[Cite as *State v. Young*, 2015-Ohio-2006.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	No. 14AP-721 (C.P.C. No. 13CR-3922)
v.	:	(REGULAR CALENDAR)
Edward L. Young,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 26, 2015

Ron O'Brien, Prosecuting Attorney, and *Sheryl L. Prichard*, for appellee.

Brian J. Rigg, for appellant.

APPEAL from the Franklin County Court of Common Pleas

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Edward L. Young, appeals from a judgment entry of the Franklin County Court of Common Pleas finding him guilty, pursuant to a no contest plea, of one count of improper handling firearms in a motor vehicle and one count of having a weapon while under disability. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} By indictment filed July 24, 2013, plaintiff-appellee, State of Ohio, charged Young with one count of improperly handling firearms in a motor vehicle, in violation of R.C. 2923.16, a fourth-degree felony, and one count of having a weapon while under disability, in violation of R.C. 2923.13, a third-degree felony. The charges related to an incident on May 18, 2013 in which police approached Young while he was inside a parked vehicle. Young initially entered a plea of not guilty to both charges.

{¶ 3} On October 24, 2013, Young filed a motion to suppress the evidence obtained during the warrantless seizure of Young, arguing the police had no lawful cause to stop and detain him and that there was no probable cause, reasonable suspicion, or any other reason to search Young's vehicle after the stop. The state filed a memorandum contra Young's motion, and the trial court set the matter for hearing.

{¶ 4} At a hearing on February 21, 2014, Officer James Murawski of the Columbus Division of Police testified that he was on bike patrol on the night of May 18, 2013 in a high-crime area when he observed a car backed into a parking space in an apartment complex parking lot. The asphalt stopped behind the parking lot such that there was a drop-off behind the vehicle. Upon shining a flashlight into the vehicle, Officer Murawski observed two people inside the vehicle. Within a matter of seconds of Murawski shining his light into the vehicle, a man, later identified as Young, who had been seated in the rear passenger side of the car, started exiting the vehicle. Officer Murawski had not told Young to exit the vehicle, and the other officer on the scene, Officer Kelly Melvin, told Young to stay in the vehicle. Despite being told to stay in the vehicle, Young did not reenter the vehicle.

{¶ 5} After Young exited the vehicle, he walked around the rear of the car and approached Officer Murawski on the driver's side of the vehicle. Young asked whether the female occupant could get out of the vehicle. Initially, Officer Murawski told the female passenger through the open rear driver's side door that she had no reason to get out of the vehicle. Officer Murawski further testified that Officer Melvin observed a gun on the floorboard of the passenger side back seat through the open door on the other side of the vehicle and yelled "33." (Tr. 14.) Officer Murawski could not see the gun because the female occupant's legs were blocking his line of sight. Once Officer Melvin notified Officer Murawski of a weapon, Officer Murawski ordered the female out of the car and placed both the female and Young in handcuffs.

{¶ 6} Officer Melvin also testified at the hearing. He said that when he first saw Young's car backed into a parking space, he noticed it had no front license plate, which is often an indication of a stolen vehicle. After the officers shined their flashlights in the vehicle, Young exited the vehicle "with urgency." (Tr. 37.) Officer Melvin yelled for Young to stay in the car, but Young did not obey. The rear window of the car was completely

blacked out and Officer Melvin could not see into the vehicle. Because the female passenger remained in the vehicle and Officer Melvin thought she was not complying with Officer Murawski's instructions, Officer Melvin was concerned that the woman was "being raped," and he was unsure why Young was "trying to get away from that vehicle." (Tr. 38.) Based on his concerns for the female passenger's safety and his additional concern that Young was approaching his partner on the other side of the vehicle, Officer Melvin opened the rear passenger side door to the vehicle in order to tell the female passenger to get out of the car, and at that point he saw a gun in plain sight on the vehicle's floor. Officer Melvin reiterated that this incident occurred in a high-crime area in which he has encountered frequent rape and prostitution during his time with the Columbus Division of Police. He said he did not open the door with the intention of searching the vehicle.

{¶ 7} On cross-examination, Officer Melvin agreed that the female passenger made no indication that she was being raped or under distress. Officer Melvin said that at the point that he ordered Young to stay in the car, Young was no longer free to leave.

