

CLARK COUNTY, OHIO
FILED

JUL - 2 2020

COURT OF APPEALS
MELISSA M. TUTTLE, CLERK

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Appellate Case No. 2018-CA-77

Plaintiff-Appellee

Trial Court Case No. 2017-CR-761A

v.

RAMON A. BOYCE

FINAL ENTRY

Defendant-Appellant

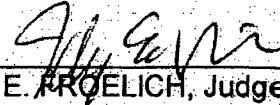
Pursuant to the opinion of this court rendered on the 2nd day
of July, 2020, the trial court's sentence on Count 19 is vacated, and the
matter is remanded to the trial court for an amended judgment entry. In all other respects,
the trial court's judgment is affirmed.

Costs to be paid by the Appellant.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the
Court of Appeals shall immediately serve notice of this judgment upon all parties and make
a note in the docket of the mailing.



MICHAEL L. TUCKER, Presiding Judge



JEFFREY E. PROELICH, Judge



MICHAEL T. HALL, Judge

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Hon. Douglas M. Rastatter
Clark County Common Pleas Court
101 N. Limestone Street
Springfield, OH 45502

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE OF OHIO

Plaintiff-Appellee	Appellate Case No. 2018-CA-77
V.	Trial Court Case No. 2017-CR-761A
RAMON BOYCE	
Defendant-Appellant	

.....

DECISION AND ENTRY

Rendered on the 8th day of September, 2020.

.....

PER CURIAM:

Pursuant to App.R. 26(A)(1), Ramon Boyce asks us to reconsider our July 2, 2020, judgment affirming his convictions on one count of engaging in a pattern of corrupt activity (a felony of the first degree), 18 counts of burglary (one felony of the second degree and 17 felonies of the third degree), and six counts of receiving stolen property (three felonies of the fifth degree and three misdemeanors of the first degree). Boyce focuses on his third assignment, which claimed that the trial court erred in denying his motion to suppress evidence from a warrantless search of his vehicle.

App.R. 26(A)(1) " 'provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law.' " *State v. Gillispie*, 2012-Ohio-2942, 985 N.E.2d 145, ¶ 9 (2d Dist.), quoting *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). However, "[a]n application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court." *Id.*, quoting *Owens* at 336. Rather, the application "must call the court's attention to obvious errors in a decision or must raise issues that the court either failed to consider or did not fully consider when the original decision was made." *Id.*

Boyce claims that we made an obvious error when we concluded that Springfield Police Officer Derrick Nichols did not unreasonably prolonged the traffic stop by conducting a free air sniff with the officer's canine partner. His primary contention is that the evidence showed that Officer Nichols ran Boyce's information prior to the stop, and therefore the officer prolonged the stop by providing Boyce's information to the dispatcher again. Boyce claims that his name was run and cleared prior to the free air dog sniff. Boyce also asks us to consider several additional facts:

1. Officer Freeman arrived on her own and testified to that in municipal court; Officer Nichols did not call for back-up.
2. Officer Freeman testified in municipal court that Boyce's name was cleared before she arrived.
3. Officer Nichols did not believe Boyce to be a drug dealer.
4. The cruiser video shows that Officer Nichols wanted to stop Boyce and just

happened to find marijuana. Boyce states that the dog sniff was not based on a belief that Boyce had drugs.

5. The trial court ignored Officer Nichols's testimony that he ran Boyce's name twice.

Boyce claims that, with these facts, his case is distinguishable from *State v. Maston*, 2d Dist. Montgomery No. 27567, 2018-Ohio-1948, which we found analogous to Boyce's circumstances.

We have again reviewed the suppression hearing transcript and exhibits. The State presented the testimony of Officer Nichols and, on an unrelated search warrant issue, Detective Jean Byrne. The State also presented eight documentary exhibits, all of which related to the search warrant issue: the municipal court decision on the motion to suppress, the municipal court docket and entry, two Clark County search warrants, a Clark County tracking device warrant, and a Franklin County complaint, and a Franklin County search warrant. Boyce testified on his own behalf, but did not present any documentary evidence. The evidence at the suppression hearing did not include a copy of the cruiser video depicting the stop nor a transcript of the suppression hearing held in the municipal court.

