IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case Nos. 2022-1227
	:	2022-1229
Plaintiff-Appellant,	:	2022-1237
	:	2022-1238
vs.	:	
	:	On Appeal from the
	:	Geauga County Court of Appeals,
JESSICA F. DUNLAP,	:	Eleventh Appellate District
	:	
Defendant-Appellee.	:	C.A. Case No. 2021-G-0037
	:	

MERIT BRIEF OF APPELLEE, JESSICA F. DUNLAP

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INTRODUCTION

The Fourth Amendment right to be free from unwarranted government intrusion is fundamental. That right was violated when Ms. Jessica Dunlap and Je'Brel Lewis were detained after reasonable suspicion that she was driving with a suspended license terminated. This court has already determined that the moment reasonable suspicion terminates, "to further detain appellee and demand that he produce his driver's license is akin to the random detentions struck down by the Supreme Court in *Delaware v. Prouse*." *State v. Chatton*, 11 Ohio St.3d 59, 63, 463 N.E.2d 1237 (1984). Ms. Dunlap asks this court to apply its holding in *Chatton* to her case, affirm the Eleventh District's decision, and remand her case for further proceedings consistent with the Eleventh District's decision.

STATEMENT OF THE CASE AND FACTS

On April 20, 2021, Jessica Dunlap was indicted in the Geauga County Common Pleas Court on one count of Improperly Handling Firearms in a Motor Vehicle in violation of R.C. 2923.16(B). (4/20/21 Indictment). Ms. Dunlap pleaded not guilty to the charge. (5/12/21 Waiver and Request to Enter Plea). Ms. Dunlap filed a motion to suppress evidence resulting from her unlawful detention. (6/11/21 Motion to Suppress). In her motion, Ms. Dunlap argued that the officer unlawfully extended a traffic stop—in violation of her Fourth Amendment rights—when he asked the driver for identification after reasonable suspicion for the stop had already terminated. (6/11/21 Motion to Suppress, p. 5). Specifically, she argued that "[w]hile Officer Centrackio may rationally infer that the Kia's owner was driving [and] thus [he was] permitted to stop the car, once he saw that the physical description of the registered owner was not the driver, [the] inference was no longer rational." (6/11/21 Motion to Suppress, p. 5).

On August 10, 2021, Ms. Dunlap and Mr. Lewis appeared for a joint hearing on their suppression motions. (8/10/21 Docket). At the hearing, the state called Officer Andrew Centrackio of the Chester Township Police Department and entered his cruiser video from the traffic stop into evidence. (8/10/21 T.p. 3). Officer Centrackio testified that, on March 15, 2021, he was running license plate numbers on passing vehicles in Geauga County, Ohio. (8/10/21 T.p. 7). One of those vehicles belonged to Ms. Dunlap, who was the passenger while Mr. Lewis drove her vehicle. (8/10/21 T.p. 11). After the vehicle passed, Officer Centrackio entered Ms. Dunlap's license plate number into the Law Enforcement Automated Data System ("LEADS"). (8/10/21 T.p. 7). LEADS showed that Ms. Dunlap was the registered owner of the vehicle and that she had a suspended driver's license. (8/10/21 T.pp. 7, 9-10, 20). Based on the information provided in LEADS, Officer Centrackio also knew Ms. Dunlap is a white woman. (8/10/21 T.pp. 10, 20, 23).

Officer Centrackio did not see who was driving until he approached the driver's side window. (8/10/21 T.pp. 8-9). Officer Centrackio testified that his sole purpose for stopping the vehicle was to investigate whether Ms. Dunlap was driving with a suspended license. (8/10/21 T.pp. 21, 25). He did not observe a driving infraction or have any other reason to stop the vehicle. (8/10/21 T.pp. 22, 25-26).

Upon approaching the vehicle, Officer Centrackio saw that the driver was a "taller African American male," later identified as Je'Brel Lewis. (8/10/21 T.p. 10). At that point, it was clear the registered owner was in fact not driving the vehicle. (8/10/21 T.pp. 11-12). Officer Centrackio then noticed a white woman in the passenger seat, who was later identified as Ms. Dunlap. (8/10/21 T.p. 11).

On cross-examination, Officer Centrackio agreed generally that, if he saw a younger man driving a vehicle that was registered to an older woman, he would not stop the vehicle—so long

as he did not see any traffic violations and the registered owner had a valid license. (8/10/21 T.p. 28). Even though he no longer had reason to believe Ms. Dunlap was driving without a license, Officer Centrackio decided to extend the stop. (8/10/21 T.pp. 11, 23). The officer "informed [Mr. Lewis] that he [did not] appear to be the registered [owner]" and "asked if he was valid." (8/10/21 T.p. 11). Mr. Lewis responded that he believed he had a valid license, but if he did not, then he thought that Ms. Dunlap did. (8/10/21 T.p. 13). Officer Centrackio then asked for Mr. Lewis's license—Mr. Lewis provided a state identification card. (8/10/21 T.pp. 13-14).

Officer Centrackio explained that the reason he asked for Mr. Lewis's driver's license was to document the identity of the driver in his police report and "to determine if he was valid and if he was legally able to drive the vehicle." (8/10/21 T.pp. 12-13). After running Mr. Lewis's information through LEADS, Officer Centrackio found that Mr. Lewis did not have a valid driver's license. (8/10/21 T.p. 14). Since neither Ms. Dunlap nor Mr. Lewis had a valid driver's license, the vehicle was towed. (8/10/21 T.p. 15). Before the vehicle was towed, Officer Centrackio asked whether there were any weapons in the vehicle and Mr. Lewis confirmed there was an unloaded gun. (8/10/21 T.pp. 16, 24). Officer Centrackio recovered the unloaded firearm and a magazine in the back seat. (8/10/21 T.pp. 17, 27).

After the hearing, the trial court denied Ms. Dunlap's motion to suppress. (8/11/21 Order). On September 21, 2021, Ms. Dunlap pleaded no contest to the charge and was sentenced to two years of monitored time. (11/19/21 Judgment of Conviction). After sentencing, Ms. Dunlap moved the court for a detailed judgment entry on her motion to suppress from the court. (11/20/21 Renewed Motion for Detailed Judgment). The court granted the motion and issued a detailed judgment entry on December 6, 2021. (12/6/21 Order; 12/6/21 Decision).

Ms. Dunlap appealed the trial court's denial of her motion to suppress to the Eleventh District Court of Appeals. (12/14/21 Notice of Appeal). The Eleventh District reversed the trial court's decision and remanded the case for further proceedings consistent with its opinion. *State v. Dunlap*, 11th Dist. Geauga No. 2021-G-0037, 2022-Ohio-3007, ¶ 31. The appellate court held that "the extension of the stop of the vehicle was improper once Centrackio recognized Dunlap was not the driver." *Id*. at ¶ 29. It explained that there is no exception to the reasonable suspicion requirement even for a "slight intrusion." *Id.* at ¶ 23. Thereafter, the state moved the appellate court to certify a conflict between its decision in *Dunlap* and the Ninth District's decision in *State v. Graves*, 9th Dist. Medina No. 2202, 1993 WL 261562 (July 14, 1993). The Eleventh District granted the state's request and certified the following conflict question:

> When a police officer conducts a valid vehicle stop due to the legal status of the registered owner but learns upon approach that the driver is not the registered owner, may the officer continue detention of the vehicle and its occupants to ask the driver for identification?

(9/6/22 Judgment Entry).

The state filed a jurisdictional appeal and a notice of certified conflict. (10/3/22 Notice of Appeal; 10/5/22 Notice of Certified Conflict). This court accepted the jurisdictional appeal and determined that a conflict exists between *Dunlap* and *Graves*. (12/28/2022 Case Announcements, 2022-Ohio-46701). Further, this court ordered that the jurisdictional appeals and certified conflict cases in Ms. Dunlap and Mr. Lewis's cases be consolidated. *Id*.

ARGUMENT

STATE OF OHIO'S PROPOSITION OF LAW:

When a police officer conducts a valid vehicle stop due to the legal status of the registered owner but learns upon approach that the driver is not the registered owner, the officer may continue detention of the vehicle and its occupants to ask the driver for identification.

CERTIFIED CONFLICT QUESTION

When a police officer conducts a valid vehicle stop due to the legal status of the registered owner but learns upon approach that the driver is not the registered owner, may the officer continue detention of the vehicle and its occupants to ask the driver for identification?

JESSICA DUNLAP'S PROPOSITION OF LAW:

When a police officer conducts a valid vehicle stop because the registered owner has a suspended driver's license, the detention of the vehicle must end when the officer learns the driver is not the registered owner, unless there is additional reasonable suspicion of criminal activity.

The Fourth Amendment prohibits unreasonable searches and seizures. Fourth Amendment to the U.S. Constitution; *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979). The Ohio Constitution affords the same protection. Article I, Section 14 of the Ohio Constitution; *State v. Hoffman,* 141 Ohio St.3d 428, 2014-Ohio-4795, 25 N.E.3d 993, ¶ 11. Stopping a vehicle and detaining its occupants constitutes a seizure, "even though the purpose of the stop is limited and the resulting detention quite brief." *Prouse* at 653, citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-558, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976). When evaluating the constitutionality of a seizure, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Prouse* at 654. Here, the government had a

legitimate interest in stopping Ms. Dunlap's vehicle to determine if she was driving with a suspended license. However, the intrusion on her Fourth Amendment interest became unreasonable once the officer learned that she was not driving the vehicle.