{¶ 8} After the hearing, the trial court issued a written decision and entry on February 28, 2014 denying Young's motion to suppress. The trial court concluded that, after reviewing the totality of the circumstances, the officers had reasonable suspicion to make the warrantless investigative stop. Further, the trial court found that Officer Melvin's act of opening the vehicle's door was not a "warrantless search" under the Fourth Amendment but was a method to check on the safety of the female passenger based on a reasonable suspicion that she may have been in danger. (Decision and Entry, 3.)

{¶ 9} Following the trial court's decision denying his motion to suppress, Young changed his plea from not guilty to no contest. The trial court conducted an August 20, 2014 sentencing hearing and sentenced Young to 12 months on the improper handling of a firearm in a motor vehicle charge to be served concurrently with an 18-month sentence for the having a weapon while under disability charge. The trial court journalized Young's conviction and sentence in an August 20, 2014 judgment entry. Young timely appeals.

II. Assignment of Error

{¶ 10} Young assigns the following error for our review:

> The trial court erred when it denied the defendant's motion to suppress.

III. Discussion

{¶ 11} In his sole assignment of error, Young argues the trial court erred when it denied his motion to suppress. Young argues first that the officers lacked reasonable suspicion to make the initial investigative detention. He then argues the officers lacked probable cause, reasonable suspicion, or any exigent circumstances to allow the warrantless search of Young's vehicle.

{¶ 12} " 'Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.' " (Citations omitted.) *State v. Roberts* 110, Ohio St.3d 71, 2006-Ohio-3665, ¶ 100, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

A. The Initial Detention

{¶ 13} Young first argues that his initial detention was an unlawful seizure because the officers lacked reasonable suspicion. We must first determine at which point a "seizure" occurred within the meaning of the Fourth Amendment.

{¶ 14} The Fourth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, as well as Article I, Section 14, of the Ohio Constitution, prohibits the government from conducting warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *State v. Mendoza*, 10th Dist. No. 08AP-645, 2009-Ohio-1182, ¶ 11, citing *Katz v. United States*, 389 U.S. 347, 357 (1967), superseded by statute on other grounds. Even so, "not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred" within the meaning of the Fourth Amendment. *Terry v. Ohio*, 392 U.S. 1, 19 (1968), fn. 16.

{¶ 15} To determine whether a particular encounter constitutes a "seizure," and therefore implicates the Fourth Amendment, the pertinent question is whether, in view of all the circumstances surrounding the encounter, a reasonable person would believe he or she was not "free to leave," *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), or "not free to decline the officers' requests or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 439 (1991). *See also Michigan v. Chesternut*, 486 U.S. 567, 573 (1988); *Florida v. Royer*, 460 U.S. 491, 502 (1983) (plurality opinion). "[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " *Bostick* at 437, quoting *Chesternut* at 569. A person "may not be detained even momentarily without reasonable, objective grounds for doing so." *Royer* at 498.

{¶ 16} The United States Supreme Court recognizes three categories of police-citizen interactions. The first is a consensual encounter, which requires no objective justification. *Bostick* at 434. The second is a brief investigatory stop or detention, which must be supported by reasonable suspicion of criminal activity. *Terry*. The third is a full-scale arrest, which must be supported by probable cause. *Brown v. Illinois*, 422 U.S. 590 (1975).

{¶ 17} A consensual encounter occurs when police approach a person in a public place, engage the person in conversation, and the person remains free not to answer or to walk away. *Royer* at 497; *Mendenhall* at 553-54. A consensual encounter remains consensual even when police officers ask questions, ask to see identification, or ask to search the person's belongings, provided that "the police do not convey a message that compliance with their requests is required." *Bostick* at 435; *Florida v. Rodriguez*, 469 U.S. 1, 4-6 (1984). A police officer need not have probable cause or a reasonable, articulable suspicion that an individual is currently engaged in criminal activity or is about to engage in such conduct in order to lawfully initiate a consensual encounter. *Mendenhall* at 556.

