

[Cite as *State v. Short*, 2018-Ohio-3202.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

*Plaintiff-Appellee*

V.

RONNIE R. SHORT

*Defendant-Appellant*

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Appellate Case No. 27712

Trial Court Case No. 2017-CR-831

(Criminal Appeal from  
Common Pleas Court)

## OPINION

Rendered on the 10th day of August, 2018.

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WELBAUM, P.J.

{¶ 1} This case is before us on the appeal of Defendant-Appellant, Ronnie Short from his conviction and sentence for aggravated possession of drugs, following a no-contest plea to the charge. Short's sole assignment of error is that the trial court erred in overruling his motion to suppress because the police lacked probable cause for his arrest and search.

{¶ 2} We conclude that the arresting officer had probable cause to conclude that Short violated R.C. 2923.12(A)(1), which prohibits the carrying of concealed weapons. Even if the arresting officer mistakenly believed that Short's sword was concealed, the officer's conduct was not sufficiently deliberate that exclusion could meaningfully deter the conduct, nor was the officer's conduct sufficiently culpable that deterrence would be worth the price the justice system would pay. Accordingly, the judgment of the trial court will be affirmed.

#### I. Facts and Course of Proceedings

{¶ 3} On April 25, 2017, an indictment was filed charging Short with aggravated possession of drugs, which is a fifth degree felony. The charge arose after Short's arrest, when drugs were found in his possession during a search at the jail. After pleading not guilty, Short filed a motion to suppress on June 7, 2017, and the trial court heard evidence at a hearing held on July 19, 2017. At the end of the hearing, the trial court overruled the motion to suppress. Short then pled no contest to the charge on August 2, 2017, and was sentenced to up to five years of community control. This appeal followed.

{¶ 4} At the suppression hearing, only one witness, the arresting officer, testified,

and there is no real dispute about the relevant facts. On October 12, 2016, at around 8:26 p.m., Miamisburg Police Officer Matthew Armstrong was dispatched to 813 Johnson Avenue in Miamisburg, Ohio, on a report of a weapons complaint. Armstrong had been employed as a patrol officer for the Miamisburg Police Department for five years; he also had previously been employed for six years as a police officer with another Ohio police department.

{¶ 5} The report from the dispatcher indicated that “Ronnie Short in a red Dodge truck had exited his vehicle and went [sic] at the complainant with a sword.” Transcript of Proceedings (“Tr.”), p. 11. When Officer Armstrong arrived at the scene, he recognized a red truck that he had seen during prior encounters with Short. According to the police report, Short flagged down Armstrong and told him that another person had beaten Short’s truck with a bat.

{¶ 6} Armstrong asked Short to exit his vehicle and patted him down for weapons. During the search, Armstrong located a pocketknife, but this was not the weapon that was involved in the incident. Armstrong placed Short in the back of his cruiser and then spoke with Jason Hayes (“Jason”), who was on the scene. As noted in Armstrong’s police report, “ ‘Jason stated that he was in the street working on Justin Gilbert’s truck when Short drove past and yelled out of the truck, ‘I have something for you, Motherf\* \* \*.’ [Jason] yelled back at [Short] and [Short] exited the truck with a sword, waving it around in the air.’ ” Tr. at p. 32, quoting from State’s Ex. 1, p. 4. Jason further said that he “ ‘grabbed a baseball bat for protection and then yelled at [Short] to get in his truck \* \* \*.’ ” *Id.*

{¶ 7} At the time of the incident, it was dark outside. Jason said Short’s weapon

was a big, long sword, and he held his hands up to describe how long it was. Armstrong also spoke with another person on the scene, Justin Gilbert (“Justin”), who indicated that Short was waving the sword around, swearing.

{¶ 8} After speaking with Jason and Justin, Officer Armstrong advised Short of his *Miranda* rights; Short indicated that he understood the rights. At some point, Short told Armstrong that he stopped because he was tired of them (presumably Jason and Justin) yelling at him and bullying him. Ultimately, Armstrong learned that Jason had, indeed, hit Short’s truck a few times with a baseball bat. He also found out that Jason somehow came into possession of Short’s cell phone and hid it in his own car. Armstrong eventually arrested Jason for lying to him about the incident.