In reviewing the trial court's ruling on the motion to suppress, we may consider only the evidence before the trial court at the suppression hearing. *E.g., State v. Curley*, 2016-Ohio-7624, 73 N.E.3d 1050, ¶ 19 (2d Dist.); *State v. Knisley*, 2d Dist. Montgomery No. 22897, 2010-Ohio-116, ¶ 41 ("We must confine our review of the trial court's decision on the motion to suppress to the evidence before the trial court at that time."). We cannot consider any evidence outside the record of the suppression hearing. Accordingly, we

cannot consider the cruiser video of the traffic stop or any testimony from the municipal court suppression hearing or Boyce's trial, as none of that evidence was presented to the trial court at the January 8, 2018 suppression hearing.

Upon review of the suppression hearing transcript, we find no obvious error in our July 2, 2020 opinion and judgment. Officer Nichols testified that he ran the BMW's license plate prior to stopping it. He learned that the vehicle belonged to Boyce, the vehicle had not been reported stolen, the Law Enforcement Automated Database (LEADS) showed no warrants for Boyce, and Boyce's license was valid. Prior to the stop, Nichols did not know who was driving the vehicle.

After initiating the traffic stop and approaching the BMW, Officer Nichols learned that Boyce was the driver of the vehicle. Officer Nichols obtained Boyce's driver's license and insurance information. Upon returning to his cruiser, Nichols provided Boyce's personal information to the dispatcher. The dispatch log indicated that Boyce's birthdate and Social Security number were provided or entered at 7:35 p.m. The dispatcher responded that Boyce did not have any warrants, had prior aggravated robbery arrests, was a career criminal, and had a valid license.

Boyce asserts that Officer Nichols unlawfully prolonged the traffic stop by providing Boyce's information a second time. We disagree. Officer Nichols initially did not know who was driving the BMW, and he requested information based on the vehicle's license plate. It was reasonable for the officer to request information based on Boyce's personal information once Boyce was identified as the driver.

Boyce further emphasizes that Officer Nichols did not believe Boyce to be a drug dealer. As we stated in our July 2 opinion, a police officer need not have a reasonable

suspicion that a vehicle contains contraband prior to summoning a canine drug unit or conducting a canine free air sniff. *State v. Thomas*, 2d Dist. Montgomery No. 22833, 2009-Ohio-3520, ¶ 15. Furthermore, the use of a trained narcotics dog to sniff an automobile does not constitute a "search" under the Fourth Amendment. *State v. Raslovksy*, 2d Dist. Clark No. 2019-CA-55, 2020-Ohio-515, ¶ 14, citing *Illinois v. Caballes*, 543 U.S. 405, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). Whether Officer Nichols believed that Boyce was a drug dealer or had contraband in the BMW has no bearing on whether the dog sniff was lawful.

The record reflects that Officer Nichols had his canine partner in his cruiser, and Nichols did not unlawfully prolong the stop to conduct a canine free air sniff. We find no obvious error in our determination that Officer Nichols diligently conducted the traffic investigation up to the time when the officers removed Boyce from his vehicle and Officer Nichols walked his canine partner around Boyce's BMW. As we stated in our opinion, Officer Nichols spent the first four minutes performing the standard background investigation into Boyce through dispatch. Officer Freeman arrived while Officer Nichols was conducting that investigation, and Officer Nichols proceeded with the free air dog sniff upon Officer Freeman's arrival. The dog alerted to drugs six minutes after the stop began, and his alert provided probable cause for the officers' search of the BMW.

Boyce's application for reconsideration is denied.

IT IS SO ORDERED.



JEFFREY E. FROELICH, Judge

Michael T. Hall
MICHAEL T. HALL, Judge

M.L.T.
MICHAEL L. TUCKER, Judge

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Hon. Douglas M. Rastatter
Clark County Common Pleas Court
101 N. Limestone Street
Springfield, OH 45502

FILED

The Supreme Court of Ohio

NOV 24 2020

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

Case No. 2020-1210

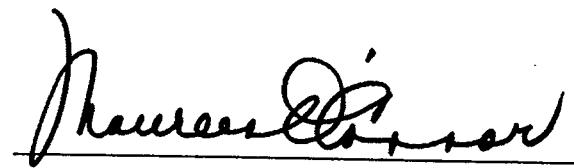
v.

E N T R Y

Ramon A. Boyce

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Clark County Court of Appeals; No. 2018-CA-77)



Maureen O'Connor
Chief Justice

2018 MAY 15 PM 12:31
FILED
CLARK COUNTY
COURT OF COMMON PLEAS

IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO

STATE OF OHIO

* CASE NUMBER: 17-CR-761

vs.