I. There must be articulable and reasonable suspicion to initiate a traffic stop

An officer must have "some quantum of individualized suspicion" to effectuate a traffic stop. *Prouse* at 654-55. The U.S. Supreme Court drew a clear line in *Delaware v. Prouse* that a roving traffic stop to check for a driver's license and vehicle registration is not a reasonable seizure. *Id*. at 663. Rather, the officer must have "at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." *Id*. at 663. In addition, a traffic stop "must be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

A. When the officer does not have information that negates an inference that the registered owner is the driver of the vehicle, there is reasonable suspicion to initiate a traffic stop if the owner has a suspended license

To initiate a traffic stop solely for the inference that the driver is operating the vehicle without a valid license, there must be reasonable and articulable suspicion supporting that inference. *Kansas v. Glover*, ___ U.S. ___, 140 S.Ct. 1183, 1186, 206 L.Ed.2d 412 (2020). In *Glover*, the officer who made the traffic stop ran the license plate number of a truck on the public roadway and learned that the registered owner had a revoked driver's license. *Id*. at 1190. From that information, the officer "used common sense to form a reasonable suspicion that a specific individual was potentially engaged in specific criminal activity—driving with a revoked license." *Id*. When an officer runs the license plate number of a vehicle and finds that the registered owner's

driver's license is suspended, it is reasonable to make the inference that the owner is driving the car. However, this inference is only reasonable when the officer does not have information that negates "an inference that the owner is the driver of the vehicle." *Id*.

Here, Ms. Dunlap does not contest that the initial traffic stop was constitutional. *State v. Dunlap*, 11th Dist. Geauga No. 2021-G-0037, 2022-Ohio-3007, ¶ 16. Since Officer Centrackio did not see who was driving the vehicle, it was reasonable for him to assume—prior to approaching her vehicle—that she was driving with a suspended license. However, once that suspicion was dispelled, further detention of the vehicle was unconstitutional.

II. In *State v. Chatton*, this court held that when the initial reasonable suspicion for a traffic stop is dispelled, the detention of the vehicle must end

This court has already held that the detention of the vehicle must end when the reasonable suspicion justifying the stop no longer exists. *State v. Chatton*, 11 Ohio St.3d 59, 62-63, 463 N.E.2d 1237 (1984). In *Chatton*, the officer initiated a traffic stop for a suspected traffic violation: failure to properly display license plates. *Id.* at 60. Prior to approaching the vehicle, the officer had reasonable suspicion that the driver had committed a traffic violation and thus the initial detention of the vehicle was justified. *Id.* However, upon approaching the vehicle, the officer saw a temporary license placard ("temporary tag") lying on the rear deck of Chatton's vehicle. *Id*. at 61. This court explained that "[t]he inquiry herein must focus on whether * * *, the police officer in this case, harbored an 'articulable and reasonable suspicion' that appellee was violating the law at the time appellee was detained and ordered to produce his driver's license." *Id*.

The officer in *Chatton* testified that he continued detaining the vehicle after seeing the temporary tags because he felt he "had a duty to investigate the identity of the operator of the vehicle to determine if he was the owner or had the owner's permission to operate the vehicle." *Id*. at 61. The officer further testified that "in his experience, temporary tags were occasionally used

to conceal the identity of stolen vehicles and were otherwise used illicitly." *Id*. This court refused to allow for the extension of traffic stops for either reason and found that a "generalized statement that temporary tags are sometimes used in criminal activity" was not sufficient grounds to extend a traffic stop without any reasonable suspicion. *Id*. at 62. And, because the initial reason for the stop was dispelled before the officer asked for the driver's identification, this court held that the officer no longer had "justification to detain Chatton and demand production of his driver's license." *Id*. By the time he asked for identification, the officer's reasonable suspicion that the driver was operating the vehicle illegally ceased to exist and therefore, it was unconstitutional. *Id.* at 63. This court refused to allow "searches of the citizens of this state and their vehicles simply because of the lawful and innocuous presence of temporary tags," finding "[t]he potential for abuse if such a rule were in effect, through arrogant and unnecessary displays of authority, cannot be ignored or discounted." *Id.*

This court held that once the officer noticed the temporary tag in the rear window, he no longer had reasonable suspicion and, from that point forward, the officer was engaged in an unconstitutional roving traffic stop to check for a driver's license and vehicle registration. *Id.* At most, once reasonable suspicion ceases to exist, the officer may only inform the driver of the reason for the stop, but the driver then is free "to continue on his way without having to produce his driver's license." *Id.*

III. Ohio appellate courts are split on whether *Chatton* allows an officer to ask for identification even when reasonable suspicion is dispelled upon approaching the vehicle

The Fifth, Eighth, Ninth, and Eleventh District Courts have all considered the issue before this court: whether a police officer can continue to detain a vehicle once the officer sees that the driver is not the registered owner. *State v. Brentlinger*, 5th Dist. Delaware No. 19 CAC 05 0032,

2019-Ohio-4989; *State v. Dowdell,* 8th Dist. Cuyahoga No. 90200, 2008-Ohio-3080; *State v. Graves,* 9th Dist. Medina No. 2202, 1993 Ohio App. LEXIS 3564 (July 14, 1993); *State v. Dunlap*, 11th Dist. Geauga No. 2021-G-0037, 2022-Ohio-3007. The Fifth and Eleventh districts properly applied *Chatton* to this issue and found that the officer must end the detention once reasonable suspicion ceases to exist. *Brentlinger* at ¶ 15-19; *Dunlap* at ¶ 17-20. In contrast, the Eighth and Ninth districts have held that continued detention to determine the driver's identity is only "slightly intrusive" and does not run afoul the Fourth Amendment. *Graves* at *6; *Dowdell* at ¶ 9. As the Eleventh District noted in *Dunlap*, the Eighth and the Ninth district opinions "stretch the bounds of *Chatton* and the general principle that reasonable suspicion ceases to exist once the officer becomes aware the grounds for instituting the stop are no longer valid." *Dunlap* at ¶ 23.

A. The Fifth and Eleventh districts properly applied *Chatton*'s Fourth Amendment analysis

The Fifth District Court of Appeals and the Eleventh District Court of Appeals applied *Chatton* to hold that once an officer's reasonable suspicion that the registered owner is the driver of the vehicle is dispelled, the detention of the vehicle and its occupants must end. *Brentlinger* at ¶ 15-19; *Dunlap* at ¶ 17-20.

1. The Fifth District properly applied *Chatton* in *State v. Brentlinger*

In *Brentlinger*, the officer conducted a "random registration check" of a vehicle and found that the license of the registered owner, a woman, was suspended. *Brentlinger* at ¶ 3. The officer initiated a traffic stop and upon illuminating the driver's side of the vehicle, he saw that a man was driving the vehicle. *Id*. at ¶ 4. Even though the driver was clearly not the registered owner, the officer still approached the vehicle. *Id*. The officer asked for the driver's identification and "while [he] was running the license check, he detected the odor of marijuana." *Id*.

The Fifth District found that this court addressed "a similar situation" in *Chatton* and therefore, applied the legal reasoning of *Chatton* to the facts before it. *Id*. at ¶ 15. The Fifth District explained that "[l]ike the officer in *Chatton*, we find [the officer] no longer maintained a reasonable suspicion Appellant was the registered owner when he illuminated the vehicle * * * and observed Appellant was not female." *Id*. at ¶ 19. Therefore, without an "independent basis to extend Appellant's detention by asking Appellant to produce his identification * * * [the officer] exceeded the constitutionally permissible scope of the detention and the trial court erred in failing to grant the Appellant's motion to suppress." *Id*.

In this case, the state argues that the Fifth District's application of *Chatton* in *Brentlinger* highlights a problem because, in the state's opinion, the *Chatton* decision requires the officer to "intentionally ignore obvious signs of illegal activity." (Merit Brief of Appellant, p. 10). However, this is not the case, and the state fails to consider the timeline of events in the *Brentlinger* case. The *Brentlinger* opinion clearly stated that the officer did not smell marijuana until he was conducting the license check, *after* he had already asked the driver for identification and *after* he had unlawfully extended the traffic stop. *Brentlinger* at ¶ 4, 14. The relevant timeframe in determining whether a request for the driver's license was reasonable is when the officer's reasonable suspicion ceases to exist. *Chatton* at 63. Once the officer does not have reasonable suspicion of criminal activity, the detention must end, and any further extension constitutes a Fourth Amendment violation. *Id.*

2. The Eleventh District properly applied *Chatton* in *State v. Dunlap*

In the present case, the Eleventh District relied on *Chatton* and *Brentlinger* to find that once an officer no longer has reasonable suspicion of the crime for which the stop occurred, a request for identification is impermissible. *Dunlap* at ¶ 17-20. As in *Chatton* and *Brentlinger*, the

officer in Ms. Dunlap's case had reasonable suspicion to stop the vehicle under the belief that Ms. Dunlap was driving under a suspended license. *Id.* at ¶ 19. However, that reasonable suspicion ceased to exist when Officer Centrackio noticed that Ms. Dunlap was not driving the vehicle. *Id.* The Eleventh District reiterated *Chatton*'s holding that, "when reasonable suspicion ceases to exist, there are no grounds to ask for identification." *Id.* Therefore, the detention should have ended before the officer asked for Mr. Lewis's identification. *Id.* The officer was permitted to inform Ms. Dunlap and Mr. Lewis of the reason for the stop, but anything more was unconstitutional. *Dunlap* at ¶ 17; *Chatton* at 63. The court explained that the reason that investigatory stops must be limited in scope is to "prevent law enforcement officers conducting 'fishing expeditions' for evidence of a crime." *Id.* at ¶ 15, citing *Wickliffe v. Hancock*, 11th Dist. Lake No. 2008-L-174, 2009-Ohio-4257, ¶ 18. The court also noted that the officer said he asked for Mr. Lewis's identification to complete paperwork regarding the stop, but "no authority [was] cited by the state to support that this provided a legally justifiable reason for continuing a stop when reasonable suspicion no longer exists." *Id*. at ¶ 19. Accordingly, the Eleventh District affirmed this court's holding in *Chatton*, "when reasonable suspicion ceases to exist, there are no grounds to ask for identification." *Id.* at ¶ 19.

B. The *Graves* decision improperly departed from this court's holding in *Chatton* to allow for the "slight intrusion" of continued detention to obtain the identification of the driver or to confirm that the vehicle is not stolen

This court certified a conflict between the Eleventh District's decision in *State v. Dunlap* and the Ninth District's decision in *State v. Graves*. (12/28/2022 Case Announcements, 2022-Ohio-46701). In *Graves*, the officer initiated the traffic stop because he saw a vehicle with a broken taillight and when he ran the license plate number he learned the driver, a man, had an outstanding warrant. *Graves,* 1993 Ohio App. LEXIS 3564 at *1. Upon approaching the vehicle, the officer

observed the driver was a woman. *Id.* at *1-2. The officer explained the reason for the stop, but then continued the detention by asking her why she was driving and for her identification. *Id.* at *2. She provided a human services card and the officer learned she did not have a valid license. *Id*.