{¶ 18} The next category is the investigatory detention, commonly referred to as the *Terry* stop. Under *Terry*, a police officer may stop or detain an individual without probable cause when the officer has reasonable suspicion, based on specific, articulable

facts, that criminal activity is afoot. *Mendoza* at ¶ 11, citing *Terry* at 21. Accordingly, "[a]n investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion that 'the person stopped is, or is about to be, engaged in criminal activity.' " *State v. Jordan*, 104 Ohio St.3d 21, 2004-Ohio-6085, ¶ 35, superseded by statute on other grounds, quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981).

{¶ 19} Reasonable suspicion entails some minimal level of objective justification, "that is, something more than an inchoate and unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *State v. Jones*, 70 Ohio App.3d 554, 556-57 (2d Dist.1990), citing *Terry* at 27. Accordingly, "[a] police officer may not rely on good faith and inarticulate hunches to meet the *Terry* standard of reasonable suspicion." *Id*. at 557. An appellate court views the propriety of a police officer's investigative stop or detention in light of the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177 (1988), paragraph one of the syllabus, approving and following *State v. Freeman*, 64 Ohio St.2d 291 (1980), paragraph one of the syllabus. "Factors suggesting that a person has been seized include: a threatening presence of several officers; the display of a weapon by an officer; some physical touching of the person; the use of language or tone of voice indicating that compliance with the officer's request might be compelled; approaching the person in a nonpublic place; and blocking the person's path." *State v. Goodloe*, 10th Dist. No. 13AP-141, 2013-Ohio-4934, ¶ 10, citing *Mendenhall* at 554.

{¶ 20} The final category of police-citizen interaction is a seizure that is the equivalent of an arrest. "A seizure is equivalent to an arrest when (1) there is an intent to arrest; (2) the seizure is made under real or pretended authority; (3) it is accompanied by an actual or constructive seizure or detention; and (4) it is so understood by the person arrested." *State v. Taylor*, 106 Ohio App.3d 741, 749 (2d Dist.1995), citing *State v. Barker*, 53 Ohio St.2d 135 (1978), syllabus. "A warrantless arrest that is based upon probable cause and occurs in a public place does not violate the Fourth Amendment." *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, ¶ 66, citing *United States v. Watson*, 423 U.S. 411 (1976).

{¶ 21} Both parties agree that the officers' initial approach to investigate Young's vehicle did not involve a detention and, therefore, did not need the support of reasonable suspicion of criminal activity. *Columbus v. Ridley*, 10th Dist. No. 13AP-1035, 2014-Ohio-4356, ¶ 10.

{¶ 22} The state argues there was no seizure until Young's arrest because Young did not heed the officer's instructions to remain in the vehicle and instead walked around the rear of the vehicle and approached Officer Murawski. While we recognize that "[w]hen a person does not submit to a show of authority, he has not been 'seized' for purposes of the Fourth Amendment," we do not agree with the state that there was no seizure here. *State v. Jennings*, 10th Dist. No. 12AP-179, 2013-Ohio-2736, ¶ 13, citing *State v. Goss*, 2d Dist. No. 98-CA-43 (May 28, 1999), citing *California v. Hodari D.*, 499 U.S. 621, 626 (1991). Although Young did not remain in the vehicle, he did not outright flee the scene and instead continued walking toward one of the officers. Importantly, both officers testified that they no longer considered Young free to leave once they ordered him to remain in the car and that they would not have allowed him to leave the scene if he had tried. Thus, we agree with Young that he was "detained" at the moment the officers asked him to remain in his vehicle.

{¶ 23} Construing the moment that the officers asked Young to remain in the vehicle as a "detention" within the meaning of the Fourth Amendment, we conclude the officers had reasonable suspicion to conduct a *Terry* stop. While we must view the propriety of an investigative detention in light of the totality of the circumstances, there are certain relevant factors that can justify it: (1) location of the stop; (2) time of day; (3) the officer's experience; (4) the suspect's conduct or appearance; and (5) the surrounding circumstances. *Bobo* at 178-79; *State v. Andrews*, 57 Ohio St.3d 86, 88 (1991).

{¶ 24} First, both officers testified that the parking lot of the apartment complex was in a high-crime area with a reputation for drug offenses, vehicle theft, prostitution, and violent crimes. " 'The reputation of an area for criminal activity is an articulable fact upon which a police officer may legitimately rely' in determining whether an investigative stop is warranted." *Bobo* at 179, quoting *United States v. Magda*, 547 F.2d 756, 758 (2d Cir.1976); *Andrews* at 88.

