No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEANDRE JORDAN, PETITIONER

v.

THE STATE OF OHIO, RESPONDENT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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FILED NOV 9, 2021

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SUPREME COURT OF OHIO

State of Ohio	Case No. 2020-0495
v.	JUDGMENT ENTRY
Leandre Jordan	APPEAL FROM THE
	COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Hamilton County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed, consistent with the opinion rendered herein.

It is further ordered that mandates be sent to and filed with the clerks of the Court of Appeals for Hamilton County and the Court of Common Pleas for Hamilton County.

(Hamilton County Court of Appeals; Nos. C180559 and C180560)

s/ Maureen O'Connor
Maureen O'Connor
Chief Justice

The official case announcement, and opinion if issued, can be found at

http://www.supremecourt.ohio.gov/ROD/docs/

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Jordan*, Slip Opinion No. 2021-Ohio-3922.]

SLIP OPINION NO. 2021-OHIO-3922

THE STATE OF OHIO, APPELLEE *v.* JORDAN, APPELLANT.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State v. Jordan*, Slip Opinion No. 2021-Ohio-3922.]

Criminal law—Warrantless arrest—R.C. 2935.04—Neither a showing of exigent circumstances nor a showing of the impracticability of obtaining an arrest warrant is necessary to sustain the constitutionality of a warrantless arrest under either the United States Constitution or the Ohio Constitution—Court of appeals' judgment affirmed.

(No. 2020-0495—Submitted March 31, 2021—Decided November 9, 2021.)

APPEAL from the Court of Appeals for Hamilton County,

Nos. C-1800559 and C-1800560, 2020-Ohio-689.

O'CONNOR, C.J.

{¶ 1} Appellant, LeAndre Jordan, challenges the constitutionality of his warrantless arrest, which ultimately led to his convictions for multiple drug offenses. He asks this court to hold that a police officer is constitutionally required to secure an arrest warrant before conducting an arrest anytime the circumstances demonstrate that it is practicable to do so.

{¶ 2} R.C. 2935.04, Ohio's felony-arrest statute, authorizes a warrantless arrest "[w]hen a felony has been committed, or there is reasonable ground to believe that a felony has been committed" and there is "reasonable cause to believe" that the person being arrested is guilty of the offense. This court has held, consistently with United States Supreme Court precedent, "A warrantless arrest that is based upon probable cause and occurs in a public place does not violate the Fourth Amendment" to the United States Constitution. *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶ 66, citing *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976). Today, we reiterate that holding and further hold that neither a showing of exigent circumstances nor a showing of the impracticability of obtaining an arrest warrant is necessary to sustain the constitutionality of a warrantless arrest under either the United States Constitution or the Ohio Constitution.

Facts and procedural background

{¶ 3} This appeal stems from Jordan's convictions in the Hamilton County Court of Common Pleas for various drug offenses, but Jordan's drug charges arose as

a result of his arrest for an unrelated crime with which he was ultimately not charged. The investigation of that unrelated offense is the focus of our analysis.

{¶ 4} On December 12, 2016, someone broke into James and Emiko Locke's Cincinnati home through a bedroom window and stole a safe that contained $40,000. Cincinnati Police Detective Mark Longworth, who investigated the burglary, characterized it as "unusual in that really only the safe was taken," as only a few people knew of the safe's location and contents. James Locke told Detective Longworth that other than Locke and his wife, only his son Michael and godson Demarco knew about the safe.

{¶ 5} The Lockes suspected that Michael had been involved in the burglary. They told Detective Longworth that they had thrown Michael out of the house but that he had "recently come back around." They were suspicious of Michael because he had telephoned them around the time of the burglary to determine whether they were home. Michael then arrived at his parents' home shortly after they discovered the burglary, "fishing around for information about what had happened" and what they knew. When a neighbor stopped by and reported that he had seen a suspicious vehicle—a cream-colored Chrysler 300—parked near the Lockes' house around the time of the burglary, Michael became upset and told the neighbor to leave.

{¶ 6} The Lockes believed that the vehicle the neighbor had described belonged to Michael's friend "Dre"—appellant, LeAndre Jordan—whom they described to Detective Longworth and characterized as "trouble." They told Detective Longworth that Jordan worked at a barbershop near the Kroger store on Warsaw Avenue.

Detective Longworth located a cream-colored Chrysler parked in the Kroger parking lot, across the street from the barbershop; it was registered to Jordan's mother.

{¶ 7} Detective Longworth interviewed Michael a couple of days after the burglary, and Michael confirmed that Jordan drove the car that Detective Longworth had located in the Kroger parking lot. Michael's cell-phone call log confirmed calls to his parents at 4:23 p.m. and 4:29 p.m. on December 12, 2016, shortly before the burglary, as well as multiple calls between Michael and Jordan around the time of the burglary.

{¶ 8} As a result of his investigation, Detective Longworth believed that Jordan was involved in the burglary. For several days, he observed Jordan coming and going between the cream-colored Chrysler, parked in the Kroger parking lot, and the barbershop. On December 20, eight days after the burglary, Detective Longworth and another officer arrested Jordan as he exited a cell-phone store.

