

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2014-1273
Plaintiff-Appellee,	:	
	:	On Appeal from the
vs.	:	Richland County Court of Appeals
	:	Fifth Appellate District
QUAYSHAUN J. LEAK,	:	
	:	C.A. Case No. 13CA72
Defendant-Appellant.	:	

MERIT BRIEF OF APPELLANT QUAYSHAUN J. LEAK

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STATEMENT OF THE CASE AND FACTS

In August of 2012, Mansfield Police Officer Ryan Anschutz received a dispatch communicating that the Richland County Sheriff's Office had a domestic violence warrant out for Quayshaun J. Leak. (Tr. 3-4.) Officer Anschutz testified that the dispatch included descriptions of Mr. Leak, his apartment building, and a car that he was "supposed to be in." (Tr. 4.) Officer Anschutz saw a white car parked near the apartment building. (Tr. 5.) As he approached the car, Officer Anschutz saw two black men in the front seat and, eventually, a child in the back seat. (Tr. 5.) After getting out of the car, the man who was in the passenger seat confirmed that he was Mr. Leak. (Tr. 5.) Officer Anschutz arrested Mr. Leak and placed him in the back of his patrol car. (Tr. 5.)

Next, Officer Anschutz removed the driver and the child and searched the car. (Tr. 6.) His search yielded a handgun found under the passenger seat and marijuana found in the center console. (Tr. 6.) Mr. Leak admitted that the gun was his. (Tr. 6.)

Officer Anschutz testified that he called and requested to have the car towed even though a LEADS search on the driver revealed no active warrants and the car was legally parked on a cul-de-sac near Mr. Leak's apartment. (Tr. 5-6, 10.) In response to being asked whether the LEADS search revealed that the driver had a valid license, the officer answered, "I don't remember." (Tr. 10.)

Officer Anschutz testified that his sole justification for having the car towed was his arrest of Mr. Leak, whom he assumed to be the car's owner. (Tr. 11.) And he acknowledged that he was not certain Mr. Leak owned the car. (Tr. 12.) The suppression hearing, at which Officer Anschutz was the only witness called, did not establish who owned the car.

The officer had no information about the domestic violence incident for which Mr. Leak had been charged and he did not know whether the warrant was for a misdemeanor or felony charge. (Tr. 9, 12.) He had no information that suggested the car was linked to the domestic violence charge or any other crime. (9, 12.) Yet, Officer Anschutz searched the car for criminal evidence. (Tr. 12.)

Following the suppression hearing, the trial court overruled Mr. Leak's suppression motion, finding that there was probable cause to arrest Mr. Leak, and finding that the inventory search was lawful pursuant to the arrest. (Judgment Entry, Apr. 12, 2013.) Mr. Leak subsequently pleaded no contest to carrying a concealed weapon and improper handling of a firearm in a motor vehicle, both fourth-degree felonies. (Sentencing Entry, Aug. 1, 2013.) The court found Mr. Leak guilty and imposed a sentence of one year on each count, to be served consecutively to each other, but suspended those terms and imposed 30 months of community control and a fine of \$1,500. (Sentencing Entry, Aug. 1, 2013.)

Mr. Leak appealed to the Fifth District Court of Appeals on three grounds, and that court affirmed the trial court's ruling on the suppression motion, while reversing on two sentencing-related issues. *See generally State v. Leak*, 5th Dist. Richland No. 13CA72, 2014-Ohio-2492. One judge dissented regarding the search-and-seizure issue, noting the officer's subjective belief that Mr. Leak owned the car was unsupported by the record, and would have reversed the trial court's ruling because the warrantless search of the car violated Mr. Leak's constitutional rights. *Id.* at ¶ 13-14 (Hoffman, J., dissenting).

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law

Because the mere arrest of an occupant of a lawfully parked car should not automatically trigger police impoundment of that car, a warrantless inventory search conducted in such a scenario violates the Fourth Amendment and Section 14, Article I of the Ohio Constitution.

The Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution insure “‘the right of the people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures.’ Time and again, [the United States Supreme] Court has observed that searches and seizures “conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject to only a few specifically established and well delineated exceptions.” *Minnesota v. Dickerson*, 508 U.S. 366, 372, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), quoting *Thompson v. Louisiana*, 469 U.S. 17, 19-21, 105 S.Ct. 409, 83 L. Ed.2d 246 (1984), quoting *Katz v. United States*, 389 U.S. 347, 357, 19 L. Ed.2d 576, 88 S.Ct. 507 (1967). The burden of demonstrating the applicability of an exception to the warrant requirement is on the State. *State v. Kessler*, 53 Ohio St.2d 204, 207, 373 N.E.2d 1252 (1978).