{¶ 25} Second, the stop occurred at night in a poorly lit corner of the parking lot. *Bobo* at 179 (noting the stop occurred at 11:20 p.m.); *Andrews* at 88 (noting the stop occurred at night and in a dark area).

{¶ 26} Third, Officer Murawski had been a patrol officer for seven years and Officer Melvin has been a patrol officer for three years. "[T]he circumstances surrounding the stop must 'be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.' " *Bobo* at 179, quoting *United States v. Hall*, 525 F.2d 857, 859 (D.C. Cir.1976). Both officers testified that they knew from their experience that the location of the stop was one commonly associated with criminal activity.

{¶ 27} Fourth, almost immediately upon the officers' approach, Young began exiting the vehicle "with urgency." (Tr. 37.) He further did not listen to officers when they asked him to remain in the car. Officer Murawski described Young's conduct as an indication that he was trying to distance himself from the vehicle. A defendant's act of walking away from the car can reasonably be considered "questionable conduct under the totality of the circumstances." *State v. Bradford*, 10th Dist. No. 14AP-322, 2014-Ohio-5527, ¶ 31 (noting a suspect's attempt to reverse course when first seeing the officer is a factor that can support the officer's decision to conduct a *Terry* stop), citing *United States v. Carter*, 558 Fed.Appx. 606, 611 (6th Cir.2014).

{¶ 28} Lastly, the surrounding circumstances of the vehicle being backed into a parking spot in a darkened area of the lot and the fact that the vehicle had no front license plate were specific, articulable facts leading the officers to suspect that the vehicle may have been stolen. *See State v. Bly*, 10th Dist. No. 13AP-909, 2014-Ohio-1261, ¶ 20 (concluding an officer's testimony that he recognized the manner in which the defendant was parked, backed into a parking space facing the driver's side window of another vehicle, as one commonly used during drug transactions, was a specific, articulable fact supporting reasonable suspicion).

{¶ 29} Taken together, the totality of the circumstances supports a finding that the officers had a reasonable suspicion based on specific, articulable facts to conduct an investigatory detention of Young. Thus, we agree with the trial court's decision to deny Young's motion to suppress on this basis.

B. Opening the Car Door

{¶ 30} Young next argues that even if the officers had reasonable suspicion to conduct the initial investigatory detention, the officers nonetheless lacked reasonable suspicion, probable cause, or other exigent circumstances to open the vehicle's door.

{¶ 31} Young characterizes Officer Melvin's action of opening the car door as a warrantless search of his vehicle. The trial court, however, concluded that the opening of the car door was not a warrantless search within the meaning of the Fourth Amendment but was a valid method for checking on the safety of the female occupant of the vehicle.

{¶ 32} This court has recognized that "police officers are not required to possess reasonable suspicion of criminal activity when exercising community caretaking functions." *State v. Weese*, 10th Dist. No. 12AP-949, 2013-Ohio-4056, ¶ 13, citing *State v. Chapa*, 10th Dist. No. 04AP-66, 2004-Ohio-5070, ¶ 8, citing *State v. Norman*, 136 Ohio App.3d 46 (3d Dist.1999). " '[C]ourts recognize that a community-caretaking/emergency-aid exception to the Fourth Amendment warrant requirement is necessary to allow police to respond to emergency situations where life or limb is in jeopardy.' " *Id*., quoting *State v. Dunn*, 131 Ohio St.3d 325, 2012-Ohio-1008, ¶ 21. "The bounds of an officer's ability to investigate, pursuant to the community caretaking function, are not limitless." *Id*. "A police officer must possess 'objectively reasonable grounds to believe that there is an immediate need for his or her assistance to protect life or prevent serious injury to effect a community-caretaking/emergency-aid stop.' " *Id*., quoting *Dunn* at ¶ 26.