The *Graves* court incorrectly relied on *Berkemer v. McCarty*. *Graves* at *2, citing *Berkemer v. McCarty*, 468 U.S. 420, 82 L.Ed.2d 317 (1984). The question in *Berkemer* was whether an officer needed probable cause to detain a motorist. *Berkemer* at 439. The *Berkemer* court found that an officer did not need probable cause, but the officer does need reasonable suspicion to briefly detain a motorist who is lawfully stopped. *Id*. In its analysis, the *Graves* court ignored that an officer must have reasonable suspicion "that a particular person has committed, is committing, or is about to commit a crime" to be allowed to ask a detainee "a moderate number of questions." *Id*. Instead, the court held that "[h]aving learned that the vehicle was not being driven by the registered owner, there is no prohibition against asking the identity of the driver," because when the vehicle is driven by someone other than the registered owner, there is a possibility it is stolen. *Graves* at *2.

To the contrary, this court held in *Chatton* that there is a prohibition against asking for a driver's identification once reasonable suspicion ceases to exist. *State v. Chatton*, 11 Ohio St.3d at 63, 463 N.E.2d 1237. The Eleventh District declined to follow *Graves* for that reason. *Dunlap* at ¶ 23. The Eleventh District noted that *Graves* "stretch[es] the bounds of *Chatton* and the general principle that reasonable suspicion ceases once the officer becomes aware the grounds for instituting the stop are no longer valid." *Id*. Because there are many circumstances where the registered owner of a vehicle may not be driving, "[t]o presume that any car not driven by its owner is stolen diminishes the value of the term 'reasonable suspicion' and sets the bar for detaining

individuals for further investigation incredibility low." *Id*. at ¶ 24. Because the *Graves* court failed to follow binding precedent, without justification, this court should find that the Eleventh District reached the correct conclusion in *Dunlap* and answer the certified question in the negative.

C. *Metcalf* and *Dowdell* have significant factual differences from the present case

The courts in *Metcalf* and *Dowdell* both found that it reasonable for the officer to ask for identification from the driver despite the officer knowing that the driver was not the registered owner. *State v. Metcalf*, 9th Dist. Summit No. 23600, 2007-Ohio-4001, ¶ 2; *State v. Dowdell*, 8th Dist. Cuyahoga No. 90200, 2008-Ohio-3080, ¶ 9. These cases have significant factual differences from the present case that impact the legal analysis of whether an identification request was reasonable.

1. In *Metcalf*, the officer could not tell whether the driver was the registered owner without speaking with the driver

In *Metcalf*, an officer ran the license plate number of a vehicle and learned that the vehicle's owner, Rikki Shepherd, had an expired driver's license. *Metcalf* at ¶ 2. The officer testified that he only knew the vehicle owner's name when approaching the vehicle because he did not look at any other information in his database prior to executing the traffic stop. *Id*. The Ninth District held that, because the officer did not know any of the owner's physical characteristics when he approached the vehicle, it was reasonable for him to assume that the man driving the vehicle was the owner, Rikki. *Id*. at ¶ 8. Therefore, that court held that the officer was justified in asking the driver for his identification. *Id.* Here, it was obvious that Ms. Dunlap was not the driver of the vehicle, as she is a white woman and Mr. Lewis is a Black man.

2. In *Dowdell*, there were specific and articulable facts that led to the suspicion that the vehicle was stolen

In *State v. Dowdell*, the court held that—like *Graves*—requesting identification of the driver was a "slight intrusion" because of concerns the vehicle was stolen. *Dowdell* at ¶ 9. However, unlike *Graves*, there were specific and articulable facts that raised the suspicion that the vehicle was stolen. *Id.* In *Dowdell*, officers were patrolling a "high drug area" and "observed a vehicle pull away from a stop sign at a high rate of speed, suggesting that the occupants were trying to get out of view of the police." *Id*. at ¶ 3. The police ran the license plate and learned that the owner of the vehicle had a suspended license. *Id*. Therefore, "the officers here had reason to suspect that the driver was committing a traffic offense * * *, and this suspicion was *heightened* by the fact that the vehicle pulled away from the stop sign at a high rate of speed." (Emphasis added.) *Id*. at ¶ 8. Upon approaching the vehicle, the officer observed that the registered owner was not the driver of the vehicle. *Id.* The Eighth District explained that continued detention of the vehicle after the officer learned the driver was not the registered owner was justified by additional factors. *Id.* at ¶ 9. First, the stop occurring in a high drug area and second, the appearance that vehicle was attempting to get out of view of the police. *Id.* Together, these facts enhanced the possibility that the vehicle was stolen and allowed for the continued detention of the vehicle. *Id*. at ¶ 9. Because there were specific and articulable facts that the vehicle might have been stolen, it was reasonable for the officers to further detain the vehicle despite knowing the registered owner was not driving the vehicle. *Id*. That is not the case here and nothing about Ms. Dunlap's case gave Officer Centrackio reason to believe that Ms. Dunlap's car was stolen.

D. U.S. Supreme Court dicta and other state supreme courts agree with the Fifth and Eleventh Districts

The U.S. Supreme Court in *Glover* and other state supreme courts have found that a traffic stop must end when reasonable suspicion terminates. While the *Glover* holding focused on initiating the traffic stop, the court specifically limited its holding and cautioned that additional facts could dispel reasonable suspicion. *Glover* at 1191. This limitation is consistent with the holding of the court in *Chatton*. *See Id*. The *Glover* court explained, "if an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not 'raise a suspicion that the particular individual being stopped is engaged in wrongdoing.'" *Id*. at 1191, citing *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981); *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). The *Glover* court highlighted that gender and age are two factors that could negate the inference that the registered owner was driving the vehicle, at which point reasonable suspicion of driving with a suspended license would cease to exist. *Id*.

The supreme courts of Indiana, Minnesota, and Iowa, and a Washington court of appeals have all found that reasonable suspicion to pull a car over does not confer unconditional authority to request the driver's license and registration. *See Holly v. State,* 918 N.E.2d 323 (Ind.2009); *State v. Penfield*, 106 Wash.App. 157, 22 P.3d 293 (2001); *State v. Pike*, 551 N.W.2d 919 (Minn.1996); *State v. Coleman*, 890 N.W.2d 284 (Iowa 2017). In *State v. Penfield,* a Washington appellate court cited *Chatton* when it held that the officer could not continue the detention of a driver who was clearly not the registered owner of the vehicle to ask for his license. *Penfield* at 162. While these cases are not binding on this court, they indicate that other jurisdictions who have considered this same issue reached the same conclusion as this court in *Chatton* and the Eleventh District in *Dunlap*.

IV. *Chatton* is directly applicable to the present case

The issue in the present case is the same question that this court addressed in *Chatton*: whether an officer has reasonable suspicion to continue the detention of a vehicle and its occupants after the reasonable suspicion giving rise to the traffic stop is dispelled. Like in *Chatton*, the answer must be no. Once Officer Centrackio approached the vehicle and learned that Ms. Dunlap was not driving the vehicle, he no longer had reason to suspect that either Ms. Dunlap or Mr. Lewis were committing, had committed, or were going to commit a crime. When the officer initiated the traffic stop, his only suspicion of criminal activity was based on the inference that the registered owner was driving the vehicle with a suspended license. Once that inference was dispelled, the stop became akin to an unconstitutional roving detention. *Chatton* at 63.

Officer Centrackio cited similar reasons as the officer in *Chatton* during the hearing on the motion to suppress as to why he asked for Mr. Lewis's driver's license.

> Q: What was the purpose of asking this question?
>
> A: For my purpose it was not only to let him know that he wasn't the driver – he wasn't the suspended driver and so I could document who in fact was in my report.
>
> Q: So other than documenting who was driving the vehicle for the incident report, any other reason you would have asked him this?
>
> A: Just to determine if he was valid and if he was legally able to drive the vehicle.

(8/10/21 T.pp. 12-13).

In *Chatton*, this court found that no specific facts existed to create reasonable suspicion that the driver was violating the law. *State v. Chatton*, 11 Ohio St.3d at 61, 463 N.E.2d 1237. Here too, the officer did not provide specific facts that Mr. Lewis or Mr. Dunlap were violating the law. (8/10/21 T.pp. 22, 25-26). Rather, Officer Centrackio's articulated reason for continued detention of Mr. Lewis and Ms. Dunlap were to (1) document the identity of the driver in his report and (2)

to ensure that Mr. Lewis had a valid license and was legally permitted to drive the vehicle. (8/10/21 T.pp. 21, 25). However, neither are permissible reasons to extend a traffic stop. *Kansas v. Glover*, 140 S. Ct. at 1186, 206 L.Ed.2d 412. Further, detention of a driver merely because that person is not the registered owner constitutes an unlawful seizure of individuals based on the "lawful and innocuous" practice of allowing others to operate their vehicles.

The state attempts to distinguish *Chatton* from Ms. Dunlap's case based on the "reason for the stop." (Merit Brief of Appellant, p. 9). The state incorrectly characterizes driving under suspension as an "issue of the driver's potential identity." *Id*. In both *Chatton* and the present case, the reasonable suspicion that gave rise to the traffic stop was an alleged traffic violation. *Chatton* at 60; (8/10/21 T.pp. 21, 25). Officer Centrackio did not stop the vehicle driven by Mr. Lewis to determine Mr. Lewis's identity; he stopped the vehicle because he had reasonable suspicion to believe that Ms. Dunlap was driving the vehicle under suspension. (8/10/21 T.pp. 21, 25). Therefore, this distinction is a mischaracterization and is without merit.