This Court summarized the warrant exception for police officers engaged in a community-caretaking role, as opposed to one of criminal investigation:

The United States Supreme Court concluded that a routine inventory search of a lawfully impounded vehicle is not unreasonable within the meaning of the Fourth Amendment when performed pursuant to standard police practice and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded vehicle. The court held that “[i]n the interests of public safety and as part of what the Court has called ‘community caretaking functions,’ * * * automobiles are frequently taken into police custody. * * * The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.”

City of Blue Ash v. Kavanagh, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, ¶ 11, quoting, in part, *South Dakota v. Opperman*, 428 U.S. 364, 368-369, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), quoting, in part, *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). This Court relayed the rationale behind conducting inventory searches:

Inventory searches involve administrative procedures conducted by law enforcement officials and are intended to (1) protect an individual's property while it is in police custody, (2) protect police against claims of lost, stolen or vandalized property, and (3) protect police from dangerous instrumentalities.

State v. Mesa, 87 Ohio St.3d 105, 109, 717 N.E.2d 329 (1999), citing *Opperman* at 369. “[T]he validity of an inventory search of a lawfully impounded vehicle is judged by the Fourth Amendment’s standard of reasonableness.” *Mesa* at 109, citing *Opperman* and *Colorado v. Bertine*, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987). And this Court held that “in order to satisfy the requirements of the Fourth Amendment * * * an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedure(s) or established routine.” *State v. Hathman*, 65 Ohio St.3d 403, 407, 604 N.E.2d 743 (1992), citing *Opperman*, *Bertine*, and *Florida v. Wells*, 495 U.S. 1, 110 S.Ct. 1632, 109 L.Ed.2d 1 (1990).

The inventory exception does not apply to Officer Anschutz’s warrantless automobile search because the impoundment of the car was not lawful. In *Kavanagh*, this Court held that the impoundment of an automobile by a police officer was lawfully authorized. 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, ¶ 10-16. The defendant was pulled over on Interstate 71 for driving with expired license plates and he produced an expired driver’s license. *Id.* at ¶ 2. Because the defendant could not legally drive the vehicle away and because Interstate 71 was not a safe location to leave the vehicle, an officer

decided to impound the defendant's vehicle. *Id.* at ¶ 3. The officer's search of the vehicle ultimately yielded a gun. *Id.* at ¶ 5.

This Court employed state and local authority to analyze the impoundment in that case:

R.C. 4513.61 provides that “[t]he sheriff of a county or chief of police * * * or a state highway patrol trooper * * * may order into storage any motor vehicle * * * that has come into possession of the sheriff, chief of police, or state highway patrol trooper as a result of the performance of the [officer's] duties or that has been left on a public street or other property open to the public for purposes of vehicular travel * * *.”

Further, Blue Ash Code of Ordinances 303.08 also addresses impounding of vehicles:

“(a) Whenever any police officer finds a vehicle unattended upon any highway * * * where such vehicle constitutes an obstruction to traffic, such officer may provide for the removal of such vehicle to the nearest garage or other place of safety. In addition to the above, any police officer may impound any stolen, abandoned or unroadworthy vehicle, or any other vehicle parked at a place where parking is prohibited * * *.”

Thus, under both R.C. 4513.61 and Blue Ash Code 303.08, Officer Rockel was expressly authorized to use his discretion whether to impound the vehicle.

Id. at ¶ 13-16.

In this case, the applicable local code is the Codified Ordinances of the City of Mansfield, Ohio. Mansfield Code of Ordinances 307.01, entitled “Authority to Impound,” provides an exhaustive list of the circumstances under which Mansfield Police Officers are permitted to impound vehicles:

Police officers are authorized to provide for the removal and impounding, or the “booting” of a vehicle under the following circumstances:

(a) When any vehicle is left unattended upon any public street, bridge or causeway and is illegally parked, or constitutes a hazard or obstruction to the normal movement of traffic, or unreasonably interferes with street cleaning or snow removal operations.

(b) When any vehicle or “abandoned junk motor vehicle” as defined in Ohio R.C. 4513.63 is left on private property for more than forty-eight consecutive hours without the permission of the person having the right to the possession of the property, or on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right of way of any road or highway, for forty-eight consecutive hours or longer, without notification to the Police Chief of the reasons for leaving such vehicle in such place. Prior to disposal of an “abandoned junk motor vehicle” as defined in Ohio R.C. 4513.63, it shall be photographed by a law enforcement officer.