{¶ 33} Here, Officer Melvin testified that he feared the female passenger had been raped. He based this concern on their presence in a high-crime area, the fact that both vehicle occupants were in the back seat, and the fact that he thought the female passenger was not obeying his partner's instructions for her to exit the vehicle. We conclude that, under the specific circumstances of this case, Officer Melvin's fear that the woman had been raped was a sufficient, objectively reasonable ground to believe that there was an immediate need for his assistance when he opened the vehicle's door. Young responds that because he was already out of the vehicle at the time that Officer Melvin opened the door, Officer Melvin's concern for the passenger's safety was no longer reasonable. However, the testimony indicated Young continued to approach Officer Murawski despite the officers' instructions to the contrary. Given how quickly the situation unfolded and in

light of Officer Melvin's repeated testimony that he was concerned for the female passenger's safety, we find Officer Melvin's conduct in opening the vehicle door to be objectively reasonable.

{¶ 34} We recognize that an officer's community caretaking or emergency aid functions often arise independent of any ongoing investigation into the possibility that criminal activity is afoot. *See, e.g.*, *Chapa* at ¶ 8 (noting the law enforcement officer initially noticed the defendant's vehicle because it was stopped in the middle of the roadway, and police officers "are allowed to intrude on a person's privacy to carry out 'community caretaking functions' to enhance public safety" without having reasonable suspicion of criminal activity). However, there is nothing in our Fourth Amendment jurisprudence to suggest that an officer's role in investigating criminal activity cannot overlap with an officer's role in providing a community caretaking function. Where, as here, the officers were initially conducting a *Terry* stop of one individual and subsequent circumstances caused them to fear for the safety of another individual, we find the officer acted properly under his community caretaking function in opening the vehicle door to check on the female passenger's safety. Accordingly, we conclude the trial court did not err in denying Young's motion to suppress based on Officer Melvin's act of opening the vehicle door when he then observed the gun in plain view.

{¶ 35} Having determined that there was reasonable suspicion to conduct the initial investigatory detention and having further determined that the officer acted within his legitimate community caretaking function when he opened the vehicle door, we conclude the trial court appropriately denied Young's motion to suppress. Therefore, we overrule Young's sole assignment of error.

IV. Disposition

{¶ 36} Based on the foregoing reasons, the trial court did not err in denying Young's motion to suppress. Having overruled Young's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN, J., concurs.
HORTON, J., concurs in part and dissents in part.

HORTON, J., concurring in part and dissenting in part.

{¶ 37} While I concur with the majority's conclusion that the officers possessed reasonable, articulable suspicion to justify their initial detention of defendant, I am unable to agree with the majority's conclusion that Officer Melvin had an objectively reasonable belief that the female passenger was in danger and in need of immediate assistance when he opened the vehicle's door. Because the police did not have probable cause to conduct a warrantless search of the vehicle and the community caretaking exception is inapplicable, I respectfully dissent.

{¶ 38} Under the community caretaking/emergency-aid exception to the Fourth Amendment warrant requirement, a law enforcement officer must possess "objectively reasonable grounds to believe that there is an immediate need for his or her assistance to protect life or prevent serious injury to effect a community-caretaking/emergency-aid stop." *State v. Dunn*, 131 Ohio St.3d 325, 2012-Ohio-1008, ¶ 26. Thus, when an officer observes a stationary vehicle in the middle of a roadway obstructing other vehicles, an officer is justified in approaching the vehicle under the community caretaker exception, as the officer "could reasonably have * * * concerns as to whether the car was disabled, the car had been involved in an accident, the driver was injured, or a host of other reasonable possibilities." *State v. Chapa*, 10th Dist. No. 04AP-66, 2004-Ohio-5070, ¶ 8. *See also State v. Weese*, 10th Dist. No. 12AP-949, 2013-Ohio-4056, ¶ 4, 22. In *Dunn*, the officers were justified in stopping the defendant's vehicle under the community caretaker exception, as the officers had received a dispatch call that defendant was suicidal, carrying a weapon, and was going to commit suicide when he reached his destination.

{¶ 39} The majority notes that Officer Melvin opened the car door because he feared the female passenger had been raped. The trial court never relied on Officer Melvin's statement that the female passenger had been raped. Rather, the trial court stated simply that "Officer Melvin opened the rear passenger door of the vehicle to check on her safety," and that Officer Melvin opened the car door "based on a reasonable suspicion that she may have been in danger." (Decision, 3.) Because " '[a] warrantless emergency entry cannot be used as a fishing expedition for evidence of a crime,' " there must be competent, credible evidence in the record to support the court's conclusion that Officer Melvin reasonably believed the female passenger was in danger. *State v. McHale*,

2d Dist. No. 18963, 2002-Ohio-2373, quoting *State v. Cheadle*, 2d Dist. No. 00CA03 (Jul. 14, 2000).