{¶ 9} At the time of his arrest, Jordan was carrying his girlfriend's identification and keys that had an apartment number on them. Detective Longworth determined that Jordan was staying with his girlfriend at that apartment. Based on that information, Detective Longworth obtained a warrant to search the apartment for evidence related to the burglary. The search did not uncover evidence that could be definitively linked to the burglary, but officers found and seized approximately $2,100 in cash, as well as heroin, cocaine, an electronic scale, and a handgun. Jordan's drug charges stemmed from the evidence seized.

{¶ 10} Jordan filed a motion to suppress. He argued that his arrest was unconstitutional and that the evidence should be suppressed as the fruit of that constitutional violation. Jordan admitted in his motion, "An arrest without a warrant is constitutionally valid if, at the moment the arrest is made, the arresting officer has probable cause to make it," but he argued that his arrest was not supported by probable cause. At the suppression hearing, Jordan's attorney primarily repeated the argument that the police lacked probable cause to arrest Jordan, but he also stated more broadly that "there was no warrant," even though eight days had elapsed during which Detective Longworth could have obtained one.

{¶ 11} The trial court denied the motion to suppress, and the case proceeded to a jury trial. Jordan was convicted of trafficking in heroin, aggravated trafficking in drugs, possession of heroin, aggravated possession of drugs, and possession of cocaine. After merging allied offenses, the trial court sentenced Jordan to an 11-year prison term and imposed a driver's license suspension.

{¶ 12} Jordan appealed his convictions to the First District Court of Appeals, challenging the trial court's denial of his motion to suppress. The First District held that the trial court did not err by denying Jordan's motion to suppress, and it affirmed his convictions.[1] It rejected Jordan's argument that the information known to Detective Longworth at the time of Jordan's arrest did not establish probable cause. It also rejected Jordan's argument, which Jordan had not raised in

[1] The court of appeals did, however, remand the case to the trial court for a nunc pro tunc entry to correct a clerical error in the sentencing entry with respect to the length of the imposed license suspension

his motion to suppress, that his arrest was unlawful because there were no exigent circumstances to justify a warrantless arrest. *Id.* at ¶ 21.

{¶ 13} This court accepted a discretionary appeal to consider a single proposition of law: "Under R.C. 2935.04, once probable cause is established, a warrantless arrest is unconstitutional if there is unreasonable delay in effecting the arrest. Whether the delay is reasonable depends upon the circumstances surrounding the delay and the nature of the offense." Jordan frames his proposition of law in terms of unreasonable delay, but he also variously casts his argument in terms of a requirement of exigent circumstances or of the impracticability of securing an arrest warrant. Essentially, he asks this court to hold that a police officer is constitutionally required to secure an arrest warrant before conducting an arrest whenever the circumstances demonstrate that it is practicable to do so.

Analysis

{¶ 14} The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Article I, Section 14 of the Ohio Constitution contains virtually identical language. With respect to felony cases, this court has interpreted Article I, Section 14 of the Ohio Constitution as providing the same protections as the Fourth Amendment. *State v. Jones*, 143 Ohio St.3d 266, 2015-Ohio-483, 37 N.E.3d 123, ¶ 12, citing *State v. Smith*, 124 Ohio St.3d 163,

2009-Ohio-6426, 920 N.E.2d 949, ¶ 10, fn. 1.[2] Although the Ohio Constitution may provide greater protections than the United States Constitution, we have "harmonize[d] our interpretation" of Article I, Section 14 with the Fourth Amendment "unless there are persuasive reasons" for not doing so. *State v. Robinette*, 80 Ohio St.3d 234, 239, 685 N.E.2d 762 (1997). Jordan offers no basis for treating the provisions differently here. We therefore review and address Jordan's arguments through the lens of the Fourth Amendment.

A warrantless arrest based on probable cause and conducted in public is reasonable under the Fourth Amendment

{¶ 15} Jordan frames his proposition of law as presenting a constitutional question that arises upon application of R.C. 2935.04, which states: "When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has

[2] The dissent cites *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, to claim that Article I, Section 14 of the Ohio Constitution affords greater protections than the Fourth Amendment, but that case involved an unauthorized arrest for a minor misdemeanor. We held, "A traffic stop for a minor misdemeanor made outside a police officer's statutory jurisdiction or authority violates the guarantee against unreasonable searches and seizures established by Article I, Section 14 of the Ohio Constitution." *Id.* at ¶ 26. And we based that holding on our prior statement that " 'Section 14, Article I of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests *for minor misdemeanors*.' " (Emphasis added.) *Id.* at ¶ 21, quoting *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, ¶ 22. Not only have we never found greater protection regarding *felony* arrests under the Ohio Constitution than that provided by the United States Constitution, but Jordan does not ask us to do so here.

reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained."

