[Cite as *State v. Miller,* 2011-Ohio-5860.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2011-T-0016**
- vs -	:	
MARIO A. MILLER,	:	
Defendant-Appellee.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 10 CR 553.

Judgment: Reversed and remanded.

Dennis Watkins, Trumbull County Prosecutor, and *Lynn B. Griffith, III*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481-1092 (For Plaintiff-Appellant).

Alan J. Matavich, 205 Home Savings Bank Building, 32 State Street, Struthers, OH 44471 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, the state of Ohio, appeals the judgment of the Trumbull County Court of Common Pleas granting the motion to suppress evidence filed by appellee, Mario A. Miller. At issue is whether the police were authorized to search appellee's vehicle and to seize narcotics found therein. For the reasons that follow, we hold the police were so authorized and we therefore reverse and remand.

{¶2} On September 15, 2010, appellee was charged in a three-count indictment with possession of heroin, in violation of R.C. 2925.11(A) and (C)(6)(a), a felony of the fifth degree; possession of buprenorphine, in violation of R.C. 2925.11(A) and (C)(2)(a), a misdemeanor of the first degree; and aggravated possession of MDMA (ecstasy), in violation of R.C. 2925.11(A) and (C)(1)(a), a felony of the fifth degree. Appellee pled not guilty and filed a motion to suppress.

{¶3} At the suppression hearing, the parties stipulated to the police report of Melanie Gambill, detective with the Warren Police Department, and to the truth of the facts contained therein, in lieu of testimony. In her report, Detective Gambill stated that on April 22, 2010, at about 9:30 p.m., Officer Weber and Officer Hetmanski were dispatched to 1247 Fifth Street, an apartment building in Warren, Ohio, on a call of a disturbance involving a gun. As the officers arrived on scene, they saw several people in the apartment parking lot. As the officers exited their cruiser, a female, later identified as Dawn Fugate, approached them and said a male just put a gun in a white Jeep. When the officers asked her who had done that, she pointed to a male who was near Apartment 5. The officers approached that apartment and stopped the male Ms. Fugate had pointed out. The male was identified as appellee, whose residence address at that time was 1367 Bane Street in Warren.

{¶4} Appellee told the officers he was having a problem with a tenant, Nathaniel Fugate, a juvenile, who was playing his music too loudly. Appellee said he knocked on the door of Mr. Fugate's apartment, and when no one answered, appellee entered the apartment. Appellee said he found Mr. Fugate inside and started arguing

with him. Appellee said that when a second male entered the room, appellee left the apartment to avoid a physical confrontation.

{¶5} Mr. Fugate provided the officers with a different version of events. He said that, although he agreed to lower his music, appellee started arguing with him. Mr. Fugate said that during the argument, appellee pulled up his shirt, showed him his gun, and threatened to shoot him with it.

{¶6} The officers then returned to the apartment parking lot and located the owner of the white Jeep, who identified herself as Martrice Felton. After conferring with appellee, Ms. Felton allowed the officers to search her Jeep. The officers searched her vehicle, but did not find any guns.

{¶7} Meanwhile, an unidentified individual at the scene told Captain Marhulik that the gun was put in a blue Buick, which was parked in the parking lot in front of the apartment building. Captain Marhulik shined his flashlight inside the Buick to see if any weapons were inside, and saw a plastic bag with pills in it. The trial court found that Detective Gambill immediately identified the pills as being contraband. Appellee then told the officers that both the car and the pills were his.

{¶8} Detective Gambill asked appellee to unlock the door to the Buick. Appellee said he did not have a key to the car, and volunteered that the pills in the car were "X," which is street slang for ecstasy, a Schedule I controlled substance. Appellee then went into an apartment to get his keys, and returned with a keychain, but said he did not have the key to his car.

{¶9} Appellee was then taken into custody and given an additional opportunity to find the key to his Buick, but he did not do so. He was placed in the rear of a police cruiser.

{¶10} Detective Gambill then entered the open sunroof of appellee's Buick. Once inside, she picked up the pills and saw that in another plastic bag next to the first bag was a chunk of a light brown substance, later determined to be heroin. Under the first bag of pills was another bag that contained two and one-half suspected ecstasy pills. Detective Gambill then looked inside the center console of appellee's car and found a wallet containing appellee's driver's license.