Further, like *Glover*, the officer in this case had two pieces of information—gender and race—to dispel the inference that Ms. Dunlap was driving under suspension. The state attempts to distinguish *Glover* arguing the court was only referring to information obtained by the officer prior to the traffic stop. (Merit Brief of Appellant, p. 11). In emphasizing the narrow scope of its holding, the court did not limit its reasoning to information obtained before the traffic stop is initiated. *Glover* at 1191. It merely stated that "the presence of additional facts might dispel reasonable suspicion." *Id*.

This court's decision in *Chatton* drew a clear line to protect the fundamental right against unreasonable seizures. As this court and others have held, when reasonable suspicion ceases to

exist, an officer may not continue to detain a vehicle unless additional facts give rise to continued reasonable suspicion. Accordingly, this court should reaffirm its holding from *Chatton*.

V. The state's reliance on irrelevant case law is misplaced

The state argues that examples of extending detentions without reasonable suspicion are supported by case law. (Merit Brief of Appellant, p. 12). However, none of the cases cited in its brief support that contention. Instead, they all held that the search at issue was constitutional based on the totality of the circumstances and officer safety. *See State v. Bobo*, 37 Ohio St.3d 177, 179, 524 N.E.2d 489 (1988) (finding that detention of a legally parked car was reasonable based on the totality of the circumstances and search of the vehicle was for officer safety); *State v. Smiley*, 9th Dist. Summit No. 23815, 2008-Ohio-1915, ¶ 20 (finding officers reasonably detained a vehicle after observing its occupants participate in a drug transaction and a limited protective search was permissible for officer safety); *State v. Matheney*, 2d Dist. Montgomery No. 26876, 2016-Ohio-7690 (finding that the officer was permitted to detain the vehicle for the length of time necessary to issue a citation a turn signal violation and for having a broken taillight). The cases cited by the state do not support its argument that reasonable suspicion to stop a vehicle confers unconditional authority to request the driver's license and registration.

Following the precedent set by this court in *Chatton* and applied by the Eleventh District in *Dunlap* would not require police officers to ignore criminal activity. (Merit Brief of Appellant, pp. 10-11). Rather, when an officer has reasonable suspicion to continue the stop after learning the registered owner is not the driver, the continued detention of the vehicle is permissible. However, continued reasonable suspicion cannot be based on information learned after the cessation of the original reasonable suspicion.

CONCLUSION

Anything less than reasonable suspicion based on specific and articulable facts is insufficient to warrant the detention of a vehicle and its occupants. *State v. Chatton*, 11 Ohio St.3d at 63, 463 N.E.2d 1237. Once a traffic stop has been properly initiated, the scope of a traffic stop must be limited to "confirming or dispelling the officer's suspicions." *Berkemer v. McCarty*, 468 U.S. at 439, 104 S.Ct. 3138. Following the legal analysis of *Graves* would allow officers to prolong traffic stops where no reasonable suspicion exists in violation of the Fourth Amendment. Therefore, Ms. Dunlap asks this court to answer the certified question in the negative, reaffirm this court's holding from *Chatton*, and affirm the Eleventh District's decision remanding Ms. Dunlap's case to the trial court for further proceedings.

Respectfully submitted,

Office of the Ohio Public Defender

/s/ *Kathleen Evans*
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Counsel for Jessica F. Dunlap

CERTIFICATE OF SERVICE

A copy of the foregoing **MERIT BRIEF OF APPELLEE, JESSICA F. DUNLAP** was served by electronic mail to Nicholas Burling, Assistant Geauga County Prosecutor, at nburling@geauga.oh.gov, on this 30th day of May, 2023.

/s/ *Kathleen Evans*
Kathleen Evans, #0100028
Assistant State Public Defender

Counsel for Jessica F. Dunlap

#1778046

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case Nos. 2022-1227
	:	2022-1229
Plaintiff-Appellant,	:	2022-1237
	:	2022-1238
vs.	:	
	:	On Appeal from the
	:	Geauga County Court of Appeals,
JESSICA F. DUNLAP,	:	Eleventh Appellate District
	:	
Defendant-Appellee.	:	C.A. Case No. 2021-G-0037
	:	

ON APPEAL FROM THE GEAUGA COUNTY COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT

APPENDIX TO MERIT BRIEF OF APPELLEE, JESSICA F. DUNLAP

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

STATE OF OHIO,	:	CASE NO. 21C000046
Plaintiff	:	JUDGE DAVID M. ONDREY
-vs-	:	
JESSICA DUNLAP,	:	**ORDER**
Defendant	:	

This matter comes on for consideration upon the Defendant's Motion to Suppress. As the grounds for such Motion are identical to the grounds asserted by her Co-Defendant, Je Brel Lewis, the decision made by this Court in Defendant Lewis' case concerning his Motion to Suppress is adopted here in its entirety. Case No. 21 C 59, *State v Lewis*. Thus, the Motion to Suppress is DENIED.

IT IS SO ORDERED.

JUDGE DAVID M. ONDREY

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 21C000046
	)	
Plaintiff	)	
	)	JUDGE DAVID M. ONDREY
-vs-	)	
	)	
JESSICA F DUNLAP	)	
	)	DECISION
Defendant	)	

This matter comes on for consideration upon the Motion of the Defendant Dunlap to Suppress. The Defendant argues her Fourth Amendment rights were violated when the vehicle she was in, which she owned but was not driving, was stopped in Chester Township by a Chester Township police officer. Dunlap seeks to suppress all of the evidence gathered after such traffic stop, claiming the Police Officer was not entitled to further detain and question the driver and the Defendant after the Police Officer discovered the driver was not a white, female, as the LEADS response to the Officer had indicated the owner of the vehicle to be. The driver of Dunlap's vehicle, co- Defendant Lewis, is black.

It is clear from the evidence the only reason the Officer stopped the vehicle was because the officer, after first determining through LEADS that the owner of the vehicle was a white female (with a suspended drivers license) could not determine who was driving the vehicle as it passed by the stationary Officer who was parked next to the highway, observing traffic, and randomly confirming proper registration on license plates, etc. Unable to tell who was driving, he pursued to make sure it was not the registered owner with a suspended drivers license.

It is also clear that once the Officer exited his own vehicle, and approached on foot the Defendant's vehicle, the Officer immediately recognized that a white female was not driving the vehicle, but rather, a black male.

The Defendants argue that having confirmed the unlicensed owner was not driving the vehicle because the driver, Lewis, was obviously not a white female, the officer then had no "specific and articulable facts" to believe Lewis was violating the law justifying further detention of Lewis nor making further inquiries of him or Dunlap. They assert the Officer's detention of Lewis and inquiry of him whether Lewis' drivers license was "valid" was an unconstitutional inquiry since Lewis had otherwise done nothing wrong when driving the vehicle past the officer's patrol car.

The State asserts the Officer was justified in making further detention because the officer now knew that the driver was not the owner of this car. The State argues this Court should adopt the reasoning of the 9th District Court of Appeals which upheld the trial court's denial of a Motion to Suppress in *State v Metcalf,* 9th Dist. Summit No. 23600, 2007-Ohio-4001. In such case the appellate court reasoned there "is no prohibition against asking the identity of the driver" after learning a stopped vehicle is not being driven by the registered owner. The court concluded that "once a motor vehicle is legitimately stopped, as in this case, the slight intrusion of asking the driver for identity is neither unwarranted, nor prohibited." *Id.* at para. 11, quoting *State v Graves,* 9th Dist. Medina No. 2202, 1993 WL 1562.

This Court agrees these circumstances justify a different result than the outcomes described in *State v Chatton*, 11 Ohio St.3d 59, 63, 463 N.E.2d 1237 (1984) and in *State v Venham,* 96 Ohio App.3d 649, 645 N.E.2d 831 (4th Dist. 1994) where further police detentions were found to be improper after, in each case, the officer had already discovered the reason for the initial traffic stop had been satisfied. In the former case, the officer discovered the vehicle's temporary tags were in the back window so the reason for the detention no longer existed. In the *Venham* case, the officers had discovered the suspect they were seeking was not in the car after all so further inquiries were unjustified. In both cases, the identity of the driver was never at issue.

In the present case, however, the officer was confronted with a new potential for criminal activity, even after discovering Dunlap was not driving this vehicle. Namely, if the registered owner of the vehicle was not driving it, then who was? This was not a question confronting the police in either *Chatton* or *Venham*. It is the same question, however, which confronted the officer in *Metcalf*, the 9th District decision cited above. Thus, this Court is disposed to agree with the outcome in *Metcalf* and find the further detention of Defendant Lewis, simply in order to determine his identity after a legitimate traffic stop, to be constitutional. Having so concluded, any evidence thereafter discovered concerning either Lewis or Dunlap was legitimately gathered.

The Motion to Suppress by Dunlap is therefore DENIED.

JUDGE DAVID M. ONDREY 12-6-2021

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

STATE OF OHIO	:	CASE NO. 21 C 000046
Plaintiff	:	JUDGE DAVID M. ONDREY
-vs-	:	**JUDGMENT OF CONVICTION**
JESSICA F. DUNLAP SSN: [redacted]3092 DOB: 02-13-1996	:	
Defendant	:	

This matter came on for sentencing on the 16th day of November 2021, the defendant being present in court with her counsel, Dawn M. Gargiulo, Chief Assistant Public Defender; and the State of Ohio being represented by Nicholas A. Burling, Assistant Prosecuting Attorney.

On September 21, 2021, the defendant entered a plea of no contest to Improperly Handling Firearms in a Motor Vehicle, in violation of R.C. 2923.16(B), a felony of the fourth degree as charged in the sole count of the indictment; along with the forfeiture specification attached to said count.

The Court accepted the defendant's plea and referred the matter to the probation department for a presentence investigation, a report of which has been completed and provided to the Court.

The defendant was asked by the Court whether she had anything to say as to why sentence should not be imposed.

Before imposing sentence, the Court afforded counsel an opportunity to speak on behalf of the defendant and also addressed the defendant personally and asked her if she wished to make a statement on her own behalf or present any evidence in mitigation of punishment.