{¶ 16} Contrary to the premise of the proposition of law this court accepted, the dissent reasons that R.C. 2935.04 is a citizen's-arrest statute that does not apply to law-enforcement officials who are acting within the course and scope of their duties. Rather, it states that the only statutory authority afforded to law-enforcement officers to conduct warrantless arrests is found in R.C. 2935.03, a statute that neither Jordan nor the state has cited in their merit briefs. While R.C. 2935.03 admittedly cloaks law-enforcement officers with authority to conduct warrantless arrests in certain situations, that authority does not diminish the applicability of R.C. 2935.04 to law-enforcement officers. Indeed, this court has cited R.C. 2935.04 in numerous cases that involved warrantless arrests conducted by law-enforcement officers. *See, e.g.*, *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 38-39; *State v. Wac*, 68 Ohio St.2d 84, 88, 428 N.E.2d 428 (1981); *State v. Timson*, 38 Ohio St.2d 122, 127, 311 N.E.2d 16 (1974). Yet never once have we articulated the concern—one that ignores the statute's plain application to "any person"—that the dissent raises here.

{¶ 17} R.C. 2935.04 authorizes warrantless arrests for felony offenses. But statutory authority to make an arrest does not mean that the arrest passes constitutional scrutiny. We must therefore determine whether a warrantless arrest made in accordance with R.C. 2935.04 is consistent with the protections afforded by the Fourth Amendment.

{¶ 18} " '[T]he underlying command of the Fourth Amendment is always that searches and seizures be reasonable.' " *Wilson v. Arkansas*, 514 U.S. 927, 931, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995), quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 337, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985). An arrest is " 'quintessentially a seizure,' " that is subject to the Fourth Amendment and that must be reasonable. *Payton v. New York*, 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), quoting *Watson*, 423 U.S. at 428, 96 S.Ct. 820, 46 L.Ed.2d 598 (Powell, J., concurring).

{¶ 19} The constitutionality of an arrest depends on whether, at the moment the arrest was made, the officers had probable cause to make it. *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964). Probable cause is "defined in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.' " (Brackets added in *Gerstein*.) *Gerstein v. Pugh*, 420 U.S. 103, 111-112, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), quoting *Beck* at 91. When a warrantless arrest is challenged on constitutional grounds, the court must determine whether the facts known to the officers at the time of the arrest would " 'warrant a man of reasonable caution in the belief' that an offense has been committed." *Beck* at 96, quoting *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925). An arrest that is based on probable cause is a reasonable intrusion under the Fourth Amendment, *United States v. Robinson*, 414 U.S. 218, 235, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), whereas an arrest that is not supported by probable cause constitutes an unreasonable seizure, *Donovan v. Thames*, 105 F.3d 291, 297-298 (6th Cir.1997), citing *Beck* at 90-91.

{¶ 20} The use of probable cause as the standard for making an arrest "represents a necessary accommodation between the individual's right to liberty and the State's duty to control crime." *Gerstein* at 112. It "is a practical, nontechnical conception [that affords] the best compromise * * * for accommodating * * * often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice." *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949).

{¶ 21} In *Gerstein*, the United States Supreme Court stated, "To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible." *Id.* at 112. That does not, however, mean that an arrest warrant is necessary in all circumstances. Even though requiring that a neutral and detached magistrate review in advance a police officer's factual justification for an arrest would ensure maximum protection of individual rights, the Supreme Court noted that "it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Id.* at 113, citing *Ker v. California*, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963), *Draper v. United States*, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959), and *Trupiano v. United States*, 334 U.S. 699, 705, 68 S.Ct. 1229, 92 L.Ed. 1663 (1948). But when a police officer's assessment of probable cause provides the justification for a warrantless arrest, the Fourth Amendment requires a prompt, postarrest, judicial

determination of probable cause as a prerequisite to extended restraint of the arrestee's liberty.[3] *Id.* at 113-114, 125.

{¶ 22} The United States Supreme Court returned to the issue of warrantless felony arrests in *Watson*, in which it upheld, as consistent with the Fourth Amendment, a warrantless arrest that was based on probable cause and that was made in public. *See* 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598. The court stated that nothing in its precedent indicated that the Fourth Amendment required a warrant to make a valid felony arrest, and "[i]ndeed, the relevant prior decisions are uniformly to the contrary." *Id.* at 416-417. It characterized that precedent as "reflect[ing] the ancient common-law rule" that a police officer may make a warrantless arrest for a felony when the officer has reasonable grounds for making the arrest. *Id.* at 418. In light of that longstanding rule, the court declined to transform a judicial preference for arrest warrants into a constitutional requirement. *Id.* at 423.

{¶ 23} *Watson* does not, however, stand for the proposition that the police have unlimited authority to effect a warrantless felony arrest as long as they have probable cause. Other circumstances might compel the police to take additional steps in order to ensure the arrest will survive constitutional scrutiny. For example, several years after *Watson*, the United States Supreme Court considered whether and under what circumstances an officer could enter a suspect's home to make a warrantless arrest in a manner consistent with the Fourth Amendment. *See Payton*, 445 U.S. 573, 100

[3] Jordan has not challenged the postarrest proceedings in his case, and we need not address them here.

