

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93214**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**SHARON A. DAILEY**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No.CR-520579

**BEFORE:** Blackmon, J., McMonagle, P.J., and Sweeney, J.

**RELEASED:** May 6, 2010

**JOURNALIZED:**

**ATTORNEYS FOR APPELLANT**

William D. Mason  
Cuyahoga County Prosecutor

R. Paul Racette  
Assistant County Prosecutor  
9<sup>th</sup> Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

**ATTORNEY FOR APPELLEE**

Martin J. Keenan  
Buckeye Legal Center  
11510 Buckeye Road  
Cleveland, Ohio 44104

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant state of Ohio appeals the trial court's decision, which granted appellee Sharon Dailey's motion to suppress evidence. The state of Ohio assigns the following error for our review:

**"I. The trial court erred in granting Defendant-Appellee's motion to suppress \* \* \* JE 4/21/09."**

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶ 3} On February 9, 2009, the Cuyahoga County Grand Jury indicted Dailey for one count of drug possession. Dailey entered a not guilty plea and filed a motion to suppress the evidence. On April 17, 2009, the trial court conducted a hearing on Dailey's motion to suppress.

### **Suppression Hearing**

{¶ 4} At the suppression hearing, Cleveland Metropolitan Housing Authority ("CMHA") police officer Christopher Svec testified that on November 28, 2008, at approximately 1:00 a.m., while on routine patrol in the 2300 block of Central Avenue, he observed a Chevy S-10 truck traveling at a slow rate of speed. Officer Svec observed the vehicle traveling about 15 miles per hour in a 25 mile per hour zone and the vehicle's driver was turning her head from left to right.

{¶ 5} As he followed her, he used his police computer to attempt to determine whether the car was stolen. Unsuccessful with his computer, he

contacted dispatch to run the vehicles plates. The information from the Bureau of Motor Vehicles ("BMV") indicated the vehicle was not listed as stolen; however, the owner was deceased. Officer Svec continued to follow the vehicle until it began to pull onto the interstate highway. At this point, he stopped the vehicle.

{¶ 6} Officer Svec approached the vehicle, and advised Dailey, the driver, that the information on the vehicle indicated the owner was deceased.

Dailey told Officer Svec the car belonged to her father who had recently died. He then asked her to step out of the vehicle and provide identification.

{¶ 7} While Dailey was looking for her identification, Officer Svec began shining his flashlight in her purse and observed a pill bottle. He inquired about the contents of the bottle, Dailey indicated that she did not know what was in the bottle, and he asked her permission to examine the bottle and she consented. Upon inspecting the bottle, he discovered one pill of suspected ecstasy, and subsequently arrested Dailey.

{¶ 8} Officer Svec stated that the vehicle had not been reported stolen and he could not remember the vehicle owner's name. At the close of the hearing, the trial court took the matter under advisement; thereafter, the trial court granted the motion to suppress and the state of Ohio appealed.

**State's Assigned Error**

{¶ 9} In its sole assigned error, the state of Ohio argues that the trial court erred when it granted Sharon Dailey's motion to suppress the pill seized from her purse by Officer Svec. The trial court's journal entry granting Dailey's motion to suppress is without either an opinion or factual findings. Nevertheless, the record is implicit that Officer Svec did not have a reasonable, articulable basis for stopping Dailey. *State v. Dupree* (Apr. 9, 1991), 2<sup>nd</sup> Dist. No. 11907.

{¶ 10} Under *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, an investigatory stop must be based on reasonable grounds and an officer may not seize every person he sees. *Sibron v. New York* (1968), 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917. Consequently, before an investigatory stop is deemed reasonable, there must exist evidence that the officer could point to that specifically showed that the defendant or suspect is engaged in criminal activity. The evidence must be specific, articulable facts from the totality of the circumstances. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, cert. denied (1988), 488 U.S. 910, 109 S.Ct. 264, 102 L.Ed.2d 252.

{¶ 11} Officer Svec stated that his reason for stopping Dailey was to determine whether the car was stolen. His basis for believing that the car was stolen was the report from BMV that the owner was deceased.

{¶ 12} During the questioning of Officer Svec, the trial judge asked him the following:

**“The Court:      How did you know the owner was deceased?”**

**The Witness:    It came back from BMV. When you run the plate, the owner of the vehicle is registered through the BMV that the owner was deceased.**

**The Court:      All right. Go ahead.” Tr. 14.**

{¶ 13} During cross-examination, the officer was asked the name of the owner, but he could not recall. He also testified that, while Dailey was looking through her purse for her driver’s license, she told him that the car belonged to her father who was deceased.

{¶ 14} The officer had no reasonable basis to believe the car was stolen. He stated that he learned the owner was deceased. The fact that a owner is deceased is not sufficient to establish the car might be stolen. The BMV did not indicate the car was stolen and nothing existed on the car that would indicate to the officer under the totality of the circumstances that the car was stolen or might be stolen.

{¶ 15} It is questionable whether Officer Svec learned that the owner was deceased from the BMV. The officer could not tell the court the owner’s name. He admitted that he learned from Dailey the car belonged to her deceased father. Accordingly, under these circumstances, the officer had no reasonable, articulable basis for the stop.

{¶ 16} The officer also said that Dailey was driving slowly, but not illegally. He further testified that she was looking from right to left, also not illegal, and that the location was a high crime area. However, these factors together are insufficient to justify a *Terry* stop when the driver has not raised a reasonable suspicion of some criminal activity.

{¶ 17} Even adding to these factors that the owner was deceased is insufficient to justify the stop under *Terry*. A *Terry* stop is valid only when the officer has a reasonable suspicion of criminal activity. Since the stop was invalid, therefore, any items seized are fruits of the poisonous tree and must be suppressed. *State v. Loyer*, Cuyahoga App. No. 87995, 2007-Ohio-716, citing *Silverthorne Lumber Co. v. United States* (1920), 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319.

{¶ 18} We need not reach whether Officer Svec had a right to shine his flash light in Dailey's purse and whether she consented to the search. The investigatory stop was invalid and any actions thereafter were invalid.

{¶ 19} We are concerned, however, with the CMHA police's action in stopping a person off of CMHA property. Officer Svec said he had this authority under the "mutual aid agreement." Officer Svec stated that "basically the whole City of Cleveland" is within CMHA's domain as long as "we are working in the capacity of a police officer for CMHA police department." Tr. 9. We are unsure what this means. We find nothing in

this record or in our research that gives CMHA police the authority to investigate crimes that are not on CMHA property while not engaged in a pursuit.

{¶ 20} When Dailey was stopped she was not on CMHA's property. When she was observed she was not on CMHA's property; however, the defense failed to pursue this issue.

{¶ 21} Finally, the officer stated he could not retrieve information regarding the car's owner from his computer, yet dispatch told him that according to the BMV the owner was deceased. Tr. 18. The trial court was within its right to believe he learned this information from Dailey. The trial judge is in a position to observe the demeanor and judge the credibility of the witness. *State v. Chandler*, 10<sup>th</sup> Dist. No. 05AP-415, 2006-Ohio-2070, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶ 22} The above concerns demonstrate the glaring problems with this case. Accordingly, we affirm the trial court's decision to suppress the evidence, and overrule the state's sole assigned error.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.



A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and  
JAMES J. SWEENEY, J., CONCUR