[Cite as *State v. Tabler*, 2015-Ohio-2651.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	No. 14AP-386 (C.P.C. No. 13CR-1526)
v.	:	(REGULAR CALENDAR)
Tyrone X. Tabler,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 30, 2015

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellant.

Yeura Venters, Public Defender, and *Timothy E. Pierce*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by plaintiff-appellant, State of Ohio ("state"), from a judgment of the Franklin County Court of Common Pleas granting a motion to suppress filed by defendant-appellee, Tyrone X. Tabler.

{¶ 2} On March 20, 2013, appellee was indicted on one count of carrying a concealed weapon, in violation of R.C. 2923.12, one count of improperly handling firearms in a motor vehicle, in violation of R.C. 2923. 16, and one count of tampering with evidence, in violation of R.C. 2921.12. On October 4, 2013, appellee filed a motion to suppress. The state filed a response on October 15, 2013.

{¶ 3} On April 3, 2014, the trial court conducted a hearing on the motion. The first witness for the state was Joseph K. Moore. On the evening of January 17, 2013, at approximately 8:00 p.m., Moore and appellee were sitting in a vehicle parked on Azelda Street, waiting to pick up Moore's friend, Andrew Townsend. Moore was driving a Toyota Camry that belonged to Townsend's stepfather. According to Moore, the engine "was turned off," and the vehicle "was parked on the street." (Apr. 3, 2104 Tr. 8.) Townsend entered the vehicle and sat in the front passenger seat; Moore was in the driver's seat, and appellee was sitting in the backseat behind Townsend. Moore observed a Columbus police cruiser drive past their vehicle; the cruiser then returned, and "parked behind us." (Apr. 3, 2014 Tr. 9.) The cruiser was parked "[m]aybe a car length" behind the Camry. (Apr. 3, 2014 Tr. 10.) A police officer "got out and talked to us just to make sure we was okay." (Apr. 3, 2014 Tr. 9.)

{¶ 4} The officer then "asked for our information." (Apr. 3, 2014 Tr. 11.) Moore gave the officer his driver's license, while Townsend gave the officer an identification card. After collecting Moore's driver's license and identification material from the other individuals, the officer went back to the cruiser. After approximately five to ten minutes, the officer returned with the identification materials and asked Moore "if I had anything on me or in the car." Moore responded "no." (Apr. 3, 2014 Tr. 12.) The officer then "asked me why did I seem so nervous? And then that's when I told him that I had a blunt [marijuana] on me in my pocket." (Apr. 3, 2014 Tr. 12.) After Moore indicated he had marijuana, the officer "took me out [of] the car and searched me, and he took everybody out [of] the car as well." (Apr. 3, 2014 Tr. 13.)

{¶ 5} After searching Moore, the officer asked him if there were "weapons or any drugs in the car." Moore told the officer "no." (Apr. 3, 2014 Tr. 13.) The officer "kept repeating the questions," and then asked Moore "if he can search the car." (Apr. 3, 2014 Tr. 13.) Moore "told him it's not my car, I don't know if I have the right to give you the consent to search it and I was just a driver." (Apr. 3, 2014 Tr. 13-14.) Moore eventually said to the officer: "I don't care." (Apr. 3, 2014 Tr. 14.) Other police officers arrived at the scene and the officers conducted a search of the vehicle, discovering a weapon.

{¶ 6} On cross-examination, Moore stated he had legally parked the vehicle on the street at the time the officer approached. When the officer asked for permission to

search the vehicle, Moore did not respond yes or no but, instead, told the officer he did not care. Moore did not believe he had permission to allow the officer to search the vehicle because it belonged to someone else. According to Moore, he did not feel free to leave at the time the officer took his driver's license back to the cruiser.

{¶ 7} Officer Jacob Pawlowski of the Columbus Division of Police also testified on behalf of the state. On January 17, 2013, at approximately 8:00 p.m., Officer Pawlowski was on patrol when he observed a gold-colored vehicle parked along the curb on Azelda Street. The officer stated that the vehicle's "lights just shut off and the car was running." (Apr. 3, 2014 Tr. 38.) Officer Pawlowski observed three individuals inside the car. According to the officer, the neighborhood was a "[h]igh crime area, a lot of guns, a lot of drugs." (Apr. 3, 2014 Tr. 38.)

