search. There must be a reasonable basis or probable cause to open an individual package found within a vehicle exhibiting a strong smell of marijuana. The State relies on *State v. Gonzales*, 2004-Ohio-168, for the proposition that, once an officer has probable cause to search a vehicle, he may search all containers within the vehicle. This is not the holding of *Gonzales*; *supra*. To the contrary, *Gonzales* cites to *United States v. Ross* (1982), 456 US 798, which states that probable cause to search an automobile, is "defined by the object of the search and the places in which there is probable cause to believe it may be found." *Id* at 824. Here, the justification offered for opening the sealed envelopes found in the backseat is Officer Madej's testimony that when he felt the packages, they did not feel like stickers but instead felt like individually packaged drugs (Officer Madej later told another officer that the packages felt like marijuana). This testimony must be viewed in the totality of all of the circumstances.

{¶22} During the initial search of the defendant's vehicle, there was little said about the open package of the Sweet Stone Candy recovered from the center console of the vehicle. This candy was not identified as contraband by officers when they confiscated the marijuana buds and "shake weed" from the car. On cross-examination, Officer Madej admitted that he was not sure if the Sweet Stone Candy was even illegal. There was also no testimony that either the candy found in the center console or in the unopened U.S. Mail envelopes in the backseat smelled like marijuana. When he was

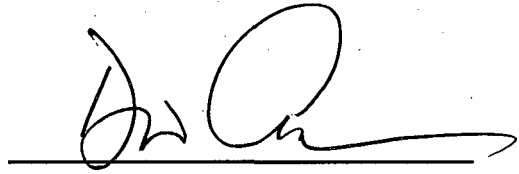
offered the same envelopes to smell during cross-examination, Officer Madej agreed that he did not detect the odor of marijuana. The Sweet Stone Candy was not positively identified as containing THC until after it was confiscated and tested at the police station.

{¶23} In viewing all the testimony and evidence presented at the hearing, the Court finds that the defendant was unlawfully detained by officers for the 38 minutes after the initial stop and search of his vehicle in which a minor misdemeanor quantity of marijuana was confiscated. During the majority of this time period, officers were trying to figure out what do with the envelopes seized from the back of defendant's vehicle. Certainly, a drug sniffing dog, if obtained within a reasonable time after the suspect envelopes were discovered, could have possibly avoided the constitutional dilemma faced by law enforcement in this particular case. The fact that the officers sought advice from superiors before conducting a search is also commendable. However, the advice they received during the course of the stop that they could detain the defendant for an indefinite period of time because drugs had been found in his vehicle was incorrect. The resulting delay while waiting for an answer via either the "sniff" of a trained K-9 officer or legal guidance from superiors exceeded constitutionally permissible grounds to detain the defendant in this case. For this reason the 150 individual packages of the Sweet Stone candy found in the envelopes that were opened during a constitutionally impermissible detention must be suppressed. The other evidence seized, the marijuana buds, the shake weed, and the opened package of the Sweets Stone Candy are not

subject to suppression as they were recovered in the context of a constitutionally permissible search. Defendant's Motion is granted consistent with this opinion.

IT IS SO ORDERED.

Date: 1/25/2016

A handwritten signature in black ink, appearing to read "D. Ambrose", written over a horizontal line.

Judge Dick Ambrose