{¶11} On February 3, 2011, the trial court entered judgment granting appellee's motion to suppress. In its judgment, the court found that the police were at the scene for a lawful purpose. The court also found that the plain view exception to the warrant requirement gave the officers the right to look inside appellee's vehicle. However, the court found that viewing the suspected narcotics inside appellee's vehicle did not invoke the automobile exception to the warrant requirement because, at the time of the search, appellee's Buick was not stopped on a highway. The court found that the automobile exception only applies when officers have probable cause to believe the vehicle contains contraband and the vehicle is on a highway. The court found that when a vehicle is located on private property, the automobile exception only applies when exigent circumstances are present. Finding no exigent circumstances, the trial court found a search warrant was necessary.

{¶12} The state timely appeals the trial court's judgment, asserting the following as its sole assignment of error:

{¶13} "The trial court erred by granting Appellee Miller's motion to suppress evidence."

{¶14} It is well settled that a motion to suppress presents a mixed question of law and fact. At a hearing on a motion to suppress, the trial court functions as the trier of fact. Accordingly, the trial court is in the best position to weigh the evidence by resolving factual questions and evaluating the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366; *State v. Smith* (1991), 61 Ohio St.3d 284, 288. Here, because the parties stipulated to the accuracy of Detective Gambill's police report, the trial court was not required to determine the credibility of the witnesses.

{¶15} On review, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Retherford* (1994), 93 Ohio App.3d 586, 592. After accepting the factual findings as true, the reviewing court must then conduct a de novo review of the trial court's application of the law to those facts. Id. See, also, *State v. Swank*, 11th Dist. No. 2001-L-054, 2002-Ohio-1337, at ¶11.

{¶16} Generally, "[f]or a search or seizure to be reasonable under the Fourth Amendment, it must be based on probable cause and executed pursuant to a warrant." *State v. Moore* (2000), 90 Ohio St.3d 47, 49, 2000-Ohio-10, citing *Katz v. United States* (1967), 389 U.S. 347, 357, and *State v. Brown* (1992), 63 Ohio St.3d 349, 350. However, as this court has previously noted, "there are several exceptions to the warrant requirement." *State v. Mitchell*, 11th Dist. No. 2004-L-071, 2005-Ohio-3896, at ¶17. (Citations omitted.)

{¶17} The United States Supreme Court, in *Pennsylvania v. Labron* (1996), 518 U.S. 938, 940, addressed the automobile exception to the search warrant requirement, as follows:

{¶18} "The Supreme Court of Pennsylvania held the rule permitting warrantless searches of automobiles is limited to cases where '"unforeseen circumstances involving the search of an automobile [are] coupled with the presence of probable cause."' 543 Pa., at 100, 669 A. 2d, at 924 ***. This was incorrect. Our first cases establishing the automobile exception to the Fourth Amendment's warrant requirement were based on the automobile's 'ready mobility,' an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear. *California v. Carney*, 471 U.S. 386, 390-391 (1985); *Carroll v. United States*, 267 U.S. 132 (1925). *More recent cases provide a further justification: the individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation*. *Carney*, supra, at 391-392. *If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more*. *Carney*, supra, at 393. As the state courts found, there was probable cause in both of these cases: Police had seen respondent Labron put drugs in the trunk of the car they searched and had seen respondent Kilgore act in ways that suggested he had drugs in his truck. We conclude the searches of the automobiles in these cases did not violate the Fourth Amendment." (Emphasis added and internal citation omitted.) *Labron*, supra.

{¶19} The United States Supreme Court later reaffirmed its expanded interpretation of the automobile exception to the warrant requirement in *Labron*, supra, in *Maryland v. Dyson* (1999), 527 U.S. 465, as follows:

{¶20} "The Fourth Amendment generally requires police to secure a warrant before conducting a search. *Carney*, [supra, at] 390-391. As we recognized nearly 75 years ago in *Carroll*[, supra, at] 153, there is an exception to this requirement for searches of vehicles. And under our established precedent, the 'automobile exception' has no separate exigency requirement. We made this clear in *United States v. Ross*, 456 U.S. 798, 809 (1982), when we said that in cases where there was probable cause to search a vehicle 'a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained*.' (Emphasis sic.) In *** *Labron*, [supra], we repeated that the automobile exception does not have a separate exigency requirement: 'If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment *** permits police to search the vehicle without more.' Id. at 940.