{¶ 8} Officer Pawlowski parked his marked cruiser "about 15 to 20 feet back," exited his cruiser and "went up and talked to the occupants of the car." (Apr. 3, 2014 Tr. 38.) The officer testified that he decided to approach the vehicle "[t]o make sure they're okay," and because "the vehicle lights were shut off and it was running, so that also piqued my interest a bit." (Apr. 3, 2014 Tr. 39.) The officer approached the driver's side of the vehicle and "told them, * * * hey, I'm coming up here to make sure you guys were okay, and I also know this was a high crime area so was making sure nothing * * * suspicious was going on." (Apr. 3, 2014 Tr. 40.)

{¶ 9} After talking with the occupants "for a bit," the officer "asked them if they had any identification on them. And * * * two of the occupants did. They gave me their IDs and I wrote down their license numbers * * * and then [appellee] gave me his name and social." (Apr. 3, 2014 Tr. 41.) Officer Pawlowski then walked back to the cruiser and "ran them for warrants." (Apr. 3, 2014 Tr. 41.) The check revealed no outstanding warrants with respect to any of the individuals. Before returning to the occupants' vehicle, the officer called for backup officer assistance.

{¶ 10} Officer Pawlowski then re-approached the vehicle and "talked to the driver again, asked him if there * * * [were] any guns or drugs in the car due to the area. And the driver got really nervous and looked straight ahead and then said he had a blunt in his pocket." (Apr. 3, 2014 Tr. 42.) The officer "[a]sked him again if there [were] guns in the car since he was nervous the first time I asked him. And * * * he got really nervous,

looked straight ahead and refused to answer my question." (Apr. 3, 2014 Tr. 42.) Officer Pawlowski "asked him again if I could search his * * * vehicle." (Apr. 3, 2014 Tr. 42.) According to the officer, "[h]e said I could." (Apr. 3, 2014 Tr. 43.)

{¶ 11} The officer instructed the driver to "step out of the vehicle. Since he told me * * * that he had marijuana on him already, I was searching him for marijuana." (Apr. 3, 2014 Tr. 44.) The driver then "leaned over and whispered to me, he said there was a gun in the car and that [appellee] put it in there." (Apr. 3, 2014 Tr. 44.) Officer Pawlowski then handcuffed Moore, and the other officers "showed up to help me handcuff the other people. And we searched the car for the gun." (Apr. 3, 2014 Tr. 44.) The officers subsequently found a handgun.

{¶ 12} On cross-examination, Officer Pawlowski stated he did not observe any illegal driving with regard to the vehicle. When the officer initially drove past the vehicle, he noticed individuals inside, but there was no indication anything was wrong or that they needed assistance, nor had the officer received a report of any criminal activity at that location. Officer Pawlowski drove around the block and returned to the parked vehicle. The officer acknowledged that the report he prepared did not indicate the vehicle's lights were off with the engine running.

{¶ 13} Officer Pawlowski called for backup assistance "at the time when I got their info and went back to the cruiser." (Apr. 3, 2014 Tr. 61.) At that point, he had no reason to suspect there was a weapon in the vehicle. He called for backup assistance "for officer safety." (Apr. 3, 2014 Tr. 61.) It took the officer "about three to five minutes" to run a warrants check. (Apr. 3, 2014 Tr. 65.) In response to his call for assistance, four other officers arrived in two cruisers "as soon as I was re-approaching the vehicle." (Apr. 3, 2014 Tr. 61.) At the time Officer Pawlowski returned to the vehicle, he had not told the individuals they were free to go. Officer Pawlowski later learned that the vehicle did not belong to Moore.

