

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

STATE OF OHIO,	:	APPEAL NO. C-240617
	:	TRIAL NO. B-2402054
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY</i>
DOMINIQUE HILL,	:	
Defendant-Appellant.	:	

KINSLEY, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

I. Facts and Procedural History

On October 3, 2024, defendant-appellant Dominique Hill entered a no-contest plea to one count of possession of cocaine in violation of R.C. 2925.11(A) following an unsuccessful attempt to suppress evidence seized during a traffic stop. On appeal, Hill raises a single assignment of error arguing that the search of his person was not supported by reasonable suspicion or probable cause. Because we ultimately agree that the facts and circumstances of the case did not give rise to probable cause to conduct a full search of Hill’s person, we reverse.

After Hill was indicted, he filed a suppression motion, arguing that the officers lacked reasonable suspicion that he was armed and therefore they could not pat him down for weapons. The suppression motion also argued that the officers lacked any

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additional justification to conduct a more intrusive “full field-type search.”

The trial court conducted an evidentiary hearing on Hill’s suppression motion. A single witness, Officer Brian Huntington of the Colerain Township Police Department, testified at the hearing. Huntington’s body-worn camera footage was also introduced as an exhibit.

Huntington testified that, around 10:30 a.m. on May 1, 2024, he initiated a traffic stop after he observed an Acura sedan turn left without signaling. According to Huntington, the Acura pulled into a spot in the parking lot of an apartment complex, and Huntington made contact with Hill, the driver and sole occupant. Huntington described the locale as a high-crime area.

Huntington testified that Hill’s hands were shaking and that he was breathing heavily.¹ Huntington also noted that Hill had lit a fresh Cigarillo, which, in the officer’s experience, was sometimes employed to mask other odors. The officer agreed that Hill behaved in a calm and compliant manner throughout the stop.

Huntington asked if Hill had any firearms on his person or in the vehicle, to which Hill replied in the negative. Huntington then returned to his cruiser and accessed Hill’s criminal history. Huntington testified that he grew concerned when he saw listings for domestic violence, strangulation, robbery, felonious assault, and weapons violations, although, on cross-examination, he acknowledged that some of the charges had been ignored and others were many years old. Huntington testified that he returned to the Acura to further question Hill, while another officer on the scene drafted a warning for Hill’s turn signal violation.

¹ The trial court noted that the footage from Huntington’s body-worn camera did not display these behaviors, but it accepted Huntington’s testimony. Huntington also conceded that some people become nervous when encountering police.

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Huntington instructed Hill to step out of the car. He then patted Hill down for weapons. Huntington explained that his bases for investigating whether Hill was armed were the fact that the traffic stop occurred in a high-crime area, the fact that Hill turned into an apartment complex shortly after Huntington began following his car, Hill's heavy breathing and shaking hands, Hill's possession of a freshly lit Cigarillo, and an obvious bulge Huntington observed in Hill's front pocket. Huntington explained that he did not feel any weapons as a result of the patdown, and the patdown was completed.

According to Huntington, he inquired about the bulge in Hill's pocket after the patdown was completed. Huntington testified that in response to his question Hill voluntarily produced a baggie, which contained a small amount of marijuana. We note that the body-worn camera footage does not support this assertion. As depicted in the video, after Huntington asked Hill about the contents of his pocket, Hill in fact made a gesture towards his pocket. But the video clearly shows Hill's hands as he is responding to the officer's question, and they do not contain a baggie being pulled from his pocket. Nonetheless, both Hill and Huntington appear to agree on the video footage that Hill is in possession of a "little bit of weed," and Huntington later appears to hold up a baggie containing what appears to be this item.

At the suppression hearing, Huntington testified that a person is not permitted to possess burnt marijuana in a vehicle. He therefore explained that Hill's possession of what appeared to be burnt marijuana created probable cause to search Hill's person. Huntington testified that he located cocaine in Hill's possession, although neither the testimony at the suppression hearing nor any other evidence in the case identifies precisely where on Hill's person the cocaine was located.

At the conclusion of the evidence, the trial court denied Hill's suppression

motion. It concluded that being in a high-crime area, by itself, was insufficient to support a patdown for weapons. It further concluded that Hill's heavy breathing and shaking hands, which it found not to be observable on the body-worn camera footage, could have innocent explanations, and it did not find these factors, taken in isolation, to create sufficient reasonable suspicion to support the patdown either. But it held that the high-crime location of the stop, plus Hill's demeanor, plus Hill's criminal history, which included crimes of violence, in their totality, gave rise to reasonable suspicion that Hill might be armed. It thus denied Hill's motion to suppress the results of the patdown search.