(c) When any vehicle has been stolen or operated without the consent of the owner and is located upon either public or private property.

(d) When any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.

(e) When any vehicle has been used in or connected with the commission of a felony and is located upon either public or private property.

(f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code whereby its continued operation would constitute a condition hazardous to life, limb or property, and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.

(g) When any vehicle is left unattended either on public or private property due to the removal of an ill, injured or arrested operator, or due to the abandonment thereof by the operator during or immediately after pursuit by a law enforcement officer.

(h) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision and is located either on public or private property.

(i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked and is located upon a public street or other property open to the public for purposes of vehicular travel or parking.

(j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required, and is located upon a public street or other property open to the public for purposes of vehicular travel or parking. To the extent of any conflict with the provisions of this chapter, any vehicle removed under authority of subsection (b) hereof shall be ordered into storage and/or disposed of as provided under Ohio R.C. 4513.60 et seq. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Division shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, as provided in Section 307.03.

(k) When any vehicle is abandoned or parked without the property owner's permission in such a manner as to prevent other motor vehicles from

entering onto or exiting from a public or private driveway, when such entrance or exit is reasonably required by one owning, possessing or controlling the obstructed property and there is no other means of entrance or exit reasonably available.

Because nothing in Mansfield Code of Ordinances 307.01 authorized Officer Anschutz to impound the vehicle Mr. Leak was in, the impoundment was unlawful, and the firearm taken from the car by Officer Anschutz should have been suppressed. *See Kavanagh*, 113 Ohio St.3d 67, 2007-Ohio-1103, 862 N.E.2d 810, at ¶ 10-16.

Further, the record in this case does not support the finding by the court of appeals that “Officer Anschutz decided to impound the vehicle which was done in accordance with department policy.” *Leak*, 5th Dist. Richland No. 13CA72, 2014-Ohio-2492, at ¶ 16. Officer Anschutz testified that the sole reason for impounding the car was his arrest of Mr. Leak:

Q. Officer, what would be the reason for towing that car if it’s legally parked there?

A. The owner of the vehicle was arrested.

Q. And that’s your only reason, correct?

A. Yes.

(Tr. 11.) And he testified that it was the policy of his department to conduct inventory searches of cars prior to towing them:

Q. Now, you said you had called a tow and you were doing a search of the vehicle prior to the tow?

A. Yes.

Q. What was the purpose of that?

A. Procedure is once we call a tow, we conduct an inventory search where we’re making note of all valuable items or items that could be, you know, stolen. It’s an inventory of what’s kind of in the vehicle to make sure that, you know –

Q. What's the policy behind that search?

A. The policy is to document all items that are in the vehicle of value and log it on the tow sheet before the tow.

Q. And at the time you conducted this search, the Defendant was arrested and put in your patrol car?

A. Correct.

Q. And is it the policy of the police department to conduct these searches when you're going to have a car towed?

A. Yes.

(Tr. 7.) But Officer Anschutz did not testify that it was the policy of the Mansfield Police Department to impound a vehicle when the vehicle's driver is arrested. And even if he had, such a policy would have violated the Fourth Amendment. *See Opperman*, 428 U.S. at 368-370, 96 S.Ct. 3092, 49 L.Ed.2d 1000. If an impoundment is not supported by probable cause, it must be consistent with the community-caretaking role of the police and not in furtherance of criminal investigation. *Id.*; *see Benavides v. State*, 600 S.W.2d 809, 812 (1980) (Court of Criminal Appeals of Texas held "while it may have been standard police procedure to impound the vehicle of a person who is arrested we conclude that the Fourth Amendment protection against seizures cannot be whittled away by a police regulation. For such a procedure there must be some reasonable connection between the arrest and the vehicle."); *Commonwealth v. Brinson*, 440 Mass. 609, 610 (2003) (Supreme Judicial Court of Massachusetts held that "the government may not impound and conduct an inventory search of a car based on the arrest of the owner, where the car was lawfully parked in a privately owned parking lot and there was no evidence that the car constituted a safety hazard or was at risk of theft or vandalism.") Because the impoundment here is not consistent with a community-caretaking role, the fruits of the search should be suppressed.