{¶21} "In this case, the Court of Special Appeals found that there was 'abundant probable cause' that the car contained contraband. This finding alone satisfies the automobile exception to the Fourth Amendment's warrant requirement, a conclusion correctly reached by the trial court when it denied respondent's motion to suppress. The holding of the Court of Special Appeals that the 'automobile exception' requires a separate finding of exigency in addition to a finding of probable cause is squarely contrary to our holdings in *Ross* and *Labron*. ***" (Emphasis sic.) *Dyson*, supra, at 466-467.

{¶22} This court followed the Supreme Court's holdings in *Labron* and *Dyson* in *State v. Stone*, 11th Dist. No. 2007-P-0048, 2008-Ohio-2615, in which this court stated:

{¶23} "The United States Supreme Court has long recognized an 'automobile exception' to the Fourth Amendment's requirement that police officers must generally obtain a warrant before conducting a search. *Carney*[, supra, at] 390, citing *Carroll*[, supra]. *** Under the automobile exception, there is no need to demonstrate that a 'separate exigency' exists to justify the search. *Dyson*[, supra, at] 466. ***" *Stone*, supra, at ¶21.

{¶24} "Probable cause in the context of an automobile search has been defined as 'a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction.' *** 'In a case where police found marijuana in a defendant's pocket during a legal search, a search of the automobile under the automobile exception was proper because police had "probable cause to search the automobile for additional marijuana or evidence of marijuana use."'" (Internal citations omitted.) *State v. Walker*, 11th Dist. No. 2009-L-155, 2010-Ohio-4695, at ¶28.

{¶25} Turning our attention to the facts of the instant case, appellee does not dispute that the officers had probable cause to search his vehicle. Moreover, he concedes in his brief that the officers had a right to look inside his vehicle. In doing so, they saw pills in a plastic bag, which Detective Gambill immediately identified as contraband. Appellee told the officers that the pills were ecstasy, an illegal street drug, and that both the vehicle and the pills were his. As a result, the officers had probable cause to search appellee's vehicle for additional narcotics, which they, in fact, found.

Because the police had probable cause to believe appellee's vehicle contained contraband, they were authorized to search his vehicle and to seize contraband without pointing to any exigent circumstances. *Dyson*, supra.

{¶26} As noted above, the trial court found that the automobile exception only applies when the vehicle in question is on a public highway. However, our review of the United States Supreme Court's holdings in *Labron*, supra; *Dyson*, supra; and *Ross*, supra, do not support this position. In *Labron*, police searched the defendant's pickup truck that was parked in the driveway of a private residence. As noted above, the Court in *Labron* stated that, while the automobile exception was originally based on the ready mobility of automobiles, more recent decisions of the Court justify the exception based on an individual's reduced expectation of privacy in an automobile due to the "pervasive regulation" of motor vehicles. That justification exists whether the vehicle is searched on a highway or on private property.

{¶27} We note that the trial court's ruling was based in large part on two cases decided by the Twelfth Appellate District, *State v. Sprague* (Apr. 17, 1989), 12th Dist. Nos. CA88-05-037 and CA88-06-049, 1989 Ohio App. LEXIS 1410 and *State v. Roaden* (1994), 98 Ohio App.3d 500. In both cases, the Twelfth District held that the automobile exception did not apply because the search occurred in a driveway of a private residence. However, both cases were decided prior to *Labron*. We note that, more recently, the Twelfth District reached the opposite conclusion in *State v. Underwood*, 12th Dist. No. CA2003-03-057, 2004-Ohio-504. In *Underwood*, the police searched the defendant's vehicle that was parked in the driveway of a residence. In upholding the search, the court stated:

{¶28} "'If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment *** permits police to search the vehicle without more.' *Dyson*[, supra, at] 467, citing *Labron*[, supra]. In addition to the element of mobility, less rigorous requirements exist because the expectation of privacy with respect to an individual's automobile is significantly less than that relating to one's home or office. *Carney*[, supra, at] 391." *Underwood*, supra, at ¶17.

{¶29} The Fourth Appellate District reached the same conclusion in *State v. Miller*, 4th Dist. No. 06CA57, 2007-Ohio-6909. In *Miller*, the defendant's vehicle was on private property at the time of the search. The court stated:

{¶30} "Miller contends *** that it makes a difference that his car was on private property, not public property. He cites *Coolidge v. New Hampshire* (1971), 403 U.S. 443 in support.

