

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

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| STATE OF OHIO, | : | APPEAL NO. | C-230514 |
| | : | TRIAL NO. | B-2205885 |
| Plaintiff-Appellant, | : | | |
| vs. | : | <i>JUDGMENT ENTRY.</i> | |
| SAUL WILLIAMS, | : | | |
| Defendant-Appellee. | : | | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.

FACTS AND PROCEDURE

One afternoon in December 2021, Cincinnati Police Officers Owens-Jordan and Carver initiated a stop of defendant-appellee Saul Williams’s parked car for traffic violations. With Officer Owens-Jordan at the driver’s door, Officer Carver opened Williams’s rear passenger door and found a firearm tucked into the back of the front passenger seat. Officers also recovered marijuana.

Williams moved to suppress the evidence. At the suppression hearing, an undercover officer described observing Williams commit several traffic violations, including an illegal U-turn. He believed Williams sought to avoid police officers involved in a separate traffic stop. The undercover officer called for uniformed officers to effectuate a traffic stop on Williams.

After Officers Owens-Jordan and Carver pulled up behind Williams’s parked car on a residential street, Williams opened his door and turned to exit the car, but was ordered to stay in his car. The car windows were heavily tinted. Officer Owens-Jordan testified that as she

approached, Williams opened his door and began “screaming and yelling, obviously irritated, agitated, angry.” He remained in the car and Officer Owens-Jordan did not see any movements that caused her alarm as she approached. Officer Owens-Jordan instructed Williams to lower his windows, and he began complying with that order.

Meanwhile, Officer Carver approached the vehicle from the passenger side and stopped near the trunk to “put the traffic stop out over the radio” as her partner spoke with Williams. Although in her body-worn camera footage Williams’s and Officer Owens-Jordan’s voices were clear, Carver testified that she could not hear the substance of their conversation because “he was animated,” she was on the other side of the car, and the windows were closed.

Officer Carver testified that it is standard procedure when approaching a heavily tinted car in a high-crime area to “ask them to roll their windows down so we can see in the car, not just to see how many people are in the car, but if any weapons are in plain view or anything.” If a person “refuses to roll down any windows we’re not going to make any further approach.” But when her partner “passed and was at the front seat,” she decided to open the back door to ensure “there’s nobody behind [Officer Owens-Jordan] that’s going to put her in danger.”

The trial court found that Williams was “in the process of rolling down the windows when Officer Carver opened the back door” and that she opened Williams’s door prematurely. Finding that Officer Carver lacked probable cause to open the rear passenger door, the trial court granted Williams’s motion to suppress.

ASSIGNMENT OF ERROR

On appeal the state challenges the trial court’s suppression of the evidence recovered from Williams’s vehicle in a single assignment of error. When reviewing the trial court’s decision to suppress the evidence, we “ ‘accept the trial court’s findings of fact as true’ ” if competent and credible evidence supports those findings. *State v. O’Neal*, 1st Dist. Hamilton No. C-220541, 2023-Ohio-3268, ¶ 9, quoting *State v. Thyot*, 2018-Ohio-644, 105 N.E.3d

1260, ¶ 17 (1st Dist.). But we “ ‘independently determine whether the facts satisfy the applicable legal standard.’ ” *Id.*, quoting *Thyot* at ¶ 17.

As an exception to the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution, law enforcement may conduct a protective sweep of a vehicle, “limited to those areas in which a weapon may be placed or hidden * * * if the police officer possesses a reasonable belief * * * that the suspect is dangerous and the suspect may gain immediate control of weapons.” *Michigan v. Long*, 463 U.S. 1032, 1049, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983). When considering the constitutionality of a protective sweep, courts must determine whether an officer has “a reasonable suspicion that an individual is armed based on the totality of the circumstances.” *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph two of the syllabus.

The trial court found that Williams initially moved to exit from his car at the outset of the stop but was ordered back by Officer Owens-Jordan. Officer Carver testified that she was unable to see into the vehicle or hear her partner’s conversation with Williams. She explained that when stopping a vehicle with tinted windows like Williams’s, they “command the driver to roll down the windows” to check for passengers and weapons and do not further approach the vehicle if the driver refuses to lower the windows. But her partner had “already passed and was at the front seat, so at that point it’s on me, I need to make sure she’s safe,” so she opened the rear passenger door for her partner’s safety. The trial court found that Williams was “in the process of rolling down the windows when Officer Carver opened the back door.”

First, we acknowledge that the trial court incorrectly based its ruling on probable cause, rather than the lower standard required for a protective sweep, reasonable suspicion. We therefore consider whether there was reasonable suspicion that Williams was armed based on the totality of the circumstances to justify opening Williams’s car door. The state maintains that Officer Carver had reasonable suspicion that Williams was armed and

dangerous based on his presence in a high-crime area, his tinted windows, his behavior and furtive movements, and potentially unseen passengers.