CONCLUSION

Mr. Leak asks this Court to reverse the judgment of the court of appeals and to order the suppression of the firearm, or alternatively, to remand with instructions to suppress the firearm.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing MERIT BRIEF OF APPELLANT QUAYSHAUN J. LEAK has been sent on this 26th day of January, 2015, by regular U.S. mail, to:

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2014-1273
Plaintiff-Appellee,	:	
	:	On Appeal from the
vs.	:	Richland County Court of Appeals
	:	Fifth Appellate District
QUAYSHAUN J. LEAK,	:	
	:	C.A. Case No. 13CA72
Defendant-Appellant.	:	

APPENDIX TO

MERIT BRIEF OF APPELLANT QUAYSHAUN J. LEAK

IN THE SUPREME COURT OF OHIO

14-1273

STATE OF OHIO,

Case No. _____

Plaintiff-Appellee,

v.

On Appeal from the Richland
County Court of Appeals
Fifth Appellate District

QUAYSHAUN LEAK,

Defendant-Appellant.

Court of Appeals
Case No. 13CA72

NOTICE OF APPEAL OF QUAYSHAUN LEAK

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FILED
JUL 24 2014
CLERK OF COURT
SUPREME COURT OF OHIO

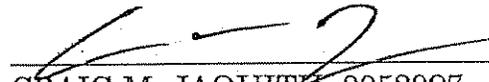
NOTICE OF APPEAL OF QUAYSHAUN LEAK

Quayshaun Leak hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Richland County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 13CA72 on June 9, 2014.

This case raises a substantial constitutional question, involves a felony, and raises an issue of public or great general interest.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



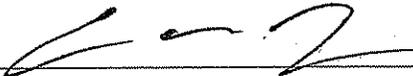
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QUAYSHAUN LEAK

CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing Notice of Appeal of Quayshaun Leak was forwarded by regular U.S. Mail, postage prepaid to the office of James J. Mayer, Jr., Richland County Prosecutor, 38 South Park Street, Mansfield, Ohio 44902, on this 24th day of July, 2014.


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COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
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LEOLA M. FERRY
CLERK OF COURTS

STATE OF OHIO
:
:
Plaintiff-Appellee
:
-vs-
:
QUAYSHAUN LEAK
:
Defendant-Appellant

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. Craig R. Baldwin, J.

Case No. 13CA72

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common
Pleas, Case No. 2012CR0568H

JUDGMENT:

Affirmed/Reversed in Part and
Remanded

DATE OF JUDGMENT:

Journalized on the court's
docket on 6-9-14

J. Black
Deputy Clerk

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Farmer, J.

{¶1} On August 8, 2012, Mansfield Police Officer Ryan Anschutz was dispatched to execute an arrest warrant for appellant, Quayshaun Leak, on a domestic violence charge. Appellant's vehicle was not at his home, so Officer Anschutz patrolled the streets looking for the vehicle. He found the vehicle parked on a street near appellant's residence, with appellant seated in the front passenger seat. Appellant was arrested, and an inventory search of the vehicle was conducted prior to towing. During the search, a loaded firearm was discovered under the front passenger seat. Appellant admitted the firearm was his.

{¶2} On September 10, 2012, the Richland County Grand Jury indicted appellant for carrying a concealed weapon in violation of R.C. 2923.12 and improper handling of a firearm in a motor vehicle in violation of R.C. 2923.16. Appellant filed a motion to suppress on January 28, 2013, claiming an illegal search of the vehicle. A hearing was held on April 3, 2013. By judgment entry filed April 12, 2013, the trial court denied the motion.

{¶3} On June 12, 2013, appellant pled no contest to both counts and the trial court found him guilty. By sentencing entry filed August 1, 2013, the trial court sentenced appellant to one year on each count, to be served consecutively, suspended in lieu of thirty months of community control.

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶15} "THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO BE FREE OF UNREASONABLE SEARCHES AND SEIZURES UNDER THE STATE AND FEDERAL CONSTITUTIONS BY DENYING HIS MOTION TO SUPPRESS A FIREARM."

II

{¶16} "THE COMMUNITY CONTROL CONDITION PROHIBITING APPELLANT FROM COHABITATING WITH MEMBERS OF THE OPPOSITE SEX IS UNREASONABLE AND OVERBROAD."

III

{¶17} "THE TRIAL COURT VIOLATED DOUBLE JEOPARDY AND R.C. 2941.25 BY FAILING TO MERGE THE CONVICTION FOR CARRYING A CONCEALED WEAPON AND IMPROPER HANDLING OF A FIREARM IN A MOTOR VEHICLE."