{¶ 9} In the meantime, another police officer arrived, and Short’s truck was searched. The officers found a hammer and a large butcher-style knife, but the witnesses said this was not the sword Short had used when he exited the truck. Short subsequently admitted that he had a sword in his bedroom, and he agreed to show it to Officer Armstrong. The sword was then retrieved from the bedroom and brought to the scene, where both Jason and Justin identified it as one they had seen. At that point, Short was arrested for carrying a concealed weapon and was taken to the Montgomery County Jail. After a search at the jail revealed contraband, Short was charged with aggravated possession of drugs.

{¶ 10} With respect to the arrest for carrying a concealed weapon, Officer Armstrong testified that when he spoke initially with Justin and Jason, they said that Short “exited the truck with the sword in his hands. He didn’t exit and then get back in to get it.” Tr. at p. 22. At the suppression hearing, Armstrong also recited the following facts

from his report as reasons why he arrested Short for carrying a concealed weapon:

Based on the following facts I then arrested Ronnie [Short] for carrying a concealed weapon. Ronnie directed me to a sword, which he did have in his bedroom. Ronnie knew where the sword was without having to find it. Ronnie's residence is only a few houses south of the area where the altercation took place. Witnesses stated Ronnie returned to the residence prior to his arrival. Ronnie admitted he returned to the residence prior to my arrival.

After locating the sword, Justin positively identified it as being the sword Ronnie had. Jason identified the sword as being the sword Ronnie had. The two witnesses observed Ronnie exit his vehicle with the sword; therefore, the vehicle itself concealed the sword, but allowed it to be ready at hand. Ronnie's action of exiting the vehicle waving the sword indicated that the sword was being kept ready at hand as neither Ronnie nor the others involved stated Ronnie had to retrieve the sword from some other location.

Tr. at pp. 23-24, quoting from State's Ex. 1 at p. 5.

{¶ 11} Officer Armstrong admitted that there was no evidence of the sword's location when it was in the truck, because none of the witnesses saw the sword before the incident. In addition, the sword was obviously not in the truck when Armstrong arrived at the scene.

{¶ 12} After hearing the evidence, the trial court overruled the motion to suppress. The court concluded that the sword was concealed as to the observers, who were away

from the truck, and that Officer Armstrong had probable cause for the arrest. Alternatively, the court held that even if Armstrong had been mistaken in his probable cause determination, there was no evidence of systematic wrongdoing by the officer. As was indicated, after the court's decision to overrule the motion to suppress, Short pled no contest to the drug charge and was sentenced accordingly.

## II. Motion to Suppress

**{¶ 13}** Short's sole assignment of error states that:

The Trial Court Erred in Overruling Defendant-Appellant's Motion to Suppress as the Evidence Produced at the Hearing Did Not Support the Judgment of the Trial Court that the Miamisburg Police Officer Had Probable Cause to Arrest and, Therefore, Search the Defendant-Appellant in Violation of Defendant-Appellant's Fourth Amendment Rights to the United States Constitution and Article I, Section 14 of the Ohio Constitution.

**{¶ 14}** Under this assignment of error, Short contends that Officer Armstrong did not have a reasonable belief of his guilt based on the totality of the circumstances. As support for this assertion, Short points first to the fact that there was no evidence that he was concealing a sword in the truck, because there was no evidence where the sword was located before he got out of the truck. For the same reason, Short contends that there was also no evidence that the sword was "ready at hand" for purposes of a concealed weapons charge.

**{¶ 15}** In responding to the assignment of error, the State argues that alternate bases for probable cause to arrest existed under the menacing and aggravated menacing

statutes. The State further argues that, even if we limit our analysis to the concealed weapons charge, Armstrong had probable cause because the vehicle itself concealed the sword; in addition, the requirement of having a weapon “ready at hand” was satisfied because Short exited his vehicle while holding the sword. Finally, the State argues that, even if we conclude that the police officer lacked probable cause for an arrest, a good faith exception applied and prevented exclusion of any evidence.