Turning to the discovery of the marijuana, the trial court indicated that Huntington's encounter with Hill should have been over after the fruitless patdown. However, the trial court considered Hill's production of the marijuana in his pocket to be voluntary. It further concluded that the marijuana gave Huntington probable cause to search Hill and denied the remainder of Hill's suppression motion on this basis.

Following the denial of Hill's suppression motion, Hill entered a no-contest plea, and the trial court found him guilty of the charged offense. It imposed a sentence of only court costs.

II. Analysis

Hill raises a single assignment of error on appeal, arguing that the trial court erred in denying his motion to suppress. We agree.

Appellate review of a trial court's ruling on a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 2003-Ohio-5372, ¶ 8. Because the trial court sits in the best position to evaluate credibility and determine the facts, we defer to the court's factual findings so long as they are supported by competent, credible evidence. *Id.* However, we review the trial court's application of the facts to

the applicable legal standard de novo. *Id.*

The first question Hill raises is whether Huntington’s decision to pat him down was supported by reasonable suspicion. In accordance with *Terry v. Ohio*, 392 U.S. 1 (1968), a law enforcement officer may briefly detain an individual for investigatory purposes where the officer has reasonable suspicion that criminal activity is recent or imminent. *See State v. Hairston*, 2019-Ohio-1622, ¶ 9, citing *Terry* at 30. The officer may conduct a limited, protective search for weapons if the officer has a justified belief that the subject might be armed. *Hairston* at ¶ 9, citing *Terry* at 24. “Reasonable suspicion” requires something more than an inchoate or unparticularized hunch, but something less than probable cause. *In re J.T.*, 2023-Ohio-2695, ¶ 18 (1st Dist.). The inquiry takes into account whether the facts confronting the officer at the time of the search or seizure would compel a reasonable and prudent police officer to take similar action. *Hairston* at ¶ 10. Reasonable suspicion is a relatively low bar. *See State v. Hawkins*, 2019-Ohio-4210, ¶ 20.

In concluding that reasonable suspicion supported the patdown, the trial court considered Hill’s criminal record, which included both convictions and allegations of violence, as well as factors specific to the location of the traffic stop and Hill’s unique behavior. Huntington identified additional factors supporting his belief that Hill was armed—the fact that Hill made an immediate turn after Huntington began following him, Hill lighting a fresh Cigarillo, and the obvious bulge in Hill’s right front pocket. An officer confronting a person with a violent criminal history who observes a bulge in the person’s pocket is justified in suspecting the person might be armed. The trial court did not err in reaching this conclusion.

Hill next challenges Huntington’s authority to question him about the item in his pocket after the patdown was completed and no weapons were located on Hill’s

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person. Hill argues that the interaction between Huntington and Hill should have concluded once the patdown determined that Hill was unarmed.

The evidence at the suppression hearing is unclear as to why Huntington continued to investigate the contents of Hill's pocket following the completed patdown. Huntington initially testified that his continued involvement with Hill was an "investigation and inquiries about his nervous behavior, his criminal history, the bulges in his pocket." But he admitted that he did not ask Hill any questions about his criminal record or otherwise investigate Hill's criminal history after the patdown, nor did he inquire as to why Hill was nervous. He also testified that he could not tell what the bulge in Hill's pocket was from feeling it.

Later in the suppression hearing, in response to questioning from the trial court, Huntington indicated that he continued to question Hill after the patdown to "further investigate, you know, the signs that I was seeing from Mr. Hill that he was potentially armed." The trial court asked Huntington to explain why he did not have Hill sit in the car to receive his warning after the patdown yielded no weapons. In other words, the trial court wanted to know why Huntington asked Hill what was in his pocket. Huntington responded, "Well I, - - I mean, almost immediately after, my purpose for pulling him out of the car for the pat-down is when we, you know, discovered the marijuana. So I didn't really get, you know, initial time to make any further decisions into how that traffic stop, you know, was going to go."

While Huntington's testimony as to why he prolonged his encounter with Hill after the fruitless patdown meandered, one explanation he gave was that he could not ascertain what made up the bulge in Hill's pocket and that he was still investigating for weapons. This was permissible. During a *Terry* stop, an officer is permitted to ask a moderate number of questions designed to allay or confirm the officer's reasonable

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suspicious. *State v. Mapson*, 2006-Ohio-5248, ¶ 16 (8th Dist.). A person is not obligated to answer these questions. *Berkemer v. McCarty*, 468 U.S. 420, 439-440 (1984). The person's response is therefore voluntary and does not trigger any Fourth Amendment implications, so long as the scope of the questions is reasonable. See *Mapson* at ¶ 16-21 (finding no Fourth Amendment violation when officer asked defendant what was in his pocket following patdown search that yielded no obvious weapons and defendant voluntarily answered).