I

{¶18} Appellant claims the trial court erred in denying his motion to suppress. We disagree.

{¶19} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning*, 1 Ohio St.3d 19 (1982); *State v. Klein*, 73 Ohio App.3d 486 (4th Dist.1991); *State v. Guysinger*, 86 Ohio App.3d 592 (4th Dist.1993). Second, an appellant may argue the

rial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams*, 86 Ohio App.3d 37 (4th Dist.1993). Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93 (8th Dist.1994); *State v. Claytor*, 85 Ohio App.3d 623 (4th Dist.1993); *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 1663 (1996), "...as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶10} Specifically, appellant argues the search was pretextual and the trial court erred in determining that the inventory search was a valid search. During the suppression hearing held on April 3, 2013, the trial court found the following (T. at 16):

THE COURT: Okay. Based on what I've heard, it sounds like there was probable cause to arrest. The officer, having been told by his dispatcher that there was an outstanding warrant for a domestic violence perpetrator; that the domestic violence perpetrator had the following description, which matched the Defendant; that he had a description of the car, including a North Carolina plate, which matched the Defendant's car.

Probable cause to approach when he verified it was the Defendant and arrested him and then decided he was going to have the car towed. He did a proper inventory search for the tow. So it sounds as if it was a search incident to arrest - - an inventory search incident to towing the car. Therefore, it was an appropriate search of the car, and therefore, I am not suppressing the gun which was found in the car.

{¶11} Generally, factual determinations by the trial court are accepted as issues relating solely to the trier of fact. However, it is still incumbent on this court to determine if those facts are supported by the record.

{¶12} Officer Anschutz testified he was dispatched to the area of Red Oak Trail in reference to an outstanding domestic violence warrant. T. at 4. He was given a description of the suspect and the vehicle he was in, his name, and his approximate location. *Id.* He located appellant via those descriptions, sitting in the vehicle in the front passenger seat. T. at 4-5. Another individual was in the driver's seat. T. at 6. Appellant exited the vehicle and was positively identified and arrested. T. at 5. Officer Anschutz removed the driver from the vehicle and conducted an inventory search of the vehicle after determining the vehicle would be towed. T. at 6. He explained the following (T. at 7):

Q. What was the purpose of that?

A. Procedure is once we call a tow, we conduct an inventory search where we're making note of all valuable items or items that could be, you

know, stolen. It's an inventory of what's kind of in the vehicle to make sure that, you know - -

Q. What's the policy behind that search?

A. The policy is to document all items that are in the vehicle of value and log it on the tow sheet before the tow.

Q. And at the time you conducted this search, the Defendant was arrested and put in your patrol car?

A. Correct.

Q. And is it the policy of the police department to conduct these searches when you're going to have a car towed?

A. Yes.

{¶13} Appellant does not challenge his arrest, but argues the inventory search was a pretext because there were no valid reasons to impound the vehicle. Appellant's Brief at 3. The vehicle was legally parked, appellant was sitting in the passenger seat, and a LEADS check of the driver established the driver was "clean." *Id.*; T. at 10-11.

{¶14} In defense, Officer Anschutz testified he impounded the vehicle because he believed the owner of the vehicle to be appellant, who had just been arrested. T. at 11-12. However, he was not one hundred percent sure that the vehicle belonged to appellant. T. at 12. On cross-examination, Officer Anschutz testified as follows (T. at 13-14):

Q. As you testify here today, did you ever see an arrest warrant?

A. No.

Q. You saw this car. You went up to the car. You're not certain who actually even owns the car, correct?

A. Correct.

Q. I believe you testified that the reason that you arrested -- towed the car was because you believe the car was owned by Quayshaun Leak, correct?

A. Yeah. From my understanding.

Q. You did a search of this vehicle. That was not a search that anybody consented to, correct?

A. Correct.

{¶15} No evidence was presented as to the vehicle's ownership, except for Officer Anschutz's belief at the time of the arrest that appellant was the owner. Also, Officer Anschutz testified he always looks "for evidence of a crime because I didn't know where the domestic violence happened." T. at 12.

{¶16} Although appellant argues Officer Anschutz was not one hundred percent sure of the vehicle's ownership, the record establishes at the time of the arrest, he believed that appellant owned the car. Because the individual who he believed to be the owner of the vehicle had just been arrested, Officer Anschutz decided to impound the vehicle which was done in accordance with department policy. *South Dakota v. Opperman*, 428 U.S. 364 (1976).