RAMON BOYCE
(D.O.B.: 4/1/85)
(SS#: xxx-xx-8260)* JUDGMENT ENTRY OF
CONVICTION / WARRANT
FOR REMOVAL

* * * *

On May 11, 2018, after a three-week trial, the defendant was convicted by jury of the following offenses:

- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count one of the indictment;
- Receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count two of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count three of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count four of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count five of the indictment;
- Receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count six of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count seven of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count eight of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count nine of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count ten of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count eleven of the indictment;

- Receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count twelve of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count thirteen of the indictment;
- Receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count fourteen of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as a lesser-included offense in count fifteen of the indictment;
- Receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count sixteen of the indictment;
- Receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count nineteen of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-one of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-two of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-three of the indictment;
- Receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count twenty-four of the indictment;
- Engaging in a pattern of corrupt activity as a felony of the first degree, pursuant to Ohio Revised Code Section 2923.32(A)(1) as set forth in count twenty-five of the indictment;
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-six of the indictment;
- Burglary, a felony of the second degree, pursuant to Ohio Revised Code Section 2911.12(A)(1) as set forth in count twenty-seven of the indictment; and
- Burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-eight of the indictment.

The Court set disposition for May 15, 2018 and Ordered that the defendant be held without bond pending disposition.

On May 15, 2018, the defendant's sentencing hearing was held pursuant to Ohio Revised Code Section 2929.19. The defendant was present, pro se, and the State was represented by Andy Wilson and Aaron Heskett. The Court considered the record, oral statements of counsel, the defendant's statement, the principles and purposes of sentencing under Ohio Revised Code Section 2929.11, the defendant's prior criminal record, and has balanced the seriousness and recidivism factors under Ohio Revised Code Section 2929.12.

The Court found, pursuant to Ohio Revised Code Section 2929.14(C)(4), that consecutive sentences (1) are necessary to protect the public from future crime and to punish the defendant, (2) are not disproportionate to the seriousness of the defendant's conduct and to the danger the defendant poses to the public, (3) are necessary to protect the public from future crime by the defendant given the defendant's history of criminal conduct, and (4) at least two of the multiple offenses were committed as part of a course of conduct and the harm caused by the offenses so committed was so great or unusual that no single prison term adequately reflects the seriousness of the defendant's conduct.

IT IS HEREBY ORDERED that the defendant be sentenced as follows:

- Three (3) years in the Ohio State Penitentiary (OSP) for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count one of the indictment;
- One (1) year OSP for receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count two of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count three of the indictment;
- Three (3) years OSO for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count four of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count five of the indictment;
- Six (6) months in the Clark County Jail for receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count six of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count seven of the indictment;

- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count eight of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count nine of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count ten of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count eleven of the indictment;
- Six (6) months in the Clark County Jail for receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count twelve of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count thirteen of the indictment;
- Six (6) months Clark County Jail for receiving stolen property, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count fourteen of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as a lesser-included offense in count fifteen of the indictment;
- One (1) year OSP for receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count sixteen of the indictment;
- One (1) year OSP for receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count nineteen of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-one of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-two of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-three of the indictment;

- One (1) year OSP for receiving stolen property, a felony of the fifth degree, pursuant to Ohio Revised Code Section 2913.51(A) as set forth in count twenty-four of the indictment;
- Eleven (11) years OSP for engaging in a pattern of corrupt activity as a felony of the first degree, pursuant to Ohio Revised Code Section 2923.32(A)(1) as set forth in count twenty-five of the indictment;
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-six of the indictment;
- Eight (8) years OSP for burglary, a felony of the second degree, pursuant to Ohio Revised Code Section 2911.12(A)(1) as set forth in count twenty-seven of the indictment; and
- Three (3) years OSP for burglary, a felony of the third degree, pursuant to Ohio Revised Code Section 2911.12(A)(3) as set forth in count twenty-eight of the indictment.

IT IS FURTHER ORDERED that all felony receiving stolen property offenses (Counts 2, 16, 19, and 24) run consecutively to one another for a total of four (4) years OSP. The sentences for the misdemeanor receiving stolen property offenses (Counts 6, 12, and 14) shall run consecutively to one another but, by law, concurrently with the felony receiving stolen property offenses.

IT IS FURTHER ORDERED that all remaining felony offenses run consecutively to one another for a total of seventy (70) years OSP.

IT IS FURTHER ORDERED that the four (4) year aggregate sentence for the receiving stolen property offenses run concurrently to the remaining felony sentences.

Accordingly, IT IS HEREBY ORDERED that the defendant serve an aggregate sentence of seventy (70) years OSP with jail credit from July 7, 2017 until conveyance to the penitentiary.