After consideration of the record; information presented by, or on behalf of, the defendant, the prosecuting attorney, the PSI report; the defendant's ability to pay financial sanctions; and any victim impact statement(s), the Court, based upon the purposes and principles of sentencing (R.C. 2929.11) and the sentencing factors [seriousness and recidivism (R.C. 2929.12)], imposed upon the defendant the following sentence:

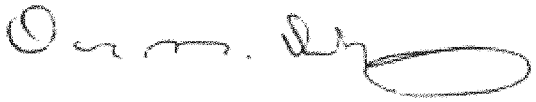
1. For Improperly Handling Firearms in a Motor Vehicle, in violation of R.C. 2923.16(B), a felony of the fourth degree as charged in the sole count of the indictment, a total of two (2) years monitored time under the conditions journalized March 7, 2019 by the Geauga County Court of Common Pleas.

Payment of court costs for which judgment is rendered (R.C. 2947.23) and execution may issue (R.C. 2949.09).

The defendant was notified and advised by the Court as required by R.C. 2929.19(B)(4), including a potential specific prison term of eighteen (18) months for violation of a community control sanction.

The court ordered the Glock 9mm handgun, Serial #BSCZ317 forfeited to the State of Ohio.

The defendant has spent one (1) day in the Geauga County jail for Case No. 21 C 000046. This credit includes jail time up to this hearing date, November 16, 2021.



DAVID M. ONDREY, JUDGE

Prepared by:
Nicholas A. Burling (#0083659)
Assistant Prosecuting Attorney

cc: Prosecutor
Defendant
Dawn M. Gargiulo, Chief Assistant Public Defender
Victim/Witness
Adult Probation
Chester Twp. Police Department

Chardon Municipal Court

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

STATE OF OHIO, Plaintiff-Appellee, - v - JESSICA F. DUNLAP, Defendant-Appellant.	**CASE NO. 2021-G-0037** Criminal Appeal from the Court of Common Pleas Trial Court No. 2021 C 000046

OPINION

Decided: August 29, 2022
Judgment: Reversed and remanded

James R. Flaiz, Geauga County Prosecutor, and *Nicholas A. Burling*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Plaintiff-Appellee).

R. Robert Umholtz, Geauga County Public Defender, and *Dawn M. Gargiulo*, Assistant Public Defender, 211 Main Street, Chardon, OH 44024 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Defendant-appellant, Jessica F. Dunlap, appeals her conviction for Improperly Handling Firearms in a Motor Vehicle in the Geauga County Court of Common Pleas, on the grounds that the court erred by denying her Motion to Suppress. For the following reasons, we reverse the decision of the court below and remand for further proceedings consistent with this opinion.

{¶2} On April 20, 2021, the Geauga County Grand Jury issued an Indictment, charging Dunlap with Improperly Handling Firearms in a Motor Vehicle, a felony of the

fourth degree, in violation of R.C. 2923.16(B).

{¶3} Dunlap filed a Motion to Suppress on June 11, 2021. She argued that reasonable suspicion to stop the vehicle on the grounds that the registered owner had an invalid license terminated once the police determined that the driver was not the registered owner. The State's Response argued that the minimal intrusion of verifying the driver's identity and determining whether the vehicle was stolen was permissible.

{¶4} A suppression hearing was held on August 10, 2021, jointly with co-defendant Je'Brel Lewis, at which the following testimony was presented:

{¶5} Patrolman Andrew Centrackio of the Chester Township Police Department testified that for the entirety of his shift on March 15, 2021, he was in a parking lot running random registration checks on passing vehicles. He entered the tag of a Kia Forte into the Law Enforcement Automated Data System (LEADS), which showed the registered owner, Dunlap, was a suspended driver. At that time, he had not yet observed the driver but had reviewed Dunlap's identifying information in LEADS, including her height, weight, and gender. Centrackio performed a traffic stop of the vehicle.

{¶6} Upon approaching the vehicle, Centrackio observed that the driver did not match Dunlap's description, whom he knew to be a white female, and was instead an African American male, later identified as Lewis. A female, later identified as Dunlap, was in the passenger seat. Centrackio informed Lewis that the reason for the stop was the invalid license of the registered owner. Centrackio asked Lewis if he had a valid license. Lewis responded that he believed his license was valid, pointed to the passenger, and stated he believed she had a valid license. Centrackio then asked for Lewis' license and was provided a state identification card. The dash cam video recording shows that upon

taking the identification, Centrackio indicated "if you're valid, you guys are good to go." Centrackio testified that he requested identification to document the driver in his report and to confirm that Lewis was legally able to drive the vehicle. Centrackio entered Lewis' information into LEADS and determined he had a suspended driving status and outstanding warrants.

{¶7} Since there was no valid driver, Centrackio contacted a tow truck for the vehicle. As the warrants indicated the potential that Lewis was armed, Centrackio asked him whether there was a weapon in the vehicle. Lewis confirmed that there was and, when asked of its location, he pointed to the front passenger side door compartment, said it was unloaded, and granted permission to enter the vehicle. A firearm was recovered as well as a loaded magazine.

{¶8} On August 11, 2021, the trial court issued an Order denying Dunlap's Motion to Suppress and adopted its decision ruling on Lewis' suppression motion. Therein, it determined that "the officer was confronted with a new potential for criminal activity even after discovering Dunlap was not driving this vehicle" and had grounds to question "if the registered owner of the vehicle was not driving it, then who was?" It found that the detention of Lewis to determine his identity after a legitimate traffic stop was constitutional.

{¶9} Dunlap entered a plea of no contest to the charge in the indictment on September 21, 2021. She was sentenced to a term of two years of monitored time. Subsequently, she filed a renewed motion for a detailed judgment entry on the motion to suppress and on December 6, 2021, the court issued an entry that restated the reasoning for denial as stated in the judgment in Lewis' case.

{¶10} Dunlap timely appeals and raises the following assignment of error:

{¶11} "The trial court erred in denying appellant's motion to suppress because the seizure of evidence resulted from an illegal detention."

{¶12} "Appellate 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, 797 N.E.2d 71, ¶ 8. "[A]n appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence," but "must then independently determine, without deference to the conclusion of the trial court [i.e., de novo], whether the facts satisfy the applicable legal standard." *Id.*

{¶13} The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Article I, Section 14 of the Ohio Constitution affords the same protection. *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795, 25 N.E.3d 993, ¶ 11.

{¶14} "'The touchstone of the Fourth Amendment is reasonableness'" and warrantless searches are unreasonable subject to a few exceptions. (Citation omitted.) *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 14 and 15. "One exception to the warrant requirement is a brief investigatory stop based upon reasonable suspicion of recent, ongoing, or imminent criminal activity." *State v. Luther*, 2018-Ohio-4568, 123 N.E.3d 296, ¶ 18 (11th Dist.), citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

{¶15} "[T]he detention of an individual by a law enforcement officer must, at the very least, be justified by 'specific and articulable facts' indicating that the detention was reasonable." *State v. Chatton*, 11 Ohio St.3d 59, 61, 463 N.E.2d 1237 (1984), citing *Terry* at 21. A traffic stop "must be carefully tailored to its underlying justification * * * and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983); *State v. Anderson*, 11th Dist. Lake No. 2017-L-127, 2018-Ohio-2455, ¶ 15 ("[a]n investigatory stop must be limited in duration and scope and can last only as long as necessary for an officer to confirm the suspicion of criminal activity"). The principles in *Royer* are "designed to prevent law enforcement officers from conducting 'fishing expeditions' for evidence of a crime." *Wickliffe v. Hancock*, 11th Dist. Lake No. 2008-L-174, 2009-Ohio-4257, ¶ 18. If additional facts provide reasonable suspicion of criminal activity beyond that which led to the initial stop, "'the officer may detain the vehicle * * * for as long as the new articulable and reasonable suspicion continues.'" (Citation omitted.) *State v. Jackson*, 11th Dist. Lake No. 2011-L-107, 2012-Ohio-2123, ¶ 28. If there is a lack of reasonable suspicion or other constitutional grounds for a search and seizure, evidence obtained as a result must be excluded. *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 181.

{¶16} On appeal, Dunlap argues that although the initial stop was justified, the continued detention once the officer determined there was no violation of the law was contrary to her Fourth Amendment rights, citing in support the Ohio Supreme Court case of *Chatton*, *supra*. The State counters that some appellate districts have held that the possibility of a vehicle being stolen in these circumstances warrants the continuation of the stop to determine the identity of the driver.

{¶17} In *Chatton*, an officer stopped a vehicle for failing to display license plates but observed the plate lying below the rear window upon approaching the vehicle. The officer requested the defendant's driver's license, which was suspended, and subsequently recovered a firearm in the vehicle. The Ohio Supreme Court held that since the officer "no longer maintained a reasonable suspicion" that the vehicle lacked a proper license or registration, detaining the driver to demand his license "is akin to the random detentions struck down by the Supreme Court." *Id.* at 63, citing *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) ("stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment"). Further, it held that "[a]lthough the police officer, as a matter of courtesy, could have explained to appellee the reason he was initially detained, the police officer could not unite the search to this detention, and appellee should have been free to continue on his way without having to produce his driver's license." *Chatton* at 63.

{¶18} This court has applied *Chatton* in circumstances where the officer realized the suspected crime had not been committed. *See State v. Cooke*, 11th Dist. Lake No. 98-L-160, 1999 WL 778378, *4 (Sept. 24, 1999) (once the officer determined upon approaching a vehicle that the temporary placard was visible and was properly displayed, he no longer had reasonable suspicion and could not further detain appellant to obtain identifying information regarding his driving status); *State v. Molek*, 11th Dist. Portage No. 2001-P-0147, 2002-Ohio-7159, ¶ 30-34 (where the officer mistakenly believed a license plate was obstructed by snow since the letter "E" was actually an "F," the officer did not "investigate the cause of the stop" and examine the license plate but, rather, asked the

defendant for his license and registration, the evidence obtained following questioning was properly suppressed).