{¶17} The facts sub judice support the officer's belief that appellant was the owner of the vehicle, and appellant was personally identified in relation to this specific vehicle. Of further consequence, the immediate ownership may not have been available because the vehicle had an out-of-state registration.

{¶18} Although the officer may have been wrong in deducing that appellant owned the vehicle, the officer's subjective belief was sufficient to establish the legitimacy of the law.

{¶19} Upon review, we find the trial court did not err in denying appellant's motion to suppress.

{¶20} Assignment of Error I is denied.

II

{¶21} Appellant claims the trial court's imposition of a community control sanction that he "not cohabit with persons of the opposite sex who are not your spouse" is overbroad and unreasonable. We agree.

{¶22} The imposition of community control sanctions lies in a trial court's sound discretion. *Lakewood v. Hartman*, 86 Ohio St.3d 275 (1999). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983). However, a "trial court's discretion in imposing probationary conditions is not limitless." *State v. Talty*, 103 Ohio St.3d 177, 2004-Ohio-4888. As explained by the *Talty* court at ¶ 12-13:

We stated that courts must "consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." *Jones*, 49 Ohio St.3d at 53, 550 N.E.2d 469.***

In addition to considering whether a condition relates to these statutory goals, we observed that probation conditions "cannot be overly broad so as to unnecessarily impinge upon the probationer's liberty." *Id.* at 52, 550 N.E.2d 469.

{¶23} The *Talty* court further explained at ¶ 16: "Thus, *Jones* stands for the proposition that probation conditions must be reasonably related to the statutory ends of probation and must not be overbroad. Because community control is the functional equivalent of probation, this proposition applies with equal force to community-control sanctions."

{¶24} There is nothing in the record to support a nexus between the complained of sanction imposed and the offenses in this case (carrying a concealed weapon and improper handling of a firearm in a motor vehicle). *State v. Lacey*, 5th Dist. Richland No. 2005-CA-119, 2006-Ohio-4290.

{¶25} Upon review, we find the trial court abused its discretion in imposing the complained of community control sanction.

{¶26} Assignment of Error II is granted.

{¶27} Appellant claims his convictions for carrying a concealed weapon and improper handling of a firearm in a motor vehicle violated the doctrine of double jeopardy and R.C. 2941.25.

{¶28} R.C. 2941.25 governs multiple counts and states the following:

(A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.

(B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

{¶29} In *State v. Johnson*, 128 Ohio St.3d 153, 2010-Ohio-6314, syllabus, the Supreme Court of Ohio held: "When determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered. (*State v. Rance* (1999), 85 Ohio St.3d 632, 710 N.E.2d 699, overruled.)"

{¶30} During the June 12, 2013 plea hearing, defense counsel addressed the multiple counts issue (T. at 31-32):

MS. BLAZEF: In addition, I noted on that entry that it indicates a potential maximum sentence of three years. I'm not sure if those two charges are allied offenses for purposes of sentencing. I'll have additional time to take a look at it when we get back at sentencing, but I just wanted to bring that to your attention.

THE COURT: In the past, they've been found otherwise.

MS. BLAZEF: That's fine.

THE COURT: Carrying a concealed weapon, having it in the car is the same thing.

MS. BLAZEF: That's fine, Your Honor. I just wanted to bring that to your attention.

THE COURT: I believe they can be treated as two, but I will treat it as one.

MS. BLAZEF: Thank you, Judge.

{¶31} The trial court then accepted appellant's no contest pleas. *Id.* at 32-33. During the sentencing hearing, the trial court did not merge the two counts and "treat it as one," but sentenced appellant to one year on each count, to be served consecutively, suspended in lieu of thirty months of community control. July 31, 2013 T. at 43.

{¶32} Upon review, we find the trial court erred in not merging the two offenses as it indicated it would during the plea hearing.

{¶33} Assignment of Error III is granted.

{¶34} The judgment of the Court of Common Pleas of Richland County, Ohio is
hereby affirmed in part and reversed in part.

By Farmer, J.

Baldwin, J. concur and

Hoffman, P.J., concurs in part and dissents in part.


Hon. Sheila G. Farmer

Hon. William B. Hoffman



Hon. Craig R. Baldwin

SGF/sg 520

toffman, P.J., concurring in part and dissenting in part

{¶35} I concur in the majority's analysis and disposition of Appellant's second and third assigned errors. I respectfully dissent from the majority's disposition of the first assignment of error.

{¶36} As set forth by the majority, this Court must determine whether the facts, as determined by the trial court, are supported by the record.