S.Ct. 1371, 63 L.Ed.2d 639. In *Payton*, the court recognized that " 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed,' " *id.* at 585-586, quoting *United States v. United States District Court*, 407 U.S. 297, 313, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972), and that unlike a warrantless seizure conducted in a public place, a warrantless seizure conducted inside a home is presumptively unreasonable, *id.* at 586-587. It concluded that "the Fourth Amendment has drawn a firm line at the entrance to the house" that "may not reasonably be crossed without a warrant" unless exigent circumstances exist. *Id.* at 590. Because Jordan was arrested in public, the rule announced in *Payton* is inapplicable here. Instead, *Watson* controls.

Neither exigent circumstances nor the impracticability of obtaining a warrant is required to justify a warrantless felony arrest that is supported by probable cause and that is conducted in public

{¶ 24} Jordan no longer argues that the arresting officers did not have probable cause to believe that he was involved in the burglary of the Lockes' home. Rather, his proposition of law concerns the constitutionality of a warrantless arrest "once probable cause is established."

{¶ 25} In support of his position that a police officer is constitutionally required to obtain an arrest warrant any time it is practicable under the circumstances to do so, Jordan relies on *State v. Heston*, 29 Ohio St.2d 152, 280 N.E.2d 376 (1972), in which this court stated:

> "Under certain circumstances, a warrant need not be obtained in order to render an arrest valid. The arresting

> officer must have probable cause to believe that a felony was committed by defendant, and the circumstances must be such as to make it impracticable to secure a warrant. *Johnson v. United States*, 333 U.S. 10 [68 S.Ct. 367, 92 L.Ed 436 (1948)]; *Jones v. United States*, 357 U.S. 493, 499, 500 [78 S.Ct. 1253, 2 L.Ed.2d 1514 (1958)]; *Chapman v. United States*, 365 U.S. 610, 615 [81 S.Ct. 776, 5 L.Ed.2d 828 (1961)]."

Id. at 155, quoting *State v. Woodards*, 6 Ohio St.2d 14, 20, 215 N.E.2d 568 (1966). But *Heston* is factually distinguishable from this case. The arrest challenged in *Heston* was not conducted in public. Rather, the police arrested Heston inside private property, based on information that Heston had committed a felony, that he intended to leave town to evade apprehension, and that one of Heston's alleged accomplices had already fled. *Id.* Each of the cases that the United States Supreme Court cited in *Heston* in support of an impracticability requirement likewise involved nonpublic searches or seizures. *See Johnson* at 16-17; *Jones* at 495; *Chapman* at 610.

{¶ 26} Jordan argues that the trial court and the First District should have followed *Heston*'s lead and determined whether the circumstances surrounding his arrest made it impractical for the officers to have secured an arrest warrant, but that argument ignores the innate difference between a warrantless arrest that occurs in public and a warrantless entry into private property for the purpose of making a felony arrest. Fourth Amendment jurisprudence consistently accords law-enforcement officers greater latitude when they exercise their duties in public places. *Florida v. White*, 526 U.S. 559, 565, 119 S.Ct. 1555, 143 L.Ed.2d 748 (1999). In this context, "although a warrant presumptively is required for a felony arrest in a suspect's home, the Fourth Amendment permits warrantless arrests in public places

where an officer has probable cause to believe that a felony has occurred." *Id.*, citing *Watson*, 423 U.S. at 416-424, 96 S.Ct. 820, 46 L.Ed.2d 598.

{¶ 27} Even if indistinguishable on its facts, *Heston*'s remaining precedential value is, at best, questionable with respect to warrantless arrests in public because it predates *Watson,* in which the United States Supreme Court refused to require the government to obtain a warrant for a public arrest even though there was "concededly" time to do so. 423 U.S. at 414, 96 S.Ct. 820, 46 L.Ed.2d 598. While Jordan has suggested that we should read *Watson* narrowly, as applying only to cases involving exigent circumstances, that reading of *Watson* is directly contrary to the broad language the Supreme Court employed. The Supreme Court expressly held in *Watson* that the Fourth Amendment does *not* require exigent circumstances or impracticability of obtaining a warrant before police may conduct a warrantless public arrest upon probable cause. *Id.* at 423-424. It noted, "[T]he judgment of the Nation and Congress has for so long been to authorize warrantless public arrests on probable cause rather than to encumber criminal prosecutions with endless litigation with respect to the existence of exigent circumstances, whether it was practicable to get a warrant, whether the suspect was about to flee, and the like." *Id.*

{¶ 28} Since *Watson* was decided, this court has held, clearly and without qualification, "A warrantless arrest that is based upon probable cause and occurs in a public place does not violate the Fourth Amendment." *Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, at ¶ 66, citing *Watson*. And when evaluating a constitutional challenge to a warrantless public arrest in *State v. Elmore*, 111 Ohio

St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 38, we considered only whether there was probable cause to support the arrest; because the police had probable cause, we rejected the defendant's challenge, *id.* at ¶ 40-41. We have never held that something more than probable cause is required to render constitutional a felony arrest conducted in public. And we decline to do so today. The First District appropriately followed precedent in affirming the denial of Jordan's motion to suppress.