{¶19} Here, Dunlap does not dispute that there was reasonable suspicion to perform a stop of the vehicle once Patrolman Centrackio became aware that the registered owner had a suspended license. Several appellate districts in Ohio have held that an officer has reasonable suspicion to conduct a stop when he determines the license plate is registered to a person who is not permitted to drive, since the "officer can reasonably infer that the owner is driving the vehicle." *See State v. Jones*, 7th Dist. Belmont No. 03 BE 28, 2004-Ohio-1535, ¶ 11; *State v. Kingman*, 5th Dist. Ashland No. 02COA032, 2003-Ohio-1243, ¶ 11; *State v. Yeager*, 4th Dist. Ross No. 99CA2492, 1999 WL 769965, *5 (Sept. 24, 1999). There is no dispute that the sole justification for the stop was on this ground. However, upon approaching the vehicle, Centrackio immediately became aware that Lewis was not the registered owner given his gender and other identifying characteristics. Similar to *Chatton*, at that point, Centrackio no longer maintained reasonable suspicion of the crime for which the stop occurred. Although Centrackio testified that he wanted to verify that Lewis was licensed, in *Chatton*, the court indicated that when reasonable suspicion ceases to exist, there are no grounds to ask for identification. In the absence of reasonable suspicion, a request for identification would otherwise be impermissible since the law is clear that "random stops of vehicles to check the validity of the operator's driver's license" have been condemned. *State v. Ford*, 11th Dist. Lake No. 2000-L-130, 2001 WL 1647149, *4 (Dec. 21, 2001), citing *Chatton* at 61. Centrackio testified that, in addition to seeking Lewis' identity to determine the validity of his license, he sought it to complete paperwork relating to the stop. No authority is cited

by the State to support a finding that this provided a legally justifiable reason for continuing a stop when reasonable suspicion no longer exists.

{¶20} Although the facts justifying the stop in *Chatton* differ from the present matter, its holding has been applied under similar circumstances. In *State v. Brentlinger,* 5th Dist. Delaware No. 19 CAC 05 0032, 2019-Ohio-4989, an officer performed a random registration check on a vehicle and found that the registered owner, a female, had a suspended driver's license. Upon stopping the vehicle, the officer discovered that the driver was male. At that time, the officer asked for the driver's license and, as he was running a license check, detected the odor of alcohol on the driver. *Id.* at ¶ 14. The Fifth District, relying on *Chatton*, held that the officer "no longer maintained a reasonable suspicion" when he became aware that the driver's gender did not match that of the registered owner. It held that "[a]lthough the deputy could have explained to Appellant the reason he was initially detained," the officer "did not have an independent basis to extend Appellant's detention by asking Appellant to produce his identification" and exceeded the constitutionally permissible scope of the initial detention. *Id.* at ¶ 19. The same analysis applies in the present matter. Of note, the United States Supreme Court has also questioned the existence of reasonable suspicion where an officer observes that the owner's identity differs from the driver. It found: "[I]f an officer knows that the registered owner of the vehicle is in his mid-sixties but observes that the driver is in her mid-twenties, then the totality of the circumstances would not 'raise a suspicion that the particular individual being stopped is engaged in wrongdoing.'" (Citation omitted.) *Kansas v. Glover*, __ U.S. __, 140 S.Ct. 1183, 1191, 206 L.Ed.2d 412 (2020).

{¶21} The State points to authority from other districts holding to the contrary. We

decline to apply such authority and find it to be factually distinguishable.

{¶22} In *State v. Graves,* 9th Dist. Medina No. 2202, 1993 WL 261562 (July 14, 1993), the officer ran the vehicle's license plate and determined the registered driver, a male, had an outstanding warrant. Upon executing the traffic stop, the officer saw the driver was female, inquired as to why she was driving, and she responded that she was the owner's girlfriend. The officer requested her identification, she produced a county human services card, and he determined the driver's license was suspended. *Id.* at *1. The court determined that, having learned the vehicle was not being driven by the registered owner, "there is no prohibition against asking the identity of the driver. The possibility that a vehicle, not driven by the registered owner, is stolen permits this very slight intrusion." *Id.* at *2. In another Ninth District case, *State v. Metcalf,* 9th Dist. Summit No. 23600, 2007-Ohio-4001, the court found it was proper to ask for identification when a vehicle was stopped due to the owner's expired license, and the driver indicated the owner was his daughter. *Id.* at ¶ 2-3. The court again held there was no violation of the defendant's constitutional rights. *Id.* at ¶ 12. In *State v. Dowdell*, 8th Dist. Cuyahoga No. 90200, 2008-Ohio-3080, the Eighth District also held it was a "slight intrusion," due to concerns of a stolen vehicle, to request identification of the driver although it was known to the officer that the driver was not the owner whose license was suspended. *Id.* at ¶ 9.

{¶23} The foregoing cases stretch the bounds of *Chatton* and the general principle that reasonable suspicion ceases once the officer becomes aware the grounds for instituting the stop are no longer valid. The rationale provided in these cases is that once a vehicle is stopped, it is a "slight intrusion" to then ask for identification. The Ohio Supreme Court's decision in *Chatton* appears to be contrary to such a conclusion.

Chatton specifically held that it was improper to ask for identification although the vehicle had initially been stopped on lawful grounds. It made no exceptions for "slight intrusions" following such a stop. *Chatton*, 11 Ohio St.3d at 63, 463 N.E.2d 1237.

{¶24} In particular, the conclusion that there is reasonable suspicion that a vehicle is stolen, advanced by the State and foregoing authority, stretches this concept beyond its logical meaning. Reasonable suspicion requires specific articulable facts warranting intrusion and "something more than an inchoate and unparticularized suspicion or 'hunch.'" (Citations omitted.) *State v. Hawkins*, 158 Ohio St.3d 94, 2019-Ohio-4210, 140 N.E.3d 577, ¶ 20. It cannot be said it is uncommon for couples or even friends to drive each other's vehicles, or various other circumstances to arise wherein the registered owner may not be driving. To presume that any car not driven by its owner is stolen diminishes the value of the term "reasonable suspicion" and sets the bar for detaining individuals for further investigation incredibly low.

{¶25} This is particularly true here where there were no facts, other than the driver not being the owner of the vehicle, present to support a conclusion that the vehicle was stolen. The driver was not acting suspiciously and was cooperative with police. A female matching the owner's description, which the officer had reviewed prior to approaching the car, was present in the passenger seat. There were no signs of tampering with the vehicle and the stop was not committed because the officer witnessed activity demonstrating a theft may have occurred, such as speeding away from a location or evading the officer. Significantly, in *Chatton*, the court rejected as justification for continued detention the officer's observation that, "in his experience temporary tags were occasionally used to conceal the identity of stolen vehicles and were otherwise used illicitly." *Chatton* at 61.

The court held: "If we were to uphold the detention of appellee to check the validity of his driver's license upon the generalized statement that temporary tags are sometimes used in criminal activity, we would be sanctioning, in effect, the detention of the driver of any vehicle bearing temporary tags. We are unwilling to place our imprimatur on searches of the citizens of this state and their vehicles simply because of the lawful and innocuous presence of temporary tags. The potential for abuse if such a rule were in effect, through arrogant and unnecessary displays of authority, cannot be ignored or discounted." *Id.* at 62. To hold otherwise creates a slippery slope whereby suspicion arises from ordinary circumstances such as allowing another to drive one's vehicle.

{¶26} Further, even if the rationale of these courts were found to be persuasive, there are significant factual differences in *Metcalf* and *Dowdell.* In *Metcalf,* the officer was unaware of the owner's gender or identifying characteristics other than her name when the stop was conducted and the owner's name was not immediately identifiable as belonging to a certain gender (Rikki). *Metcalf*, 2007-Ohio-4001, at ¶ 2. Thus, the officer did not know immediately upon approaching the driver whether he was the owner of the vehicle, reasonably warranting further investigation. *Id.* at ¶ 8. In *Dowdell,* there were facts that could support a reasonable suspicion that the vehicle was stolen, thus providing potential grounds for continued detention, including that the vehicle had been in a known drug area and had driven away from a stop sign at a high rate of speed, "suggesting that the occupants were trying to get out of view of the police." *Id.* at ¶ 3 and 9. In other words, there was more than inchoate or unparticularized suspicion, unlike in the present matter as indicated above. Further, unlike in *Metcalf*, the officer immediately knew when approaching the vehicle that the driver was not the owner.

{¶27} Several courts throughout the country have also reasoned that continued detention to request the driver's license in similar circumstances is improper due to a lack of reasonable suspicion. In *Holly v. State*, 918 N.E.2d 323 (Ind.2009), the officer became aware the driver was not the owner due to his gender. The court found that "once it becomes apparent that the driver of the vehicle is not the owner then an officer simply has no reason to conduct additional inquiry" given that "[r]easonable suspicion to pull a car over does not confer unconditional authority to request the driver's license and registration." *Id.* at 325-326. In *State v. Penfield*, 22 P.3d 293 (Wash.App.2001), the court observed that, although "other facts may exist to create suspicion that the driver may not have the owner's permission to use the automobile or that the driver is engaged in some other criminal activity," in the absence of such facts, the driver may not be further detained once it is discovered his gender did not match that of the vehicle's owner. *Id.* at 295. *See also State v. Pike*, 551 N.W.2d 919, 922 (Minn.1996) ("if the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity evaporates"); *State v. Coleman*i 890 N.W.2d 284, 301 (Iowa 2017) (continued detention to request identification was invalid where the officer discovered the registered owner was not the driver: "when the reason for a traffic stop is resolved and there is no other basis for reasonable suspicion, * * * the driver must be allowed to go his or her way without further ado"). In none of these cases did the courts find that concerns of a stolen vehicle arose.

{¶28} The State emphasizes that its argument that the holdings in *Graves*, *Metcalf*, and *Dowdell* should apply is further justified by the public policy of keeping

suspended drivers off of the road. However, as noted above, the law in relation to this issue, established by the Supreme Court, is that once reasonable suspicion terminates, there can be no request for identification. It does not make an exception for a policy of protecting against suspended drivers. As stated in *Chatton* and *Cooke*, random stops to determine a license is suspended, as well as extensions of otherwise legitimate stops to investigate a person's license status, are impermissible regardless of the benefits of preventing driving with a suspended license. *Chatton*, 11 Ohio St.3d at 61, 463 N.E.2d 1237; *Cooke*, 1999 WL 778378, at *2.