An area's reputation for criminal activity is a relevant factor for an officer's reasonable suspicion, but that factor alone does not justify a protective sweep. *See State v. Carter*, 69 Ohio St.3d 57, 65, 630 N.E.2d 355 (1994) ("To hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of living in high crime areas."). Officer Carver testified that Williams was parked in an area known for drug crimes and gun violence. *See State v. Henson*, 1st Dist. Hamilton No. C-210244, 2022-Ohio-1571, ¶ 30. But there was no evidence connecting Williams's conduct to such crimes. *See id.* at ¶ 31, citing *In re J.C.*, 1st Dist. Hamilton Nos. C-180478 and C-189479, 2019-Ohio-4815, ¶ 25.

Likewise, furtive movements may "suggest a person's attempt to quickly conceal an unseen weapon from police view." *State v. Olagbemiro*, 1st Dist. Hamilton Nos. C-170451 and C-170452, 2018-Ohio-3540, ¶ 19. But Williams's furtive movements were in response to Officer Carver's opening the car door. A protective sweep "cannot be legitimized by the results thereof." *State v. Ward*, 2017-Ohio-8141, 98 N.E.3d 1257, ¶ 23 (1st Dist.), quoting *State v. Williams*, 55 Ohio St.2d 82, 86, 377 N.E.2d 1013 (1978). Instead, the constitutionality of an officer's action turns on "whether the [] action was justified at its inception." *Bobo*, 37 Ohio St.3d at 178, 524 N.E.2d 489.

This leaves Williams's tinted windows, the potential for unseen passengers in the vehicle, Officer Owens-Jordan's presence at the driver's door, and Williams's behavior as the basis for the sweep.

The officers testified that tinted windows limit their ability to view the cabin of the vehicle to check for passengers or weapons. Officer Carver explained that, where window tint is too dark to allow officers to see inside the vehicle, "one of the first things we do is ask them to roll their windows down" so they can see how many people are in the car and if there are

visible weapons. Officer Carver also testified that when a driver refuses to lower the windows, officers do not approach the driver. But Officer Owens-Jordan had already approached Williams's car door and the video shows that Williams had begun to comply with her order to lower his windows. The trial court's finding that Williams had begun to lower his windows before Officer Carver opened his car door is supported by the record.

Officers also testified that Williams's "irritated, agitated, angry" behavior was suspicious. But despite his angry or agitated behavior, Williams complied with Officer Owens-Jordan's commands to both remain in the car and lower his windows.

We recognize the need for "reasonable precautions for the officer's own safety so that he or she may pursue [a traffic stop] without fear of violence." *State v. Henson*, 1st Dist. Hamilton No. C-210244, 2022-Ohio-1571, ¶ 15. But the totality of the circumstances must include " "specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant" the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons.' " *Bobo*, 37 Ohio St.3d at 180, 524 N.E.2d 489, quoting *Long*, 463 U.S. at 1049, 103 S.Ct. 3469, 77 L.Ed.2d 1201, quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Our review of the record leads us to the conclusion that the totality of the circumstances did not rise to a reasonable suspicion that Williams was armed and dangerous. Therefore, the sweep of the vehicle violated Williams's rights under the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

Nevertheless, the state argues that the good-faith exception warrants a reversal of the trial court's judgment. As an exception to the rule that a Fourth Amendment violation warrants the suppression of evidence, "the exclusionary rule should not be applied in situations in which an officer has relied in good faith on a warrant issued by a neutral and detached magistrate or judicial officer, notwithstanding the fact that the warrant is later

found to be invalid.” *State v. Dibble*, 159 Ohio St.3d 322, 2020-Ohio-546, 150 N.E.3d 912, ¶ 17, citing *United States v. Leon*, 468 U.S. 897, 913, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). This rule has been extended to an officer’s reasonable mistake of law “ ‘[w]here a statute is vague or ambiguous, or requires judicial construction.’ ” *State v. Stadelmann*, 1st Dist. Hamilton No. C-130138, 2013-Ohio-5035, ¶ 4, quoting *State v. Reedy*, 5th Dist. Perry No. 12-CA-1, 2012-Ohio-4899, ¶ 19. This appeal does not involve an ambiguous statutory violation, but the reasonableness of a protective sweep. We therefore decline to apply the good-faith exception to this case. *See State v. Jones*, 70 Ohio App.3d 554, 555, 591 N.E.2d 810 (2d Dist.1990) (“a police officer may not rely on good faith and inarticula[ble] hunches to meet the *Terry* standard of reasonable suspicion.”).

CONCLUSION

For the foregoing reasons, we overrule the state’s assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

BOCK, P.J., WINKLER and KINSLEY, JJ.

To The Clerk:

Enter upon the Journal of the Court on March 22, 2024

per order of the court _____.
Administrative Judge