{¶ 16} “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.” *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Here, no credibility issues exist because the pertinent facts are undisputed. As a result, our review is de novo.

{¶ 17} In felony cases, Article I, Section 14 of the Ohio Constitution and the Fourth Amendment to the United States Constitution provide the same protections to defendants. *State v. Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, ¶ 16. As a result, whether motions are brought under state or federal grounds, all unreasonable searches and seizures are prohibited. *Id.* at ¶ 17.

{¶ 18} However, “[a] warrantless arrest that is based upon probable cause and occurs in a public place does not violate the Fourth Amendment. \* \* \* A reasonably

prudent person must, at the time of arrest, believe that the person placed under arrest was committing or had committed a criminal offense.” *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶ 66.

{¶ 19} Probable cause is evaluated by looking at the totality of the circumstances. This is a “ ‘practical, nontechnical conception.’ ” *Illinois v. Gates*, 462 U.S. 213, 231, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), quoting *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). “ ‘In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’ ” *Id.*, quoting *Brinegar* at 175. Accord *State v. Etherington*, 172 Ohio App.3d 756, 2007-Ohio-4097, 876 N.E.2d 1285, ¶ 20 (2d Dist.).

{¶ 20} Probable cause is also “determined by examining the historical facts, i.e., the events leading up to a stop or search, ‘viewed from the standpoint of an objectively reasonable police officer.’ ” *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 14, quoting *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). See also *State v. Carter*, 2d Dist. Montgomery No. 19105, 2002 WL 538871, \*2 (Apr. 12, 2002).

{¶ 21} In *Godwin*, the Supreme Court of Ohio focused on the fact that probable cause does not require officers to accurately predict that convictions will result. *Godwin* at ¶ 15. Thus, in that case, which involved unapproved posting of traffic-control signs, the court emphasized that the issue for probable cause purposes was not how well a police officer understood the city ordinances that required authorization of the posting of traffic-control devices, but whether an objectively reasonable officer would have believed



that the defendant's conduct was a traffic violation, "based on the totality of the circumstances known to the officer at the time of the stop." *Id.* at ¶ 16.

{¶ 22} As was noted, Officer Armstrong concluded that Short had violated R.C. 2923.12(A)(1), which provides, in relevant part, that "[n]o person shall knowingly carry or have, concealed on the person's person or concealed ready at hand \* \* \* [a] deadly weapon other than a handgun \* \* \*."

{¶ 23} Both sides have cited *In re Robert B.*, 186 Ohio App.3d 389, 2009-Ohio-3644, 928 N.E.2d 746 (2d Dist.). Short cites this case for the fact that concealment is an essential element of the crime, while the State focuses on the case's definition of "concealed." In *Robert B.*, we stated that "[a] weapon is considered to be concealed 'if it is so situated as not to be discernible by ordinary observation by those near enough to see it if it were not concealed, who would come into contact with the possessor in the usual associations of life.' " *Id.* at ¶ 24, quoting *State v. Pettit*, 20 Ohio App.2d 170, 174, 252 N.E.2d 325 (4th Dist.1969). We also "stressed that 'a concealed weapon may emerge into plain view for seizure purposes by the movement of a person or an object.' " *Id.*, quoting *State v. Thornton*, 2d Dist. Montgomery No. 18545, 2001 WL 468419 (May 4, 2001).

{¶ 24} In *Thornton*, the police found a loaded gun on the front passenger floorboard after the driver fled from the vehicle; after being apprehended, the driver was arrested for carrying a concealed weapon and drug abuse. *Id.* at \*1. The driver was later charged with possession of crack cocaine, which was found when he was patted down at the jail. *Id.* Following an adverse suppression ruling, the driver pled no contest to the drug charge and appealed. One ground on appeal was that "the officers did not

have probable cause to arrest Defendant because the weapon found in the vehicle was not concealed \* \* \*.” *Id.* at \*3. We stated that “[i]t was reasonable for the officer to assume that the [weapon] would have been concealed from his view had the passenger not left the vehicle”; however, due to the driver’s movement, the gun then came into the officer’s plain view. *Id.*

**{¶ 25}** We then said that a more difficult question was whether the officer had probable cause to believe the driver had “constructive possession” of the gun before fleeing the vehicle. In this regard, we noted that if the driver had remained in the vehicle, he could have reached over and gained control of the weapon. We also observed that “[i]t may be that a jury might have acquitted [the defendant] of the carrying concealed weapon charge, but the police officers in this case had probable cause to believe that [he] had carried a concealed weapon prior to his arrest.” *Id.* at \*4.