{¶29} As we have determined that the extension of the stop of the vehicle was improper once Centrackio recognized Dunlap was not the driver, evidence resulting from the continued detention, i.e., discovery of the firearm, must be suppressed. *Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, at ¶ 181.

{¶30} The sole assignment of error is with merit.

{¶31} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is reversed and this matter is remanded for further proceedings consistent with this opinion. Costs to be taxed against appellee.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.

STATE OF OHIO	)	**IN THE COURT OF APPEALS**
	) **SS.**	
COUNTY OF GEAUGA	)	**ELEVENTH DISTRICT**

STATE OF OHIO,

Plaintiff-Appellee,

- v -

JESSICA F. DUNLAP,

Defendant-Appellant.

JUDGMENT ENTRY

CASE NO. 2021-G-0037

This matter is presently before the court on appellee, the State of Ohio's, Motion to Certify Conflict filed on August 30, 2022. Appellant, Jessica Dunlap, filed an Answer Brief in Opposition.

On August 29, 2022, this court released its decision in *State v. Dunlap*, 11th Dist. Geauga No. 2021-G-0037, 2022-Ohio-3007, reversing the trial court's judgment denying Dunlap's motion to suppress evidence. This court held that where an officer conducted a vehicle stop because records indicated the registered owner had a suspended license, once the officer discovered the physical identity and gender of the driver did not match the registered owner, there was no longer reasonable suspicion to detain the vehicle or request the driver's license or identification. *Id.* at ¶ 25-30. The State asserts that a conflict arises between this decision and those of the Eighth and Ninth Districts in *State v. Graves*, 9th Dist. Medina No. 2202, 1993 WL 261562 (July 14, 1993); *State v. Metcalf,* 9th Dist. Summit No. 23600, 2007-Ohio-4001; and *State v. Dowdell*, 8th Dist. Cuyahoga No. 90200, 2008-Ohio-3080.

Section 3(B)(4), Article IV of the Ohio Constitution provides: "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

Three conditions must be satisfied for certification of a case to the Ohio Supreme Court pursuant to Section 3(B)(4), Article IV, of the Ohio Constitution. "First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be 'upon the same question.' Second, the alleged conflict must be on a rule of law -- not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993).

The State asks this court to certify the following question: "When a police officer had validly stopped a vehicle because the registered owner is under suspension but learns upon approach that the driver is not the registered owner, may he continue detention of the vehicle and its occupants to ask the driver for identification?"

The State argues that this matter is in conflict with the foregoing cases, which found no constitutional violation in requesting the drivers' identification although they were not the registered owner of the vehicle, and emphasizes that, in particular, it is not factually distinguishable from *Graves*. Dunlap contends that

the present matter "is factually different from the cases that the State alleges to be in conflict," emphasizing that there was no reason to infer the car might have been stolen and that the officer "saw a person in the passenger seat who matched the full description of the registered owner." She contends that "[u]nlike the cases cited by Appellee where there was reasonable suspicion to continue the parties' detention, there was no reasonable suspicion that justified the continued detention of Jessica Dunlap."

In *Metcalf*, 2007-Ohio-4001, an officer performed a vehicle stop after running a license plate check and determining that the car's owner had an expired driver's license. The officer was not aware of the owner's identifying characteristics prior to approaching the vehicle. The driver indicated that the registered owner was his daughter and the officer requested his license. *Id.* at ¶ 2-3. The court held there was no violation of the defendant's constitutional rights. *Id.* at ¶ 12. This court, in its opinion in *Dunlap*, observed *Metcalf* was factually distinguishable because "the officer was unaware of the owner's gender or identifying characteristics * * * when the stop was conducted and the owner's name was not immediately identifiable as belonging to a certain gender (Rikki)." *Dunlap* at ¶ 26. Since "the officer did not know immediately upon approaching the driver whether he was the owner of the vehicle," this "reasonably warrant[ed] further investigation." *Id.*

In *Dowdell*, 2008-Ohio-3080, officers approached a car after viewing it pull away from a stop sign at a high rate of speed, running the license plate, and determining that the female owner of the vehicle had a suspended license. After

approaching the vehicle, they observed the driver was a male and determined that neither the driver nor passenger owned the vehicle and they did not know each other's names. The officer then requested the driver provide a license. *Id.* at ¶ 4. The Eighth District held that the intrusion in requesting the license was permissible due to concerns of a stolen vehicle. *Id.* at ¶ 9. In *Dunlap*, we concluded that in *Dowdell* "there were facts that could support a reasonable suspicion that the vehicle was stolen, thus providing potential grounds for continued detention, including that the vehicle had been in a known drug area and had driven away from a stop sign at a high rate of speed." (Citation omitted.) *Dunlap* at ¶ 26. For these reasons, we find there are factual differences in *Metcalf* and *Dowdell* which preclude a finding that they are in conflict with the present matter.

In *Graves*, 1993 WL 261562, the officer ran the vehicle's license plate and determined the registered driver, a male, had an outstanding warrant. Upon executing the traffic stop, the officer saw the driver was female, inquired as to why she was driving, and she responded that she was the owner's girlfriend. The officer requested her identification, she produced a county human services card, and he determined her driver's license was suspended. *Id.* at *1. The court held that, having learned the vehicle was not being driven by the registered owner, "there is no prohibition against asking the identity of the driver" given it constitutes a "very slight intrusion." *Id.* at *2.

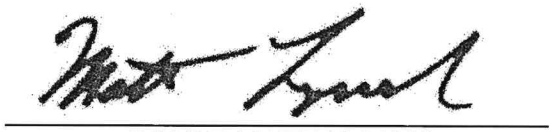
Unlike in *Metcalf* and *Dowdell*, in *Graves* there was a lack of reasonable suspicion to justify continued detention, such as behavior bringing into question whether the vehicle was stolen or facts that did not make it immediately obvious

that the driver was someone other than the registered owner. These are the same circumstances as in the present case: the officer conducted the stop on grounds relating to the registered owner, the officer could immediately tell by observing the driver's gender that the driver was not the owner, and there were no other factors justifying detaining the driver further and requesting identification. While the *Graves* court justified its conclusion that the detention was permissible because it was a "slight intrusion" and there could be a risk the vehicle was stolen, this is not a factual distinction but a differing legal conclusion than was reached by this court.

Dunlap observes that there is a factual distinction between all of the cases since, in the present matter, the owner was also the passenger. While we agree that the passenger fitting the description of the owner is a fact that is relevant to weighing the lack of suspicion that the vehicle is stolen, this fact alone does not alter the conflict between these cases. In both *Graves* and *Dunlap*, there was information tending to show the vehicle may not be stolen. In *Dunlap*, it was the existence of the owner (although not confirmed by the officer) in the passenger seat and, in *Graves*, the fact that the driver stated she was the girlfriend of the owner. While both officers had reason to believe the driver may have had permission to be driving, this court and the *Graves* court reached different legal conclusions about whether these circumstances, where the driver was not the owner, warranted further investigation by requesting the driver's identification.

Thus, we grant appellee's motion to certify a conflict between this court and the Ninth District in *State v. Graves*, 9th Dist. Medina No. 2202, 1993 WL 261562, and certify the record of this case to the Supreme Court of Ohio for review and final

determination on the following legal issue: "When a police officer conducts a valid vehicle stop due to the legal status of the registered owner but learns upon approach that the driver is not the registered owner, may the officer continue detention of the vehicle and its occupants to ask the driver for identification?"



JUDGE MATT LYNCH

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.

Article I, Section 14 | Search warrants and general warrants

Ohio Constitution / Article I Bill of Rights

Effective: *1851*

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

CONSTITUTION ANNOTATED
Analysis and Interpretation of the U.S. Constitution

Constitution of the United States

Fourth Amendment

Fourth Amendment Explained

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Ohio Revised Code

Section 2923.16 Improperly handling firearms in a motor vehicle.

Effective: April 4, 2023
Legislation: Senate Bill 288

(A) No person shall knowingly discharge a firearm while in or on a motor vehicle.

(B) No person shall knowingly transport or have a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless the person may lawfully possess that firearm under applicable law of this state or the United States, the firearm is unloaded, and the firearm is carried in one of the following ways:

(1) In a closed package, box, or case;

(2) In a compartment that can be reached only by leaving the vehicle;

(3) In plain sight and secured in a rack or holder made for the purpose;

(4) If the firearm is at least twenty-four inches in overall length as measured from the muzzle to the part of the stock furthest from the muzzle and if the barrel is at least eighteen inches in length, either in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

(D) No person shall knowingly transport or have a loaded handgun in a motor vehicle if, at the time of that transportation or possession, any of the following applies:

(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(2) The person's whole blood, blood serum or plasma, breath, or urine contains a concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance prohibited for persons operating a vehicle, as specified in division (A) of section 4511.19 of the Revised Code,

regardless of whether the person at the time of the transportation or possession as described in this division is the operator of or a passenger in the motor vehicle.

(E) No person who has been issued a concealed handgun license or who is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code, who is the driver or an occupant of a motor vehicle that is stopped as a result of a traffic stop or a stop for another law enforcement purpose or is the driver or an occupant of a commercial motor vehicle that is stopped by an employee of the motor carrier enforcement unit for the purposes defined in section 5503.34 of the Revised Code, and who is transporting or has a loaded handgun in the motor vehicle or commercial motor vehicle in any manner, shall do any of the following:

(1) Before or at the time a law enforcement officer asks if the person is carrying a concealed handgun, knowingly fail to disclose that the person then possesses or has a loaded handgun in the motor vehicle, provided that it is not a violation of this division if the person fails to disclose that fact to an officer during the stop and the person already has notified another officer of that fact during the same stop;

(2) Before or at the time an employee of the motor carrier enforcement unit asks if the person is carrying a concealed handgun, knowingly fail to disclose that the person then possesses or has a loaded handgun in the commercial motor vehicle, provided that it is not a violation of this division if the person fails to disclose that fact to an employee of the unit during the stop and the person already has notified another employee of the unit of that fact during the same stop;

(3) Knowingly fail to remain in the motor vehicle while stopped or knowingly fail to keep the person's hands in plain sight at any time after any law enforcement officer begins approaching the person while stopped and before the law enforcement officer leaves, unless the failure is pursuant to and in accordance with directions given by a law enforcement officer;

(4) Knowingly have contact with the loaded handgun by touching it with the person's hands or fingers in the motor vehicle at any time after the law enforcement officer begins approaching and before the law enforcement officer leaves, unless the person has contact with the loaded handgun

pursuant to and in accordance with directions given by the law enforcement officer;

(5) Knowingly disregard or fail to comply with any lawful order of any law enforcement officer given while the motor vehicle is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

(F)(1) Divisions (A), (B), (C), and (E) of this section do not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of the officer's, agent's, or employee's duties;

(b) Any person who is employed in this state, who is authorized to carry or have loaded or accessible firearms in motor vehicles, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (F)(1)(b) of this section does not apply to the person.