{¶ 14} On April 30, 2014, the trial court announced its findings on the record, stating that it would grant appellee's motion to suppress. The trial court determined that "the initial act of the police officer parking behind the vehicle was not a seizure." (Apr. 30, 2014 Tr. 4.) The court further found, however, "that a seizure did occur under the totality of the circumstances when the officer subsequently took the occupant[s'] identification,

including the defendant's information, conducted a check for warrants and requested to search the automobile." (Apr. 30, 2014 Tr. 4.) The trial court also noted the following on the record:

> [I]t's the Court's finding * * * that under the particular facts and circumstances, when the police officer asked for the occupants IDs to run a warrants check, and he did take the two IDs and took the information from the defendant in this case, he did so without reasonable suspicion that any of the occupants were or were about to be engaged in criminal activity. And so at that time, the defendant was unlawfully seized within the meaning of the Fourth Amendment.
>
> Because the unlawful seizure occurred before the gun in this case was seized, it's the Court's finding * * * that that evidence must be suppressed as fruit of the poisonous tree.
>
> Additionally, the Court finds * * * under the totality of the circumstances that the consent given was not voluntary. The officer obtained the occupant's identification for the purpose of running a warrant checks. Subsequent to running the warrant checks, the officer returned to the car and requested permission to search the vehicle. Only * * * after repeated questioning of the occupants about the presence of drugs or weapons was consent to search granted. Again, given the totality of the circumstances, the consent to search was only granted as a result of that repeated questioning and the show of authority by the officer, again, the requesting of the IDs for the purposes of doing the search warrant checks.

(Apr. 30, 2014 Tr. 6-8.)

{¶ 15} On May 5, 2014, the trial court filed an entry granting appellee's motion to suppress. The state timely filed a notice of appeal from that entry.

{¶ 16} On appeal, the state sets forth the following assignment of error for this court's review:

> The Trial Court Erred in Granting the Defense's Motion to Suppress.

{¶ 17} Under its single assignment of error, the state asserts the trial court erred in granting appellee's motion to suppress. Specifically, the state contends that: (1) appellee had no property or possessory interest in the car, (2) appellee was not seized when he gave his identification information to the officer, (3) appellee's asserted ownership of the

weapon does not give him any legitimate expectation of privacy in the trunk of the vehicle, and (4) even if appellee had a legitimate expectation of privacy in the trunk of the car, the search was constitutional.

{¶ 18} An appellate court's review of a motion to suppress "presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In 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." *Id*. A reviewing court therefore must "accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id*. Furthermore, "[a]ccepting those 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." *Id*.

{¶ 19} In general, "[t]he Fourth Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment, as well as the Ohio Constitution, Article I, Section 14, prohibit the government from conducting warrantless searches and seizures, rendering them per se unreasonable unless an exception applies." *State v. Goodloe*, 10th Dist. No. 13AP-141, 2013-Ohio-4934, ¶ 6. However, " '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." *Id*., quoting *Terry v. Ohio*, 392 U.S. 1, 19, fn. 16 (1968).

{¶ 20} The United States Supreme Court has recognized three types of police-citizen interactions: "(1) a consensual encounter, which requires no objective justification; (2) a brief investigatory stop or detention, which must be supported by reasonable suspicion of criminal activity; and (3) a full-scale arrest, which must be supported by probable cause." *Id*. at ¶ 7.

{¶ 21} A consensual encounter occurs "where the police merely approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away." *State v. Taylor*, 106 Ohio App.3d 741, 747 (2d Dist.1995). In this type of encounter, Fourth Amendment guarantees are not implicated

"unless the police officer has by either physical force or show of authority restrained the person's liberty so that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter." *Id*., citing *United States v. Mendenhall,* 446 U.S. 544, 554 (1980).

{¶ 22} An investigatory stop by an officer "constitutes a seizure for purposes of the Fourth Amendment," and therefore must be supported by "a reasonable suspicion, based on specific, articulable facts, that criminal activity is afoot." *State v. Westover*, 10th Dist. No. 13AP-555, 2014-Ohio-1959, ¶ 16, citing *Terry* at 21-22. An individual is "seized under this category when, in view of all the circumstances surrounding the incident, by means of physical force or show of authority a reasonable person would have believed that he was not free to leave or is compelled to respond to questions." *Taylor* at 748, citing *Mendenhall* at 553.