While Huntington's testimony and the body-worn camera footage are in conflict as to whether Hill voluntarily produced a baggie from his pocket, the evidence is consistent that Hill voluntarily responded to Huntington's question about the contents of his pocket. The question was reasonable in scope and limited to Huntington's suspicion for weapons. It was accordingly permissible as part of the *Terry* stop.

Hill additionally challenges whether probable cause supported Huntington's search of Hill's person, which ultimately led to the discovery of cocaine. Hill preserved this argument in his suppression motion by asserting that a search into his pockets had occurred at the scene and that neither officer safety, nor the search incident to arrest exception, nor consent, nor any other exception to the warrant requirement justified this intrusive "full field-type search." See Crim.R. 47 (requiring a defendant to state the grounds for suppression with particularity in a motion to suppress). This shifted the burden to the State to present evidence justifying the search, by probable cause and an exception to the warrant requirement. *City of Xenia v. Wallace*, 37 Ohio St.3d 216, 220 (1988).

To search for contraband during a warrantless search, an officer must have probable cause, and an exception to the warrant requirement must be present. *State*

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v. Grant, 2022-Ohio-2601, ¶ 18 (2d Dist.), quoting *State v. Battle*, 2011-Ohio-6661, ¶ 26 (10th Dist.). Ohio has recognized a number of such exceptions, including the automobile exception, hot pursuit, search incident to arrest, inventory search, consent, exigent circumstances, and plain view. *State v. Bradley*, 2025-Ohio-58, ¶ 15 (2d Dist.), quoting *State v. Thomas*, 2015-Ohio-1778, ¶ 13 (10th Dist.). The police bear a heavy burden when attempting to justify a warrantless search. *State v. Hodge*, 2011-Ohio-633, ¶ 24 (2d Dist.), quoting *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984). Notably, the State did not argue, nor did the trial court find, that any of these exceptions applied to Huntington’s search of Hill’s pockets for drugs. Nonetheless, Hill does not raise the lack of a warrant exception on appeal, so this issue is not before us.

But whether Hill’s possession of marijuana gave rise to probable cause to further search him for contraband is squarely at issue here. Probable cause exists when a reasonably prudent person would believe that there is a fair probability that the place to be searched contains evidence of a crime. *Illinois v. Gates*, 462 U.S. 213, 238-239 (1983). A probable cause determination is based on the totality of the circumstances. *See State v. Jones*, 2015-Ohio-483, ¶ 1.

Hill contends that his possession of a personal use quantity of marijuana was not itself evidence of a crime that amounted to probable cause. Hill is correct, inasmuch as his possession of marijuana was not unlawful. *See* R.C. 3780.01 and 3780.36. But that does not end the inquiry, as the question is whether a reasonably prudent person would believe that there was a fair probability that Hill’s pockets contained evidence of criminal activity based on his possession of marijuana.

We do not foreclose the possibility that, under some set of circumstances, the lawful possession of marijuana could give rise to probable cause supporting a

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warrantless search. Nonetheless, in this case, the State did not fulfill its burden of articulating what that probable cause might be. Huntington did not identify why he believed evidence of a crime would be present in Hill’s pockets based solely on the knowledge that Hill possessed a baggie containing a “little bit of weed.” Of note, with regard to whether evidence of unlawful personal drug use creates probable cause for a search, we have previously held it does not. *See, e.g., State v. Martin*, 2021-Ohio-2599, ¶ 23 (1st Dist.) (citing cases holding that marijuana stems, marijuana roaches, and drug-laced plastic baggies recovered from trash pulls do not amount to probable cause).


The State offered no other facts at the suppression hearing to justify Huntington’s intrusion into Hill’s pockets besides his possession of marijuana. This does not amount to probable cause. We accordingly sustain Hill’s sole assignment of error, reverse his conviction and the trial court’s judgment denying his motion to suppress, and remand the cause with instructions that the trial court suppress any and all evidence garnered in connection with the unlawful search of Hill’s person.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS and MOORE, JJ., concur.

To the clerk:

Enter upon the journal of the court on 9/17/2025 per order of the court.

By: 
Administrative Judge