(2) Division (A) of this section does not apply to a person if all of the following circumstances apply:

(a) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the chief of the division of wildlife of the department of natural resources, and the discharge at the coyote or groundhog, but for the operation of this section, is lawful.

(b) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(2)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person does not discharge the firearm in any of the following manners:

(i) While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(ii) In the direction of a street, highway, or other public or private property used by the public for vehicular traffic or parking;

(iii) At or into an occupied structure that is a permanent or temporary habitation;

(iv) In the commission of any violation of law, including, but not limited to, a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(3) Division (A) of this section does not apply to a person if all of the following apply:

(a) The person possesses a valid all-purpose vehicle permit issued under section 1533.103 of the Revised Code by the chief of the division of wildlife.

(b) The person discharges a firearm at a wild quadruped or game bird as defined in section 1531.01 of the Revised Code during the open hunting season for the applicable wild quadruped or game bird.

(c) The person discharges a firearm from a stationary all-purpose vehicle as defined in section 1531.01 of the Revised Code from private or publicly owned lands or from a motor vehicle that is parked on a road that is owned or administered by the division of wildlife.

(d) The person does not discharge the firearm in any of the following manners:

(i) While under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse;

(ii) In the direction of a street, a highway, or other public or private property that is used by the public for vehicular traffic or parking;

(iii) At or into an occupied structure that is a permanent or temporary habitation;

(iv) In the commission of any violation of law, including, but not limited to, a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and that was committed by discharging a firearm from a motor vehicle.

(4) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply:

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(c) The person owns the real property described in division (F)(4)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (F)(4)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic or parking.

(5) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, both of the following apply:

(a) The person transporting or possessing the handgun has been issued a concealed handgun license that is valid at the time in question or the person is an active duty member of the armed forces of the United States and is carrying a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements described in division (G)(1) of section 2923.125 of the Revised Code.

(b) The person transporting or possessing the handgun is not knowingly in a place described in

division (B) of section 2923.126 of the Revised Code.

(6) Divisions (B) and (C) of this section do not apply to a person if all of the following apply:

(a) The person possesses a valid all-purpose vehicle permit issued under section 1533.103 of the Revised Code by the chief of the division of wildlife.

(b) The person is on or in an all-purpose vehicle as defined in section 1531.01 of the Revised Code or a motor vehicle during the open hunting season for a wild quadruped or game bird.

(c) The person is on or in an all-purpose vehicle as defined in section 1531.01 of the Revised Code on private or publicly owned lands or on or in a motor vehicle that is parked on a road that is owned or administered by the division of wildlife.

(7) Nothing in this section prohibits or restricts a person from possessing, storing, or leaving a firearm in a locked motor vehicle that is parked in the state underground parking garage at the state capitol building or in the parking garage at the Riffe center for government and the arts in Columbus, if the person's transportation and possession of the firearm in the motor vehicle while traveling to the premises or facility was not in violation of division (A), (B), (C), (D), or (E) of this section or any other provision of the Revised Code.

(G)(1) The affirmative defenses authorized in divisions (D)(1) and (2) of section 2923.12 of the Revised Code are affirmative defenses to a charge under division (B) or (C) of this section that involves a firearm other than a handgun.

(2) It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, immediately prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

(H)(1) No person who is charged with a violation of division (B), (C), or (D) of this section shall be required to obtain a concealed handgun license as a condition for the dismissal of the charge.

(2)(a) If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (E) of this section as it existed prior to September 30, 2011, and the conduct that was the basis of the violation no longer would be a violation of division (E) of this section on or after September 30, 2011, or if a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (E)(1) or (2) of this section as it existed prior to June 13, 2022, the person may file an application under section 2953.35 of the Revised Code requesting the expungement of the record of conviction.

If a person is convicted of, was convicted of, pleads guilty to, or has pleaded guilty to a violation of division (B) or (C) of this section as the division existed prior to September 30, 2011, and if the conduct that was the basis of the violation no longer would be a violation of division (B) or (C) of this section on or after September 30, 2011, due to the application of division (F)(5) of this section as it exists on and after September 30, 2011, the person may file an application under section 2953.35 of the Revised Code requesting the expungement of the record of conviction.

(b) The attorney general shall develop a public media advisory that summarizes the expungement procedure established under section 2953.35 of the Revised Code and the offenders identified in division (H)(2)(a) of this section and those identified in division (E)(2) of section 2923.12 of the Revised Code who are authorized to apply for the expungement. Within thirty days after September 30, 2011, with respect to violations of division (B), (C), or (E) of this section as they existed prior to that date, and within thirty days after June 13, 2022, with respect to a violation of division (E)(1) or (2) of this section or division (B)(1) of section 2923.12 of the Revised Code as they existed prior to June 13, 2022, the attorney general shall provide a copy of the advisory to each daily newspaper published in this state and each television station that broadcasts in this state. The attorney general may provide the advisory in a tangible form, an electronic form, or in both tangible and electronic forms.

(I) Whoever violates this section is guilty of improperly handling firearms in a motor vehicle. A violation of division (A) of this section is a felony of the fourth degree. A violation of division (C) of this section is a misdemeanor of the fourth degree. A violation of division (D) of this section is a

felony of the fifth degree or, if the loaded handgun is concealed on the person's person, a felony of the fourth degree. A violation of division (E)(1) or (2) of this section is a misdemeanor of the second degree. A violation of division (E)(4) of this section is a felony of the fifth degree. A violation of division (E)(3) or (5) of this section is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to a violation of division (E)(3) or (5) of this section, a felony of the fifth degree. In addition to any other penalty or sanction imposed for a misdemeanor violation of division (E)(3) or (5) of this section, the offender's concealed handgun license shall be suspended pursuant to division (A)(2) of section 2923.128 of the Revised Code. A violation of division (B) of this section is a felony of the fourth degree.

(J) If a law enforcement officer stops a motor vehicle for a traffic stop or any other purpose, if any person in the motor vehicle surrenders a firearm to the officer, either voluntarily or pursuant to a request or demand of the officer, and if the officer does not charge the person with a violation of this section or arrest the person for any offense, the person is not otherwise prohibited by law from possessing the firearm, and the firearm is not contraband, the officer shall return the firearm to the person at the termination of the stop. If a court orders a law enforcement officer to return a firearm to a person pursuant to the requirement set forth in this division, division (B) of section 2923.163 of the Revised Code applies.

(K) As used in this section:

(1) "Motor vehicle," "street," and "highway" have the same meanings as in section 4511.01 of the Revised Code.

(2) "Occupied structure" has the same meaning as in section 2909.01 of the Revised Code.

(3) "Agriculture" has the same meaning as in section 519.01 of the Revised Code.

(4) "Tenant" has the same meaning as in section 1531.01 of the Revised Code.

(5)(a) "Unloaded" means, with respect to a firearm other than a firearm described in division (K)(6) of this section, that no ammunition is in the firearm in question, no magazine or speed loader containing ammunition is inserted into the firearm in question, and one of the following applies:

(i) There is no ammunition in a magazine or speed loader that is in the vehicle in question and that may be used with the firearm in question.

(ii) Any magazine or speed loader that contains ammunition and that may be used with the firearm in question is stored in a compartment within the vehicle in question that cannot be accessed without leaving the vehicle or is stored in a container that provides complete and separate enclosure.

(b) For the purposes of division (K)(5)(a)(ii) of this section, a "container that provides complete and separate enclosure" includes, but is not limited to, any of the following:

(i) A package, box, or case with multiple compartments, as long as the loaded magazine or speed loader and the firearm in question either are in separate compartments within the package, box, or case, or, if they are in the same compartment, the magazine or speed loader is contained within a separate enclosure in that compartment that does not contain the firearm and that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents or the firearm is contained within a separate enclosure of that nature in that compartment that does not contain the magazine or speed loader;

(ii) A pocket or other enclosure on the person of the person in question that closes using a snap, button, buckle, zipper, hook and loop closing mechanism, or other fastener that must be opened to access the contents.

(c) For the purposes of divisions (K)(5)(a) and (b) of this section, ammunition held in stripper-clips or in en-bloc clips is not considered ammunition that is loaded into a magazine or speed loader.

(6) "Unloaded" means, with respect to a firearm employing a percussion cap, flintlock, or other obsolete ignition system, when the weapon is uncapped or when the priming charge is removed from the pan.

(7) "Commercial motor vehicle" has the same meaning as in division (A) of section 4506.25 of the Revised Code.

(8) "Motor carrier enforcement unit" means the motor carrier enforcement unit in the department of public safety, division of state highway patrol, that is created by section 5503.34 of the Revised Code.

(L) Divisions (K)(5)(a) and (b) of this section do not affect the authority of a person who has been issued a concealed handgun license that is valid at the time in question to have one or more magazines or speed loaders containing ammunition anywhere in a vehicle, without being transported as described in those divisions, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any other provision of this chapter. A person who has been issued a concealed handgun license that is valid at the time in question may have one or more magazines or speed loaders containing ammunition anywhere in a vehicle without further restriction, as long as no ammunition is in a firearm, other than a handgun, in the vehicle other than as permitted under any provision of this chapter.