{¶ 23} As noted, in the instant case, the trial court determined that the initial encounter was consensual in nature, but that it escalated into a seizure under the circumstances. We first address, however, the state's argument that appellee cannot challenge the search on the basis that he had no property or possessory interest in the vehicle. The state relies on *Rakas v. Illinois,* 439 U.S. 128, 148 (1978), in which the United States Supreme Court held that passengers in a car who asserted "neither a property nor a possessory interest in the automobile, nor an interest in the property seized," failed to demonstrate a legitimate expectation of privacy in the vehicle and could not challenge a search of the glove compartment and area under the seat. The state notes that the Supreme Court in *Rakas* identified "the trunk of an automobile" as an area in which a passenger "would not normally have a legitimate expectation of privacy." *Id*. at 148-49.

{¶ 24} Federal and state courts, however, "distinguish passenger standing to directly challenge a vehicle search from passenger standing to seek suppression of evidence discovered in a vehicle as the fruit of an unlawful stop, detention, or arrest." *United States v. Eylicio-Montoya,* 70 F.3d 1158, 1162 (1oth Cir.1995). Thus, if the physical evidence found in a vehicle "was the fruit of the defendants' unlawful detention, it must be suppressed." *United States v. Shareef,* 100 F.3d 1491, 1500 (10th Cir.1996). *See also United States v. Ellis,* 497 F.3d 606, 612 (6th Cir.2007) quoting *United States v.*

Jones, 374 F.Supp.2d 143, 154 (D.D.C.2005) ("Although a passenger does not have a legitimate expectation of privacy in the searched vehicle, 'as a passenger [a defendant] may still challenge the stop and detention and argue that the evidence should be suppressed as fruits of illegal activity' "); *United States v. Mosley*, 454 F.3d 249, 253 (3d Cir.2006) ("passengers in an illegally stopped vehicle have 'standing' to object to the stop, and may seek to suppress the evidentiary fruits of that illegal seizure under the fruit of the poisonous tree doctrine").

{¶ 25} This distinction "inheres in *Rakas*," as "scholars and subsequent decisions have noted [that] the passengers in *Rakas* challenged neither the initial traffic stop nor their arrests." *Eylicio-Montoya* at 1162-63, citing *United States v. Kimball*, 25 F.3d 1, fn. 3 (1st Cir.1994); Wayne R. LaFave, *Search and Seizure*, Section 11.3(e) (2d Ed.1987). *See also State v. Goodlow*, 84 Ohio App.3d 529, 533 (8th Dist.1992) (distinguishing *Rakas* to find that passengers of vehicle, who argued that "the initial seizure of their persons was unreasonable and unconstitutional * * * had the requisite standing" to challenge subsequent search of the vehicle); *Mosley* at 264-65 ("*Rakas* held simply that a passenger in a car has no reasonable expectation of privacy in the interior of the car [b]ut *Rakas* says absolutely nothing about the scope of the exclusionary rule with respect to the fruits of an illegal stop"). Accordingly, "*Rakas* does not foreclose a passenger's Fourth Amendment challenge to the seizure of [his or] her person." *Eylicio-Montoya* at 1163.

{¶ 26} Further, in *Brendlin v. California*, 551 U.S. 249 (2007), the Supreme Court held that a traffic stop subjects passengers, as well as the driver, to a seizure under the Fourth Amendment. Similarly, the Supreme Court of Ohio has recognized that "[b]oth passengers and the driver have standing regarding the legality of a stopping because when the vehicle is stopped, they are equally seized, and their freedom of movement is equally affected." *State v. Carter*, 69 Ohio St.3d 57, 63 (1994).

{¶ 27} Accordingly, even accepting the state's claim that appellee lacked a possessory or ownership interest in the vehicle, we find the trial court properly concluded that appellee had standing to challenge whether he was initially the subject of an unreasonable detention and seizure. Accordingly, we turn to the issue of whether the trial court erred in its determinations that (1) appellee was unlawfully seized, and (2) that the evidence discovered was the fruit of that unlawful detention.