{¶ 29} Contrary to the First District's decision in this case, the Second District Court of Appeals has held, albeit inconsistently, that not only must a warrantless arrest be supported by probable cause to pass constitutional muster, but "it must also be shown that obtaining an arrest warrant beforehand was impracticable under the circumstances, i.e., that exigent circumstances exist." *State v. VanNoy*, 188 Ohio App.3d 89, 2010-Ohio-2845, 934 N.E.2d 413, ¶ 23 (2d Dist.), citing *State v. Jones*, 183 Ohio App.3d 839, 2009-Ohio-4606, 919 N.E.2d 252, ¶ 12 (2d Dist.), citing *Heston*, 29 Ohio St.2d 152, 280 N.E.2d 376, at paragraph two of the syllabus, and *Woodards*, 6 Ohio St.2d 14, 215 N.E.2d 568. *But see State v. Short*, 2d Dist. Montgomery No. 27712, 2018-Ohio-3202, ¶ 18, quoting *Brown* at ¶ 66 (" '[a] warrantless arrest that is based upon probable cause and occurs in public does not violate the Fourth Amendment' "). For the reasons already stated in this opinion, we reject the Second District's holding in *VanNoy* as contrary to precedent from both this court and the United States Supreme Court.

{¶ 30} Finally, even accepting that the existence of probable cause generally makes a public felony arrest constitutionally permissible, Jordan argues that the

general rule should not apply when there is an unreasonable delay between the establishment of probable cause and the arrest itself. That argument, however, amounts to nothing more than a repackaging of the previously rejected argument that a warrantless felony arrest made in public is reasonable only if there are exigent circumstances that make it impractical for the police to obtain an arrest warrant.

{¶ 31} Jordan likens the probable cause necessary to justify an arrest to that required to justify a search for evidence, and he unpersuasively suggests that any probable cause to believe that he was involved in the burglary of the Lockes' home had gone stale by virtue of the eight-day delay between the burglary and his arrest. Probable cause to support the issuance of an arrest warrant does not grow stale in the same ways as the probable cause that is necessary to support a warrant to search for particular evidence in a particular place. *Watson*, 423 U.S. at 432, 96 S.Ct. 820, 46 L.Ed.2d 598, fn. 5 (Powell, J., concurring). Probable cause to believe that particular objects exist in a particular place does not last indefinitely because delay in acting upon such probable cause affords opportunities for the evidence to be moved, hidden, or destroyed. On the other hand, there is nothing inherent in a delay that would make a suspect's involvement in a criminal offense less probable. *See United States v. Haldorson*, 941 F.3d 284, 292 (7th Cir.2019) ("It is the rare case where 'staleness' will be relevant to the legality of a warrantless arrest. When there is a reasonable belief that someone has committed a crime, time by itself does not make the existence of that fact any less probable" [footnote deleted]). Further investigation or circumstances could discredit information that supports the belief that the suspect

has committed a felony, but Jordan has identified no facts that came to light between the time of the burglary and the time of his arrest that would have discredited the information that formed the basis of the officers' probable cause for believing that he was involved in the burglary. Accordingly, the short delay in this case did not affect the existence of probable cause so as to render Jordan's arrest unreasonable.

Conclusion

{¶ 32} In accordance with United States Supreme Court precedent, we again hold that a warrantless arrest, conducted in public and with probable cause to believe that the arrestee has committed a felony, is reasonable and does not violate the Fourth Amendment to the United States Constitution or Article I, Section 14 of the Ohio Constitution. We further hold that neither the United States nor the Ohio Constitution requires a showing of exigent circumstances or of the impracticability of obtaining an arrest warrant to justify a warrantless public arrest supported by probable cause. Because Jordan does not contest the lower courts' determinations that the arresting officers had probable cause to believe that he had committed a felony when they arrested him in public, we conclude that the arrest was constitutionally valid. Accordingly, we affirm the judgment of the First District Court of Appeals.

Judgment affirmed.

KENNEDY, FISCHER, and DEWINE, JJ., concur.

DONNELLY, J., concurs in judgment only.

STEWART, J., dissents, with an opinion joined by BRUNNER, J.

STEWART, J., dissenting.

{¶ 33} The majority opinion concludes that law-enforcement officers are statutorily authorized to conduct warrantless arrests pursuant to R.C. 2935.04. With that conclusion forming the basis for its analysis, the majority then goes on to hold that warrantless arrests based on probable cause do not violate either the Fourth Amendment to the United States Constitution or Article I, Section 14 of the Ohio Constitution. I disagree and therefore dissent.