**{¶ 26}** The facts in the case before us differ to some extent, but the relevant consideration is what the officer might reasonably have concluded at the time of the arrest. As in *Thornton*, Short may ultimately have been acquitted of the concealed weapon charge. However, Officer Armstrong could reasonably have concluded, under the totality of the circumstances, that the sword was concealed before Short exited the truck and that there was probable cause for an arrest on this charge. Armstrong was not required to correctly predict that Short would be convicted of the charge.

**{¶ 27}** Moreover, even though the witnesses did not say that they saw the sword before Short exited the truck, this point actually suggests that the sword was not visible to bystanders. Specifically, the witnesses’ attention was focused on the truck when Short made an insulting comment, and also when Jason replied to the comment. In view

of these facts, the witnesses likely would have noticed if the sword were plainly displayed before Short exited the truck. It is possible that the witnesses simply did not notice or were distracted. However, we do not think the trial court erred in placing emphasis on what the bystanders were able to see.

**{¶ 28}** As noted, Short also argues that the sword was not “ready at hand” as R.C. 2923.12(A) requires, because it could have been anywhere in the truck. “ ‘Ready at hand’ means so near as to be conveniently accessible and within immediate physical reach.” *State v. Miller*, 2d Dist. Montgomery No. 19589, 2003-Ohio-6239, ¶ 14, quoting *Porello v. State*, 121 Ohio St. 280, 168 N.E. 135 (1929). In view of the undisputed facts, the sword was obviously “ready at hand,” because Short did not stop the truck, go to another part of the vehicle (like a trunk) that was inaccessible, and retrieve the sword. Instead, the witnesses said that Short “exited the truck with the sword in his hands. He didn’t exit and then get back in to get it.” Tr. at p. 22.

**{¶ 29}** Accordingly, the trial court did not err in concluding that the police had probable cause to arrest Short for a violation of R.C. 2923.12(A)(1). Based on this conclusion, we need not consider the State’s alternate argument that the police could also have arrested Short for menacing or aggravated menacing. However, we did note in *Thornton* that the police could have arrested the defendant for other charges, including fleeing and eluding a police officer. *Thornton*, 2d Dist. Montgomery No. 18545, 2001 WL 468419, at \*4.

**{¶ 30}** Alternatively, the trial court held that even if Officer Armstrong lacked probable cause for arresting Short for a concealed weapons charge, the evidence should not be excluded because it did not “appear that this was systematic wrongdoing by a

police officer.” Tr. at p. 48. Again, we agree with the trial court.

**{¶ 31}** “When an officer acts with an objectively reasonable, good-faith belief that his or her conduct is lawful, the deterrence rationale for the exclusionary rule loses force.” *Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, ¶ 33, citing *Davis v. United States*, 564 U.S. 229, 241, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). “To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Herring v. United States*, 555 U.S. 135, 144, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009). *Accord State v. Nelms*, 2017-Ohio-1466, 81 N.E.3d 508, ¶ 15 (2d Dist.).

**{¶ 32}** Short contends that Officer Armstrong did not make a mistake based on good faith, but fails to indicate why this is so. In light of the above discussion, Officer Armstrong’s conduct, even if mistaken, would not fit within the requirements for excluding the evidence.

**{¶ 33}** Accordingly, Short’s sole assignment of error is without merit and is overruled.

### III. Conclusion

**{¶ 34}** Short’s sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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DONOVAN, J. concurs.

FROELICH, J., concurring in judgment only.

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