{¶31} "After the Supreme Court of the United States found that an occupant of a car has a lesser expectation of privacy in his car than in his home, *Carney*[, supra, at] 391-392, it 'has emphasized that no special exigency is required to conduct a warrantless search of an automobile when the car is mobile and the searching officer has probable cause to believe that fruits of a crime may be present in the automobile.' *United States v. Graham* (C.A.6, 2001), 275 F.3d 490, 509-510, quoting *Dyson*[, supra, at] 466. *It no longer matters that the automobile is on private property instead of public property*. Id. (Emphasis added.) The touchstone is whether the vehicle is mobile." *Miller*, supra, at ¶18-19.

{¶32} Appellant's reliance on *State v. Elersic*, 11th Dist. Nos. 2000-L-062 and 2000-L-164, 2001-Ohio-8787, 2001 Ohio App. LEXIS 5210, which did not extend the

automobile exception to a search of the defendant's vehicle on private property, is misplaced because *Elersic* is easily distinguishable. In *Elersic*, unlike the present case, the police did not have probable cause to search the vehicle. Id. at *13.

{¶33} Appellee argues that the automobile exception does not apply here because no one testified the car was capable of being driven or had recently been driven. We note that appellee did not make this argument in his motion to suppress or during the hearing on his motion. Further, the trial court did not make such finding. Consequently, the argument lacks merit. Regardless, we note that the record contains circumstantial evidence of the vehicle's mobility. When asked by officers for the key to his car, appellee indicated he had the key on a keychain. Further, Detective Gambill testified she found appellee's driver's license in the center console, indicating recent use of the vehicle by appellee. Moreover, since appellee did not reside at the Fifth Street apartment, the fact that his car was parked in its parking lot raises the inference that it was driven there.

{¶34} In any event, it is well settled that in order for the automobile exception to apply, it is not necessary that the vehicle be readily mobile. In *Carney*, the United States Supreme Court stated that the automobile exception does not require proof that the vehicle is readily mobile. The Supreme Court stated:

{¶35} "Although ready mobility alone was perhaps the original justification for the vehicle exception, our later cases have made clear that ready mobility is not the only basis for the exception. The reasons for the vehicle exception, we have said, are twofold. 'Besides the element of mobility, less rigorous warrant requirements govern

because the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office." (Internal citations omitted.) Id. at 391.

{¶36} In fact, the Supreme Court in *Carney* noted that even in cases where an automobile is not immediately mobile, the lesser expectation of privacy resulting from its use as a vehicle has justified the application of the exception. Id.

{¶37} Likewise, in *Graham*, supra, the Sixth Circuit explained:

{¶38} "The truck's 'ready mobility' was not questioned [in *Labron*], despite the fact that, as in our case, the defendants had been arrested outside of the truck and prior to the truck search. We believe the Supreme Court's reference to the truck's 'ready mobility' was not, therefore, to demonstrate an 'exigent circumstance,' but rather to show that when the place to be searched, such as a truck, is associated with a lesser expectation of privacy than a home, the justification for a warrantless search articulated in *Carney* is satisfied provided the police have probable cause." Id. at 510.

{¶39} Further, the Twelfth District in *Underwood*, supra, rejected a similar argument, as follows: "The immobilization of the vehicle or a low probability of its being moved *** does not remove the officers' justification to conduct a search pursuant to the automobile exception." Id. at ¶19.

{¶40} Because Detective Gambill had probable cause to search appellee's automobile and to seize any contraband located therein, we hold the trial court erred in granting appellee's motion to suppress.

{¶41} For the reasons stated in this opinion, it is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is reversed, and

this matter is remanded to the trial court for further proceedings consistent with this opinion.

TIMOTHY P. CANNON, P.J., concurs with Concurring Opinion,

MARY JANE TRAPP, J., concurs with Concurring Opinion.

TIMOTHY P. CANNON, P.J., concurs with Concurring Opinion.

{¶42} I respectfully concur with the opinion of the majority. I agree with the result, but with a different analysis.

{¶43} The present case is a textbook paradigm for the distinctions between the concept of contraband found in "open view" and contraband discovered during a lawful intrusion as a result of the "plain view" exception.

{¶44} Appellee's pills were left in his vehicle in open view for the entire world to see. The officer observed the pills from outside of the vehicle through the window. The officer was on official police business investigating a possible weapons violation, thus he was lawfully on the property. As a result, the fact that the vehicle was on private property is not relevant. The observation was lawful without the necessity of establishing probable cause or obtaining a search warrant. Further, appellee acknowledged that the pills were his, and that they were ecstasy.