{¶ 34} As a preliminary matter, the language of R.C. 2935.04, when read in pari materia with other provisions of R.C. Chapter 2935, reveals that R.C. 2935.04 is a citizen's-arrest statute. As such, it does not authorize law-enforcement officers to conduct warrantless arrests. Although law-enforcement officers do have statutory authority to conduct warrantless arrests, the authority derives from R.C. 2935.03, not R.C. 2935.04, and it is limited to the statutorily enumerated scenarios contained therein. Accordingly, the foundation upon which the majority builds its analysis is flawed.

{¶ 35} Nevertheless, the language of both R.C. 2935.03 and 2935.04 indicates a requirement that an arrest warrant be obtained prior to an arrest *unless doing so is impracticable*. Because the facts in this case demonstrate that the officers had ample time to secure a warrant before arresting appellant, LeAndre Jordan, I conclude that the officers acted outside of their statutory authority to arrest and in violation of Article I, Section 14 of the Ohio Constitution. *See State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, ¶ 23 ("Article I, Section 14 of the

Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest").

R.C. 2935.04 is a Citizen's-Arrest Statute

{¶ 36} R.C. 2935.04 states:

> When a felony has been committed, or there is reasonable ground to believe that a felony has been committed, any person without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained.

Although R.C. 2935.04 states that "any person" may arrest, it is unclear from the language of the enactment whether the term "any person" was meant to include law-enforcement officials acting within the normal course and scope of their duties. When read in pari materia with other provisions of R.C. Chapter 2935, however, it becomes clear that R.C. 2935.04 was not meant to apply to law-enforcement personnel acting in their official capacity. This is because R.C. 2935.03 specifically authorizes the police, and other types of law-enforcement officials, to conduct warrantless arrests in certain circumstances.

{¶ 37} Under R.C. 2935.03(A)(1), members of law enforcement are authorized to arrest without a warrant "a person found violating" a law within the limits of the political subdivision in which they are appointed, employed, or elected. This court has interpreted the phrase "found violating" to mean that law enforcement are authorized to arrest when they view the commission of a crime. *See State v. Lewis*, 50 Ohio St. 179, 189, 33 N.E. 305 (1893) (interpreting the precursor statute to R.C. 2935.03(A)(1)

and stating: "Section 7129, Rev[ised] St[atutes], provides for the arrest of persons 'found violating' a law or ordinance. Found by whom? The statute does not expressly declare, but when the rules of the common law upon this subject are considered, it is clear that the legislature meant, found by the officer who attempts to make the arrest"); 1940 Ohio Atty.Gen.Ops. No. 1940-2735 (equating the term "found violating" with the term "on view" by the officer); *State v. Henderson*, 51 Ohio St.3d 54, 56, 554 N.E.2d 104 (1990) (discussing the facts and holding from *Lewis* and using the term "in the officer's presence"). We have also interpreted R.S. 7129, the precursor statute to R.C. 2935.03, as authorizing law enforcement to execute a warrantless arrest when law enforcement may not have viewed the commission of a crime but nevertheless have probable cause to believe the person subject to arrest is presently in the act of committing a crime. *Ballard v. State*, 43 Ohio St. 340, 1 N.E. 76 (1885), paragraph two of the syllabus (interpreting R.S. 7129 to permit an officer "without warrant, to arrest a person found on the public streets of the corporation carrying concealed weapons contrary to law, *although he has no previous personal knowledge of the fact, if he acts bona fide, and upon such information as induces an honest belief that the person arrested is in the act of violating the law*" [emphasis added]); *Houck v. State*, 106 Ohio St. 195, 198-199, 140 N.E. 112 (1922) (same holding as in *Ballard*); *Porello v. State*, 121 Ohio St. 280, 284, 168 N.E. 135 (1929) (same holding as in *Ballard*).[4]

[4] In *Ballard*, this court did not explicitly equate probable cause with "acts bona fide, and upon such information as induces an honest belief that the person arrested is in the act of violating the law," *id.* at paragraph two of the syllabus. However, we later made that connection in *Houck* when we noted that the magistrate found that the "evidence tended to show the good faith of the marshal and that he was acting upon

The officer's authority to conduct a warrantless arrest based on the officer's observation of the commission of the offense or reliable information that supports a bona fide belief that a person is presently engaging in the commission of a crime even if not based on the officer's own observations—i.e., probable cause—extends to both felonies and misdemeanors, *see* R.C. 2935.03(A)(1) (authorizing warrantless arrest for violations of "a law of this state, an ordinance of a municipal corporation, or a resolution of a township").