The Court notified the defendant that he may be eligible to earn days of credit toward his sentence while in the penitentiary under the circumstances specified in Ohio Revised Code Section 2967.193 and, as a result, his sentence may be reduced by up to 8%.

The Court notified the defendant that post-release control (PRC) is mandatory in this case for five years. Accordingly, the defendant is Ordered to serve as part of this sentence five years of PRC.

The Court further notified the defendant that one of the following sanctions could be imposed upon him if he violates PRC: (1) The duration of PRC may be increased up to a maximum term of eight years; (2) more restrictive rules may be placed upon him; (3)

he could return to prison (the maximum term for each violation is one-half of the original prison term or nine months, whichever is less, and the maximum cumulative term for all violations is one-half of the original prison term); and (4) if he commits a felony offense while on PRC and is convicted of that offense, his PRC could be terminated and he could be sentenced to prison for the greater of one year or the amount of time he has remaining on PRC and it would be mandatory that the PRC time run consecutively to his sentence on the new felony offense.

Restitution in the amount of \$3,049.94 is hereby Ordered and shall be satisfied with the \$4,765 in US Currency seized from the defendant. The remainder of the US Currency, \$1,715.06, seized shall be returned to the defendant.

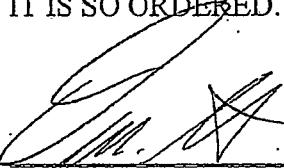
The defendant is Ordered to forfeit (1) the 2009 black BMW 328XI bearing VIN# WBAPK53589A511439, (2) the 2006 silver Chrysler 300 bearing VIN# 2C3KA43R86H307786, and (3) the 2002 tan Ford Explorer bearing VIN# 1FMZU73EE72UB02818 to the State for law enforcement use only. If the vehicle is sold, the proceeds shall be divided between the Clark County Prosecutor's Office and the seizing agency. The Clerk is Ordered to issue a title to the agency that employed the seizing officer.

IT IS HEREBY ORDERED that any property or evidence held by law enforcement in connection with this case, not otherwise specified in this Entry, may be released, destroyed, converted to law enforcement use, or otherwise disposed of thirty (30) days after the filing of this Entry provided that (1) no appeal is pending and (2) approval is obtained from the Clark County Prosecutor or his Assistant.

The Court hereby notifies the defendant that he has the right to (1) appeal his conviction, (2) have a notice of appeal filed timely on his behalf, (3) have an attorney appointed to represent him on appeal if he cannot afford to retain an attorney, and (4) have the documents necessary to perfect his appeal provided at no cost if he is unable to afford the cost of those documents.

Defendant is ORDERED conveyed to the Ohio State Penitentiary, c/o the Orient Correctional Facility, Orient, Ohio.

IT IS SO ORDERED.



DOUGLAS M. RASTATTER, JUDGE

cc: Andy Wilson/Aaron Heskett
Defendant/Matt Barbato

IN THE COMMON PLEAS COURT OF CLARK COUNTY, OHIO

STATE OF OHIO

* CASE NUMBER: 17-CR-761(A)

vs.

* AMENDMENT TO CONVICTION
ENTRY

RAMON BOYCE

* * * *

The May 15, 2018 Entry of Conviction is hereby amended by omitting any reference to a conviction or sentence with respect to the fifth-degree felony receiving stolen property offense set forth in count nineteen of the indictment, as that offense pertains only to co-defendant Quiana Boyce.

Accordingly, the sixth conviction referenced on page two of the Entry shall be Ordered stricken and the tenth sentence referenced on page four of the Entry shall be Ordered stricken.

Furthermore, the first sentence of the first full paragraph on page five of the Entry shall be amended to read as follows:

IT IS FURTHER ORDERED that all felony receiving stolen property offenses (*Counts 2, 16, and 24*) run consecutively to one another for a total of *three (3) years* OSP.

Furthermore, the third paragraph on page five of the Entry shall read as follows:

IT IS FURTHER ORDERED that the *three (3) year* aggregate sentence for the receiving stolen property offenses run concurrently to the remaining felony sentences.

The remainder of the original Entry of Conviction including, but not limited to, the seventy (70) year aggregate sentence shall remain in full force and effect.

IT IS SO ORDERED.



DOUGLAS M. RASTATTER, JUDGE

2018 MAY 29 PM 12:03
MELISSA M. TUTTLE, CLERK
CLARK COUNTY, OHIO
CLARK COUNTY, OHIO
CLARK COUNTY, OHIO

FILED

cc: Andy Wilson/Aaron Heskett
Defendant Ramon Boyce
Matt Barbato, Standby Counsel for Ramon Boyce
ODRC