{¶ 28} As noted under the facts, the trial court found that the officer's initial encounter, i.e., parking behind the vehicle and engaging the occupants in conversation, was consensual. This court has previously recognized that "[s]imply asking for and receiving [a] group's identifications did not alter the consensual nature of the encounter." *Westover* at ¶ 19. This court has also observed, however, that "what begins as a consensual encounter may escalate into an investigatory detention and seizure of a person that triggers Fourth Amendment scrutiny if, in view of all the circumstances surrounding the incident, a reasonable person would not feel free to leave or otherwise terminate the encounter." *Id*. at ¶ 20. Here, while finding the initial encounter to be consensual, the trial court further determined that the consensual nature of the encounter matured into a seizure, for purposes of the Fourth Amendment, when the officer retained the identification materials of the occupants to run a warrants check.[1]

{¶ 29} On several occasions, this court has considered whether a police officer's retention of identification information for purposes of conducting a warrants check constitutes merely a consensual encounter or a seizure. In *State v. Jones*, 188 Ohio App.3d 628, 2010-Ohio-2854 (10th Dist.), police officers observed a vehicle legally parked with its engine running and headlights turned off. The defendant was inside the vehicle with his head down. The officers approached and asked the defendant several questions, including why he was there, where he worked, and if he knew anyone in the area. The defendant, who was visibly nervous and shaking, responded that everything was fine; the defendant explained that he was waiting to go to work and had pulled over to text his girlfriend. According to the officers, the defendant was not committing any traffic offense, and they noticed no odor of alcohol or drugs; moreover, there was nothing to suggest the defendant was involved in, or about to commit, any kind of criminal activity.

{¶ 30} Based on the belief that the defendant had failed to provide an adequate explanation as to why he was in the area, "coupled with the reputation of the area and defendant's nervousness, the officers, relying on their intuition, suspected that something

[1] We note there was conflicting testimony as to whether the officer retained the identification materials or simply wrote down the information before running the warrants check. According to Moore, the officer took the identifications back to the cruiser while the officer stated he only wrote down the information. On this issue, the trial court made a determination that the officer "did take" the occupants' identification materials. (Apr. 30, 2014 Tr. 6.) The trial court obviously credited the testimony of Moore on this point, and we will not disturb the trial court's finding in regard to which version of events was credible.

might be wrong." *Id.* at ¶ 5. One of the officers then asked the defendant for his driver's license to verify his identity and to run a records check for warrants. The defendant handed the officer his license and remained in the vehicle. At some point after taking possession of the defendant's driver's license, the officer asked the defendant if he had anything on him, or inside the vehicle, that could harm the officers. The defendant responded that he had a knife next to him. The officers retrieved the knife, and the defendant was subsequently charged with carrying a concealed weapon.

{¶ 31} The defendant filed a motion to suppress, which the trial court granted. The trial court, while finding the initial investigative stop warranted, held that the officers were obligated to release the defendant once they determined that there was no criminal activity afoot. The state appealed, arguing that the police officers lawfully searched the defendant's vehicle and seized the knife because defendant had told the officers he had a knife located next to him in the vehicle, thereby justifying the officers' decision to conduct the protective search of the defendant's vehicle and seize the knife out of concern for their safety.

{¶ 32} In *Jones,* this court affirmed the judgment of the trial court, noting that "when the officers took defendant's driver's license to check for warrants, they relied merely on their intuition and acted upon a hunch that something might be wrong; they could point to no specific articulable facts supporting a reasonable suspicion that defendant was involved in criminal activity. " *Id.* at ¶ 23. Further, "even if the police officers' interaction with defendant began as a consensual encounter, the consensual nature of that encounter escalated into an investigative detention when the officers, unsatisfied with defendant's explanation as to why he was parked in a high-crime area, sought to confirm their intuition that something might be wrong." *Id.* at ¶ 24. Specifically, at the moment the officers "asked for and retained defendant's driver's license to run a warrants check to confirm or dispel their suspicions * * * any consensual aspects of the encounter ended, and defendant was seized within the meaning of the Fourth Amendment." *Id.* Finally, this court found, "[c]ontrary to the state's assertions, no reasonable person would believe that he or she is free to terminate the encounter and simply drive away when an officer retains his or her driver's license for the purpose of running a computer check for outstanding warrants." *Id.* at ¶ 25.