{¶ 40} The majority concludes that Officer Melvin had objectively reasonable grounds to believe that there was an immediate need for his assistance when he opened the car door because the car was in a high-crime area, both occupants had been seated in the back seat of the vehicle, and the female passenger did not obey Officer Murawski's instructions to exit the vehicle. Although defendant was no longer in the vehicle when Officer Melvin opened the door, the majority concludes that Officer Melvin still reasonably feared for the female passenger's safety because defendant continued to approach Officer Murawski, the situation unfolded quickly, and Officer Melvin repeatedly testified that he was concerned for the female passenger's safety.

{¶ 41} While the record demonstrates that defendant immediately exited the vehicle and approached Officer Murawski, despite the officer's instructions that he remain in the vehicle, the record is devoid of any competent, credible evidence suggesting that defendant's refusal to re-enter the vehicle was an indication that the female passenger was in danger. Indeed, defendant was asking Officer Murawski "if the female that was in the car could get out of the vehicle." (Tr. 13.) The female was alone in the vehicle and she had not made any indication that she was injured or in need of assistance. *Compare State v. Dixon*, 11th Dist. No. 2013-L-103, 2015-Ohio-208, ¶ 25 (where an officer saw a vehicle with one occupant parked "in a residential driveway * * * some '65 yards' from the residence," late at night with the headlights off, the court found that the community caretaking exception did not justify the officer's decision to approach the vehicle as there was "no evidence indicat[ing] that Officer Reed had any reason to believe Ms. Dixon was in any imminent harm"). While defendant's act of walking away "with urgency" from the vehicle may have provided the officers with reasonable suspicion to detain defendant, this fact did not objectively indicate that the female passenger was in danger or otherwise allow the officers to circumvent the requirements of the Fourth Amendment. (Tr. 37.) Moreover, Officer Melvin's repeated testimony that he was concerned for the female passenger's safety did not render his belief that she was in need of assistance objectively reasonable.

{¶ 42} An individual's mere presence in a high-crime area is not an indication that the individual has been raped or is otherwise in danger. *Compare State v. Forrest*, 10th Dist. No. 10AP-481, 2010-Ohio-5878, ¶ 19 citing *Brown v. Texas*, 443 U.S. 47, 52 (1979) (noting that "[a] person's mere presence in a high-crime area does not suspend the protections of the Fourth Amendment; nor is it a sufficient basis to justify an investigative stop"). Officer Murawski noted that, while two people being seated in the back seat of a car late at night could be an indication of "sexual intercourse, prostitution, or drug use," he further admitted that the individuals could "just [be] talking." (Tr. 30-31.) Without some objective indicia that someone has been harmed or that harm is imminent, I am unable to find that two people sitting quietly in the back seat of a car is an indication that someone is being raped or is otherwise in danger. *Compare State v. McDaniel*, 5th Dist. No. 14CA47, 2015-Ohio-1007, ¶ 38, 40 (where officers "heard the sounds of a physical struggle inside the residence," and knew that "at least one other person was inside the residence in addition to appellant," the officers had objectively reasonable grounds to enter the home under the emergency-aid exception).

{¶ 43} Officer Melvin testified that, "because the female [was] * * * not complying with [Officer Murawski's]" order to exit the vehicle, he believed she was "being raped." (Tr. 38.) However, Officer Murawski never ordered the female passenger to exit the vehicle. After defendant asked Officer Murawski "a couple of times at least if the female could get out of the vehicle," Officer Murawski told the female passenger "that she had no reason to get out of the vehicle." (Tr. 14.)