{¶37} Officer Anschutz testified at the April 3, 2013 suppression hearing as follows:

{¶38} "Q. Were you working on August 8, 2012?"

{¶39} "A. Yes.

{¶40} "Q. And what happened with respect to the defendant, Quayshaun Leak?"

{¶41} "A. We were dispatched to the area of Red Oak Trail, Riva Ridge, in reference to an individual who had a domestic violence warrant out of Richland County Sheriff's Office. We had a description of the vehicle that the suspect was supposed to be in, a description of the suspect, Mr. Leak, and his location."

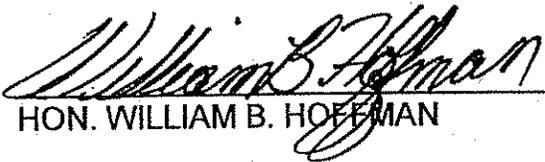
{¶42} Tr. at 4.

{¶43} Officer Anschutz did not testify to what, if any, attempt he made to learn who owns the vehicle. He testified the LEADS check of the person in the driver's side of the vehicle was "clean," and the only reason he towed the car was the arrest of Appellant, whom he thought owned the vehicle. Tr. at 11-12.

{¶44} While Officer Anschutz testified he believed Appellant owned the vehicle, I find the facts belie such belief.

{¶45} Officer Anschutz was given a description of the suspect and the vehicle he was in.¹ Being "in" a vehicle does not establish ownership. When located, Appellant was a passenger in the legally parked, described vehicle with another person in the driver's seat. His status as a passenger in the vehicle weakens any inference of ownership. I find the officer's subjective belief Appellant owned the vehicle unsupported by the record.²

{¶46} Given the fact the vehicle was legally parked; no restriction was found on the license of the person found in the driver's seat; there was no evidence to support the belief Appellant owned the vehicle; and the state of Ohio's representation in its brief it was the policy of the Mansfield Police Department to impound a vehicle when the "driver" was arrested³ - all lead me to conclude the vehicle was improperly impounded and the trial court improperly found the search and seizure valid as an inventory search.


HON. WILLIAM B. HOFFMAN

¹ The state of Ohio's brief states "Officer Anschutz testified that the car Appellant was in was the car that dispatch had relayed as the Appellant's vehicle." (See Appellee's Brief at p. 4). This is a mischaracterization of his testimony.

² The subjective intentions of an arresting officer are irrelevant in determining the validity of an arrest. *Gerstein v. Pugh* 420 U.S. 103 95 S.Ct. 854, 43. L. Ed. 2d 54(1975). Probable cause is not subjective. *State v. Abrams*, 12th Dist. No. CA2007-03-040, 2008-Ohio-94. Rather, probable cause is viewed under an objective standard and is present where, under the facts and circumstances within an officer's knowledge, a reasonably prudent person would believe the arrestee has committed a crime. *Id.* In making this determination, we examine the totality of the facts and circumstances. *State v. Christopher*, 12th Dist., No. CA 2009 08-041, 2010-Ohio-1816.

³ Appellee's brief at pgs. 4-5.

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

2014 JUN -9 PM 12:49
SHEILA G. FARMER
CLERK OF COURTS

STATE OF OHIO

Plaintiff-Appellee

vs-

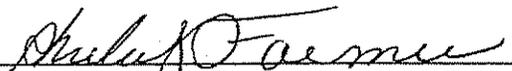
QUAYSHAUN LEAK

Defendant-Appellant

JUDGMENT ENTRY

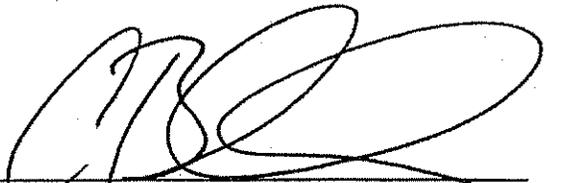
CASE NO. 13CA72

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio is affirmed in part and reversed in part, and the matter is remanded to said court for further proceedings consistent with this opinion. Costs to be divided equally between appellant and appellee.