{¶ 38} By contrast, R.C. 2935.03(B)(1) limits an officer's warrantless arrest authority to when the officer has "reasonable ground to believe" that an offense *has been* committed within the officer's jurisdiction—that is, that the commission of the offense has already occurred—and "reasonable cause to believe" that the person subject to arrest is guilty of committing the offense—that is, information that may not have resulted from the officer directly observing the crime but is nonetheless sufficient and reliable information giving rise to the belief that the person to be arrested is the offender. In such instances, a police officer still may arrest without a warrant but only if the offense is one of the following: an offense of violence, the offense of criminal child enticement as defined in R.C. 2905.05, the offense of public indecency as defined in R.C. 2907.09, the offense of domestic violence as defined in R.C. 2919.25, the offense of violating a protection order as defined in R.C. 2919.27,

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probable cause," *id.* at 198. Thus, all that was left to determine in *Houck* was whether the marshal needed to obtain a warrant prior to executing a search and arrest, when the marshal had probable cause to believe that the person was presently committing a crime. Applying the holding in *Ballard*, we determined that the marshal did not need a warrant. *Houck* at 200.

the offense of menacing by stalking as defined in R.C. 2903.211, the offense of aggravated trespass as defined in R.C. 2911.211, a theft offense as defined in R.C. 2913.01, or a felony drug-abuse offense as defined in R.C. 2925.01. R.C. 2935.03(B)(1). Thus, it can be said that an officer's more limited authority to arrest in instances in which the commission of the offense is a fait accompli extends only to those offenses for which there may be a high risk that the suspect poses an immediate threat to an individual, the public, or himself or that evidence or stolen property will be lost if the suspect is not apprehended straightaway—i.e., offenses of violence,[5] some of the more serious misdemeanor offenses, and theft and felony drug-abuse offenses.

{¶ 39} Concluding, as the majority does, that R.C. 2935.04 authorizes police officers to arrest without a warrant when *any felony* has been committed and there is reasonable cause to believe that the person to be arrested is guilty of the offense renders the felony-arrest limitations in R.C. 2935.03(B)(1) wholly superfluous. This cannot be countenanced. It is our duty when interpreting statutes to ensure that related and coexisting statutes are harmonized and that each be given full application except in the rare event that "they are irreconcilable and in hopeless conflict." *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372, 643 N.E.2d 1129 (1994); *see also*

[5] R.C. 2901.01(A)(9) defines "offense of violence" and lists the offenses falling under this category. Most of these offenses are felony offenses. Included within the list is R.C. 2911.12, burglary, the offense for which Jordan was arrested although not ultimately prosecuted. Thus, based solely on the offense type, the police would have been authorized under R.C. 2935.03(B)(1) to arrest Jordan without first obtaining a warrant. However, and as explained in greater detail below, the police exceeded their authority by failing to seek an arrest warrant when they had more than enough time to do so, there was no apparent reason to believe that Jordan would abscond, and there was no other evident exigency.

R.C. 1.51 (when there is a conflict between a general and a special provision, the provisions shall be construed to give effect to both if possible; if not possible, the special provision prevails unless the general provision is enacted later in time and it is the manifest intent of the legislature for the general provision to prevail); *State v. Chippendale*, 52 Ohio St.3d 118, 120, 556 N.E.2d 1134 (1990) ("It is a well-established principle of statutory construction that specific statutory provisions prevail over conflicting general statutes. In recognition of this principle, the General Assembly enacted R.C. 1.51 * * *").[6] The majority's interpretation of the law places R.C. 2935.03

[6] R.C. 2935.04 has remained unchanged since it was enacted in 1929. *See Am.S.B. No. 8, 113 Ohio Laws 123, 140 (codifying the Code of Criminal Procedure of Ohio and showing the language of G.C. 13432-2, which is the same as present-day R.C. 2935.04); see also Am.H.B. No. 1, 125 Ohio Laws 7 (recodifying the entire General Code into the Ohio Revised Code in 1953).* By contrast, R.C. 2935.03—specifically the provisions of subdivision (B)—has undergone numerous changes since 1953. Subdivision (B) did not exist in 1953 when the General Code was recodified into the Revised Code, let alone in 1929 when the language of R.C. 2935.04 was first introduced. Many of the provisions of R.C. 2935.03(B) were first enacted in the 1970s, with significant revisions continuing through the 1980s and 1990s. *See* Am.Sub.S.B. No. 29, 132 Ohio Laws, Part II, 2124; Part I, 959; *see also* Am.Sub.H.B. No. 511, 134 Ohio Laws 1866, 1990; Am.Sub.H.B. No. 300, 136 Ohio Laws, Part II, 2311, 2331; Am.Sub.H.B. No. 835, 137 Ohio Laws, Part II, 3524, 3532; Am.Sub.H.B. No. 588, 137 Ohio Laws, Part II, 3011, 3015; Am.Sub.S.B. No. 355, 138 Ohio Laws 1179; Sub.H.B. No. 129, 140 Ohio Laws, Part I, 2060, 2066, 2075; Am.Sub.S.B. No. 321, 140 Ohio Laws, Part I, 1192, 1215; Sub.S.B. No. 33, 141 Ohio Laws, Part I, 23; Am.Sub.S.B. No. 356, 141 Ohio Laws, Part I, 967, 970, 992; Am.H.B. No. 284, 141 Ohio Laws, Part II, 3101, 3109, 3112; Sub.H.B. No. 231, 142 Ohio Laws, Part II, 2635, 2706, 2952; Am.Sub.H.B. No. 261, 142 Ohio Laws, Part II, 3100, 3110, 3126; Sub.H.B. No. 708, 142 Ohio Laws, Part III, 4853, 5007, 5176; Am.Sub.S.B. No. 82, 145 Ohio Laws, Part I, 879, 886; Sub.H.B. No. 42, 145 Ohio Laws, Part II, 2837, 2740; Am.Sub.H.B. No. 335, 145 Ohio Laws, Part III, 5451, 5474. Accordingly, there can be no debate that the provisions of R.C. 2935.03(B) were adopted at a date in time later than those contained in R.C. 2935.04. Furthermore, it cannot be said that the legislature manifested an intent that the general provisions in R.C. 2935.04 prevail over the more specific provisions of R.C. 2935.03(B). It would make no sense for the legislature to spend time painstakingly amending the provisions of R.C. 2935.03(B) if R.C. 2935.04 already gives law-