{¶ 44} Furthermore, Officer Melvin admitted that he did not actually hear what Officer Murawski was saying to the female passenger. Officer Melvin stated that he heard his "partner * * * telling * * * the [female] passenger something," but explained that he never heard what Officer Murawski was saying to the female passenger, as "the only thing [he could] hear [was] just noise on that side. * * * I just hear[d] noise on that side." (Tr. 38.) Officer Melvin noted that the noise "was loud enough that [it] perked [his] concern," but he admitted he didn't "remember exactly what it was" that was being said. (Tr. 39.) Defense counsel specifically asked Officer Melvin: "But you also testified that Officer Murawski ordered Ms. Jones to get out of the vehicle, didn't you?" (Tr. 46.) Officer Melvin replied, "I remember him – well, honestly, I don't remember everything that was

said on that side. * * * I believe that he was telling her something, but I don't remember exactly what it was," as he "just heard noise." (Tr. 46.) As Officer Melvin admitted that he could not hear what Officer Murawski was saying to the female passenger, and Officer Murawski never told the female passenger to exit the vehicle, the record does not support Officer Melvin's claim that he was concerned for the female passenger's safety because she was refusing to exit the vehicle.

{¶ 45} When Officer Melvin opened the car door the female passenger was sitting quietly in the vehicle, obeying Officer Murawski's instructions for her to stay in the vehicle. Officer Melvin's belief that the female passenger was being raped or was otherwise in danger is completely unsupported by any objective facts. Indeed, there is no evidence in the record indicating that either defendant or the female passenger had any visible cuts, there were no signs of a struggle between the passengers, there was no broken glass, the officers did not hear any screams or cries for help, neither party appeared to have a look of concern about them, and the police had not received any emergency phone call reporting a disturbance from the vehicle. The record fails to indicate any reasonable grounds to believe that any assault, much less a sexual assault, had occurred in the vehicle. Officer Melvin's unfounded assumption that the female passenger was being raped herein effectively transforms any two individuals of the opposite sex who are seated quietly in the back seat of a vehicle in a high-crime area into rape suspects and rape victims.

{¶ 46} Accordingly, there is no competent, credible evidence to support the trial court's finding that Officer Melvin reasonably believed the female was in danger when he opened the car door. *Compare State v. Clapper*, 9th Dist. No. 11CA0031-M, 2012-Ohio-1382, ¶ 2, 14 (where the defendant's vehicle was properly parked at a rest stop and the officer observed "Clapper's brake lights flash approximately four or five times," the court concluded that the community caretaking exception did not justify the officer's decision to approach the vehicle, as the court was "unable to discern a concern of safety to the vehicle's occupant or to the public that rationally [could] be inferred from the tapping of brake lights"); *State v. Barzacchini*, 5th Dist. No. 2014CA0009, 2014-Ohio-3467, ¶ 3, 26 (where the officer saw "exaggerated arm movements that came from the vehicle as well as loud audio – audible noise, screaming, yelling, etcetera" coming from the sole occupant of

a vehicle, the court concluded that these facts did not provide the officer with "a basis to reasonably believe that there was an immediate need for his assistance to protect life or prevent serious injury"); *McHale* (finding that exigent circumstances permitted the warrantless entry and search of the trailer, where two witnesses saw "McHale raping a small child" in his trailer).

{¶ 47} Officer Melvin stated that, because "there is a lot of prostitution in that area" and the officers have been in this area on "rape cases before," he believed the female passenger was being raped. (Tr. 38-39.) Thus, rather than articulating specific facts which objectively indicated that the female passenger was in danger, Officer Melvin's stated belief that the female passenger was being raped was based on his subjective, preconceived notions and generalities of the females living in the high-crime area he patrols. The officer's claim that the female passenger was "being raped" was so outrageous and unsupported by the record that it appears the trial court omitted this glaring fact from its discussion. To accept Officer Melvin's hollow belief that the female passenger was being raped, an emotionally charged and traumatic allegation, without a scintilla of competent, credible evidence to support this belief effectively tramples on our most treasured and fundamental rights.

{¶ 48} Because Officer Melvin lacked an objectively reasonable basis to believe that the female passenger was in need of assistance to protect her life or prevent serious injury to her, the community caretaker exception did not justify Officer Melvin's decision to open the car door. As such, Officer Melvin committed a warrantless search of the vehicle when he opened the car door, thereby discovering the gun. Accordingly, the trial court erred in denying the motion to suppress and I would reverse the judgment on the Franklin County Court of Common Pleas.