{¶ 33} This court reached the same conclusion in *Westover*. Under the facts of that case, a police officer noticed three to four people standing outside of a car legally parked on the street. The officer testified that the group appeared nervous; the officer noticed that the trunk of the vehicle was open, and further observed someone taking something from the trunk to a house. The officer then turned her cruiser around and drove back to "see what was going on." *Westover* at ¶ 5. After parking the cruiser directly behind the car, the officer radioed for assistance. The officer exited the vehicle and approached the group, asking what they were doing. The members of the group indicated they were waiting for someone to come out of the house. The officer inquired as to what was in the box some of the individuals had taken into the house, and they explained to the officer that it was a tool box. The officer then asked everyone in the group for identification. As the individuals handed their identification documents to the officer, two other uniformed officers arrived in a marked vehicle.

{¶ 34} The officer then took the identification materials back to her police cruiser and ran a check for outstanding warrants on all the individuals while the two other officers exited their vehicle and stood on the sidewalk for safety purposes. The warrants check revealed that the defendant had an outstanding warrant. The officers then arrested the defendant, and a search incident to the arrest revealed that the defendant had heroin on his person. The defendant filed a motion to suppress, arguing that the evidence against him was obtained while he was unreasonably detained. The trial court denied the motion to suppress, finding no warrantless seizure, and holding that the officers had a right to run a warrants check because the defendant voluntarily provided his information.

{¶ 35} In *Westover,* this court reversed the trial court's judgment. Specifically, relying on our decision in *Jones,* this court determined that, when the officer "retained defendant's identification and took it to her cruiser to run a warrants check, defendant was unconstitutionally seized under the Fourth Amendment." *Westover* at ¶ 21. In *Westover,* the state sought to distinguish the facts of *Jones* on the basis that the defendant was not the sole occupant, or even the driver, of a parked car. This court rejected the state's argument, holding that, even if the defendant was a mere passenger, the issue was "not whether defendant could have physically walked away" while the officer retained his identification and was running a warrants check. *Id*. at ¶ 25. Rather, we noted, the issue

was "whether a reasonable person in that situation would have believed they were free to leave or free to decline the officer's requests and terminate the encounter." *Id*. Further, this court held that, because the officer's "knowledge of the outstanding warrant was the fruit of defendant's unlawful seizure, * * * the evidence recovered from defendant following his arrest must be suppressed." *Id*. at ¶ 34.

{¶ 36} In the instant case, the trial court determined that "when the police officer asked for the occupants['] IDs to run a warrants check, and he did take the two IDs and took the information from the defendant in this case, he did so without reasonable suspicion that any of the occupants were or were about to be engaged in criminal activity." (Apr. 30, 2014 Tr. 6-7.) The trial court, relying in part on this court's holding in *Jones,* concluded that, "at that time, the defendant was unlawfully seized within the meaning of the Fourth Amendment." (Apr. 30, 2014 Tr. 7.)

{¶ 37} On review, we find no error with the trial court's determination that the nature of the encounter between the officer and the occupants was not consensual at the time the officer retained the identification materials to run a warrants check. Here, under the totality of the circumstances, the record supports the trial court's finding that no reasonable person in that situation would have believed they were free to leave or decline the officer's requests. *Westover* at ¶ 25; *Jones* at ¶ 25. The state's argument that Moore, the driver, "voluntarily" handed over his driver's license to the officer is not dispositive. *See Jones* at ¶ 24 (at moment officers "asked for and retained" defendant's driver's license to run warrants check, "any consensual aspects of the encounter ended, and defendant was seized within the meaning of the Fourth Amendment"). *See also United States v. Lopez,* 443 F.3d 1280, 1283 (10th Cir.2006) (rejecting government's argument that encounter was consensual because defendant voluntarily handed his license to officer; such argument is "inapposite because our analysis of the seizure issue focuses on assessing the encounter from the perspective of a reasonable person in [the defendant's] position, not a reasonable person in [the police officer's] position).