Hon. Sheila G. Farmer

Hon. William B. Hoffman



Hon. Craig R. Baldwin

RICHLAND COUNTY
CLERK OF COURTS
FILED

2013 APR 12 PM 2:24

LINDA H. FRARY
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,)	
)	CASE NO. 2012 CR 568 H
Plaintiff)	
)	
v.)	
)	JUDGMENT ENTRY
QUAYSHAUN LEAK,)	
)	
Defendant)	

This matter came before the Court on the 3rd day of April, 2013 for an oral hearing regarding a Motion to Suppress filed on behalf of the defendant. On January 28, 2013, defendant had filed a written motion requesting the evidence (a loaded handgun) seized from the automobile of which defendant, at the time of his arrest, was a recent occupant be suppressed. Defendant contended that the search not permitted under *Arizona v. Gant*, 556 U.S. 322 (2009) and was not a proper inventory search. On February 8, 2013, the State filed a response to that motion arguing that the search of the vehicle was valid, specifically under *Gant*.

Present at the April 3rd oral hearing was Richland County Assistant Prosecuting Attorney J. Brandon Pigg, the defendant, Quayshaun Leak, and his counsel Jaceda Blazef. The State of Ohio presented the testimony of the arresting officer, Officer Ryan Anschutz of the Mansfield Police Department. The defendant presented no witnesses.

The Court made findings of fact and conclusions of law on the record. Specifically, the Court found that there existed probable cause to arrest the defendant pursuant to the issued arrest warrant for domestic violence and that, pursuant to that arrest, the inventory search of the vehicle prior to towing was proper.

Therefore, upon consideration of the evidence presented, the Court finds that defendant's Motion to Suppress to not be well taken and hereby denies the same.

IT IS SO ORDERED.

James D. White
Judge

cc: Prosecuting Attorney
Jaceda Blazef

SERVED BY Deputy Clerk: Ju
On the 12 day of Apr., 13.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CONSTITUTION OF THE STATE OF OHIO

ARTICLE I: BILL OF RIGHTS

§ 14 SEARCH AND SEIZURE

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

Codified Ordinances of Mansfield, Ohio

307.01 AUTHORITY TO IMPOUND. Police officers are authorized to provide for the removal and impounding, or the "booting" of a vehicle under the following circumstances:

(a) When any vehicle is left unattended upon any public street, bridge or causeway and is illegally parked, or constitutes a hazard or obstruction to the normal movement of traffic, or unreasonably interferes with street cleaning or snow removal operations.

(b) When any vehicle or "abandoned junk motor vehicle" as defined in Ohio R.C. 4513.63 is left on private property for more than fortyeight consecutive hours without the permission of the person having the right to the possession of the property, or on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right of way of any road or highway, for fortyeight consecutive hours or longer, without notification to the Police Chief of the reasons for leaving such vehicle in such place. Prior to disposal of an "abandoned junk motor vehicle" as defined in Ohio R.C. 4513.63, it shall be photographed by a law enforcement officer.

(c) When any vehicle has been stolen or operated without the consent of the owner and is located upon either public or private property.

(d) When any vehicle displays illegal license plates or fails to display the current lawfully required plates and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.

(e) When any vehicle has been used in or connected with the commission of a felony and is located upon either public or private property.

(f) When any vehicle has been damaged or wrecked so as to be inoperable or violates equipment provisions of this Traffic Code whereby its continued operation would constitute a condition hazardous to life, limb or property, and is located upon any public street or other property open to the public for purposes of vehicular travel or parking.

(g) When any vehicle is left unattended either on public or private property due to the removal of an ill, injured or arrested operator, or due to the abandonment thereof by the operator during or immediately after pursuit by a law enforcement officer.

(h) When any vehicle has been operated by any person who has failed to stop in case of an accident or collision and is located either on public or private property.

(i) When any vehicle has been operated by any person who is driving without a lawful license or while his license has been suspended or revoked and is located upon a public street or other property open to the public for purposes of vehicular travel or parking.

(j) When any vehicle is found for which two or more citation tags for violations of this Traffic Code have been issued and the owner or operator thereof has failed to respond to such citation tags as lawfully required, and is located upon a public street or other property open to the public for purposes of vehicular travel or parking. To the extent of any conflict with the provisions of this chapter, any vehicle removed under authority of subsection (b) hereof shall be ordered into storage and/or disposed of as provided under Ohio R.C. 4513.60 et seq. Any other vehicle removed under authority of this section shall be ordered into storage and the Police Division shall forthwith notify the registered vehicle owner of the fact of such removal and impounding, as provided in Section 307.03.

(k) When any vehicle is abandoned or parked without the property owner's permission in such a manner as to prevent other motor vehicles from entering onto or exiting from a public or private driveway, when such entrance or exit is reasonably required by one owning, possessing or controlling the obstructed property and there is no other means of entrance or exit reasonably available.

(Ord. 98145. Passed 7798.)