{¶45} Appellee had no reasonable expectation of privacy with respect to the interior cabin of his vehicle that was open to view from those passing by. Thus, the officer's glance into the compartment was not a search and not yet subject to Fourth

Amendment protection. As a result, it is unnecessary to invoke the plain view exception to the initial discovery of the ecstasy. "[T]he Fourth Amendment does not protect what one readily exposes to the open view of others, regardless of where that exposure takes place." *State v. Bradford*, 4th Dist. No. 09CA880, 2010-Ohio-1784, at ¶36, citing Katz, Ohio Arrest, Search and Seizure (2009 Ed.), Sections 1:8 and 14:1. When others have access to an area, "'the accused assumes the risk that others will observe the items left in open view. While the accused may have a subjective expectation of privacy in his car while parked in a business lot (or a public street), it is not one *** society is prepared to recognize as reasonable.'" *State v. Lang* (1996), 117 Ohio App.3d 29, 34. (Citations omitted.)

{¶46} Since there was no initial "search" of appellee's vehicle that would implicate the Fourth Amendment, the question is whether the officers had authority to make a *seizure* of the contraband under these circumstances. Did the open view observation, coupled with appellee's subsequent statement that the pills were his and they were ecstasy, give the officer authority to seize the unlawful items from the vehicle? It is this *seizure* from appellee's vehicle that implicates the Fourth Amendment.

{¶47} In analyzing whether the *seizure* in this case was proper, I think it is important not to allow the exceptions and "exigent circumstances" to swallow the rule. If the rule would permit the *seizure*, there is no need to consider automobile or other exceptions to the requirement of obtaining a warrant.

{¶48} The rule is fairly simple. Both the Fourth Amendment to the United States Constitution and Article 1, Section 14 of the Ohio Constitution protect only against

"unreasonable" searches and seizures. Under the facts and circumstances of this case, the *seizure* of the contraband was *reasonable* for many reasons: (1) the contraband was within appellee's vehicle, but in open view; (2) appellee acknowledged it was his; (3) appellee acknowledged it was illegal contraband; (4) appellee was at least overtly attempting to assist the officers in gaining entry to the vehicle by trying to find his keys; and (5) access to the interior was accomplished easily, in the least intrusive manner, without objection from appellee, through the open sunroof.

{¶49} As a result of the reasonableness of the officer's actions, there was no violation of the United States or Ohio Constitutional protections, and therefore no need to consider any exception to those provisions.

{¶50} With regard to the heroin found in appellee's vehicle, it was discovered when the officer picked up the bag of ecstasy. I would reserve the plain view analysis for the heroin. While it is commonly referred to as the plain view exception to the requirement that a police officer obtain a warrant, the use of the term "exception" implies that there has been some constitutional infirmity, i.e., an "unreasonable" search or seizure. Again, this is not the case under these circumstances. We do not need to characterize the facts of this case as an "exception" when the officer's conduct was unquestionably reasonable. Indeed, "[t]he Fourth Amendment does not by its terms require a prior warrant for searches and seizures; it merely prohibits searches and seizures that are 'unreasonable.' What it explicitly states regarding warrants is by way of limitation upon their issuance rather than requirement of their use." *California v. Acevedo* (1991), 500 U.S. 565, 581 (Scalia, J., concurring in judgment).

{¶51} In this case, there was a *lawful* intrusion into the interior cabin, and an inadvertent discovery of heroin. The immediate incriminating nature of the contraband was apparent. As a result, this contraband was properly seized by an officer performing his legal duty. I would characterize this not only as a reasonable seizure, but one which the officer was duty bound to perfect.

MARY JANE TRAPP, J., concurs with Concurring Opinion.

{¶52} I concur with the majority's opinion, and I write separately because the facts presented in this case present an excellent opportunity to further break down and clarify Fourth Amendment analysis in the automobile context.

{¶53} This case presents three distinct search issues, with three unique analyses. The factual situation can be broken down into three stages: 1) the initial search for the gun and sweep of the Buick with a flashlight; 2) the seizure of the ecstasy; and 3) the seizure of the heroin.

{¶54} **Flashlight Sweep and Initial View of Ecstasy**

{¶55} The first action taken by police was the search for the gun. The police were told by a bystander, after having searched the white Jeep, that the gun might have been in the blue Buick. The officer then shined a flashlight through the window of the parked Buick in search of the gun. The Fourth Amendment was not implicated during this initial flashlight sweep of the outside of the vehicle. The act of shining a flashlight to "illuminate the interior of [a] car trenche[s] upon no right secured to the latter by the Fourth Amendment." *Texas v. Brown* (1983), 460 U.S. 730, 740, 103 S.Ct. 1535, 75

L.Ed.2d 502. See, also, *State v. Mesley* (1999), 134 Ohio App.3d 833, 838, citing *Oliver v. U.S.* (1984), 466 U.S. 170, 180-181, 104 S.Ct. 1735, 80 L.Ed.2d 214.