{¶ 38} In light of the fact that the encounter between the occupants and the officer escalated into an investigative stop or detention, we consider whether such detention during the warrants check was supported by reasonable suspicion. On this issue, we also find no error with the trial court's determination that the officer had no reasonable

suspicion that any of the occupants were engaged in criminal activity at the time he retained the identification information. The officer himself acknowledged that the vehicle was not illegally parked, nor did the officer have any basis to suspect the occupants of criminal activity at the time he decided to run the warrants check. The officer also acknowledged he had no reason to suspect the occupants had either drugs or weapons in the vehicle at the time he re-approached the vehicle following the warrants check. Further, while the officer cited concern for the occupants' safety as one justification for initially approaching the vehicle, the record indicated no facts suggesting the occupants were in need of assistance. Accordingly, the record supports the trial court's conclusion that the occupants were unlawfully detained.

{¶ 39} Finally, we find no merit to the state's argument that, even if appellee was seized when Moore handed over his driver's license, the return of his license was an "intervening circumstance" that purged the primary taint. In its findings, the trial court noted that the officer, subsequent to running the warrants check, returned to the vehicle and proceeded to engage in "repeated questioning of the occupants about the presence of drugs or weapons," and the court found that "the consent to search was only granted as a result of that repeated questioning and the show of authority by the officer." (Apr. 30, 2014 Tr. 7-8.) The record supports the trial court's finding that, at the time the officer re-approached the vehicle after running the warrants check, the circumstances indicated a continued show of authority.

{¶ 40} As indicated under the facts, Officer Pawlowski radioed for backup assistance during the time he was running the warrants check and, at the time the officer returned to the occupants' vehicle, four other officers arrived in two marked cruisers. At that point, and still with no reasonable suspicion of criminal activity, the officer began a series of questions, unrelated to the stop, regarding possible criminal activity, i.e., the officer asked Moore if there were "any guns or drugs" in the vehicle. (Apr. 3, 2014 Tr. 42.) This court has noted that "the accusatory nature" of such questioning "creates an air of authority that could further cause a reasonable person to believe that he was not free to leave and that he had to answer the officer's questions." *Goodloe* at ¶ 14. *See also State v. Huffstutler*, 178 P.3d 626 (Idaho 2006) (once warrant check failed to reveal any problems and defendant's driver's license was returned, defendant's continued detention in which

officer asked questions accusatory in nature, vitiated his subsequent consent to search vehicle); *State v. Prater*, 2d Dist. No. 24936, 2012-Ohio-5105, ¶ 19 quoting *State v. Ferrante*, 196 Ohio App.3d 113, 2011-Ohio-4870, ¶ 2 (2d Dist.) (once officer handed defendant a warning citation and returned his driver's license, " 'the purpose of the original stop was completed, and the lawful basis for the detention of defendant ended' " thus, officer's ensuing request to search vehicle, in the absence of a reasonable suspicion of additional criminal activity, constituted an unlawful seizure). As also noted above, the officer in the instant case called for backup assistance while running the warrants check, and four other officers arrived as the officer re-approached the occupants' vehicle, further indicating the encounter had not ended. *See Westover* at ¶ 29 (In situation where backup officers arrived and stood nearby while officer ran warrants check, "no reasonable person would believe that they were at liberty to terminate the encounter").

{¶ 41} Here, under the totality of the circumstances, a reasonable person would not believe the investigative stop had concluded; accordingly, we find no error with the trial court's determination that the occupants were subject to an unlawful detention at the time the officer, in the absence of an articulable suspicion of criminal activity, re-approached the vehicle and initiated a series of questions about criminal activity and sought the driver's consent to search the vehicle.

{¶ 42} Having concluded the trial court did not err in finding that the occupants of the vehicle were unlawfully seized, we further conclude the court did not err in holding that the resulting search of the vehicle and the evidence recovered must be suppressed as the fruit of that unlawful seizure. *Westover* at ¶ 34. Accordingly, the trial court did not err in granting appellee's motion to suppress.

{¶ 43} Based on the foregoing, the state's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

LUPER SCHUSTER and BRUNNER, JJ., concur.