{¶56} Therefore, when the police observed the ecstasy on the dashboard, they were not required to have supported this search with probable cause or a warrant, as would have been the case under the Fourth Amendment. The ecstasy was in "open view," and "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. U.S.* (1967), 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576. See, also, *State v. Lang* (1996), 117 Ohio App.3d 29, 34.

{¶57} While viewing of the ecstasy does not implicate the Fourth Amendment, its seizure would. This brings us to the second stage of analysis.

{¶58} **Seizure of the Ecstasy**

{¶59} The seizure of the ecstasy from Mr. Miller's car is the first time the Fourth Amendment is implicated. While Fourth Amendment protections have been substantially eroded, particularly when it comes to one's vehicle, some expectation of privacy in connection with the personal automobile does remain.

{¶60} Thus, in order to seize the ecstasy from the Buick, the police must have had a search warrant, or they had to have been able to meet the requirements of an exception to the warrant rule. Here, the police had two exceptions to the warrant requirement at their disposal.

{¶61} Initially, as the majority explains, the police could have entered the vehicle and seized the ecstasy under the automobile exception. See *Carroll v. U.S.* (1925), 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543; *California v. Acevedo* (1991), 500 U.S. 565, 111

S.Ct. 1982, 114 L.Ed.2d 619. The automobile exception requires that the police have probable cause to search the vehicle, but does not require a warrant because of the mobile nature of the automobile. See *U.S. v. Ross* (1982), 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572. The viewing of drugs or other contraband in open view within a vehicle constitutes probable cause. See *Lang*, supra.; *State v. Fadenhotz* (June 13, 1991), 8th Dist. Nos. 60865, 60866, 1991 Ohio App. LEXIS 2751. Therefore, the police could have entered the vehicle and seized the ecstasy pursuant to the automobile exception, because "viewing the contraband created the necessary probable cause to intrude into the automobile and seize the [drugs]." *Lang* at 35, citing *State v. Harris* (1994), 98 Ohio App.3d 543.

{¶62} The majority, nor the parties, addressed a second exception to the warrant requirement available to the officers. The police could have seized the ecstasy pursuant to the search incident to arrest exception. "[C]ircumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Arizona v. Gant* (2009), 556 U.S. 332, 129 S.Ct. 1710, 1719, 173 L.Ed.2d 485, quoting *Thornton v. U.S.* (2004), 541 U.S. 615, 632, 124 S.Ct. 2127, 158 L.Ed.2d 905 (Scalia, J., concurring in judgment). Mr. Miller admitted to possession of the ecstasy and was taken into custody, therefore its seizure from the dashboard of his car fell lawfully within the search incident to arrest exception to the warrant requirement; the ecstasy was evidence of the crime for which he was being arrested.

{¶63} **Seizure of the Heroin**

{¶64} The police seizure of the heroin from Mr. Miller's car was lawful pursuant to yet another exception to the warrant requirement, the "plain view" exception. Under the plain view exception, "objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence." *Harris v. U.S.* (1968), 390 U.S. 234, 236, 88 S.Ct. 992, 19 L.Ed.2d 1067. An object that "comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant." *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 465, 91 S.Ct. 2022, 29 L.Ed.2d 564.

{¶65} The three requirements that must be met to invoke the plain view exception are present in this case. "'First, the initial intrusion must have been legitimate. Second, the police must have inadvertently discovered the object. Third, the incriminating nature of the object must have been immediately apparent.'" *State v. Flowers*, 11th Dist. No. 2009-L-103, 2010-Ohio-2952, ¶23, quoting *State v. Mitchell*, 11th Dist. No. 2004-L-071, 2005-Ohio-3896, ¶19.

{¶66} The police were lawfully present in Mr. Miller's vehicle under either the automobile or the search incident to arrest exceptions. The heroin was viewed inadvertently by the police upon picking up the bag of ecstasy on Mr. Miller's dashboard, as it was resting underneath the ecstasy, and the illegal nature of the heroin was readily apparent to any trained police officer. Therefore, the heroin was lawfully seized pursuant to the "plain view" exception to the warrant requirement and should not have been suppressed by the trial court.