and 2935.04 in direct conflict and, worse still, renders the more specific provisions of R.C. 2935.03(B)(1) largely ineffective. To avoid this result, we should interpret R.C. 2935.04 as authorizing only private citizens and those not acting under color of law as law-enforcement officials to make warrantless arrests, when there is reasonable cause to believe that the person to be arrested is guilty of having committed a felony offense.

{¶ 40} The majority justifies its decision not to engage in any critical analysis of the two statutes by stating first that the parties did not raise this issue to this court and second that this court has applied R.C. 2935.04 to police officers in other cases. While these statements are true, they certainly do not preclude the majority from analyzing the statutes now. In *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 279, 617 N.E.2d 1075 (1993), we stated:

> As a general rule, this court will not consider arguments that were not raised in the courts below. *See State v. 1981 Dodge Ram Van* (1988), 36 Ohio St.3d 168, 170, 522 N.E.2d 524, 526. The waiver doctrine, however, is not absolute. *Id.* at 169-170, 522 N.E.2d at 526; *In re M.D.* (1988), 38 Ohio St.3d 149, 527 N.E.2d 286. When an issue of law that was not argued below is implicit in another issue that was argued and is presented by an appeal, we may consider and resolve that implicit issue. To put it another way, if we must resolve a legal issue that was not raised below in order to reach a legal issue that was raised, we will do so.

In the recent past, when we have encountered a predicate question that, as a practical matter, should be answered before the question presented by the proposition of law

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enforcement officials carte blanche to arrest without a warrant when there are reasonable grounds to believe that *any* felony, regardless of type, has been committed.

is considered, we have taken appropriate measures to address the predicate question. *See State v. Jones*, 162 Ohio St.3d 542, 2020-Ohio-4031, 166 N.E.3d 1096, ¶ 3 (declining to resolve the proposition of law accepted for review and instead remanding to the court of appeals to address the predicate question of whether defendant's waiver of counsel was knowing, intelligent, and voluntary); *see also State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248 (overruling our void-sentence cases even though the parties did not raise a facial challenge to the void-sentence doctrine on appeal).

{¶ 41} The question presently before the court presumes that R.C. 2935.04 applies to law-enforcement personnel but then goes on to ask whether the United States or Ohio Constitutions require law-enforcement officials to obtain an arrest warrant if possible. Before answering this question, however, we need to determine whether the presumption on which it relies is correct. This court has never addressed, let alone reconciled, the provisions of R.C. 2935.03 as compared to those in R.C. 2935.04. And given the prime opportunity to do so here, the court conveniently declines. As pointed out in this dissent, when R.C. 2935.03 and 2935.04 are read in pari materia, one cannot help but conclude that R.C. 2935.04 does not authorize police action at all. That this court may have previously taken for granted that R.C. 2935.04 applies to the police does not absolve us of our obligation to correct that mistake now that the issue has been brought to our attention.

Neither R.C. 2935.03 nor R.C. 2935.04 Authorizes a Warrantless Arrest if an Arrest Warrant Could Have Been Obtained; Arresting Without Authority to

Arrest Violates the Constitution

{¶ 42} R.C. 2935.04 does not authorize police to conduct a warrantless arrest. Rather, law enforcement's authority to arrest without a warrant derives solely from the more limited terms of R.C. 2935.03. But both statutes contain an additional constraint on the authority to arrest beyond simply requiring probable cause to do so[7]—one that the officers in this case completely ignored. When there is reasonable cause to believe that a person has committed an offense, both R.C. 2935.03(B)(1) and 2935.04 authorize a warrantless arrest and detention of that person "until a warrant can be obtained." This clause, "until a warrant can be obtained," certainly stands for the fact that the person executing the arrest must, within a reasonable amount of time after the arrest, secure a warrant that authorizes the continued arrest and detention. *Compare* R.C. 2935.05 ("When a person named in section 2935.03 of the Revised Code has arrested a person without a warrant, he shall, without unnecessary

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[7] R.C. 2935.03(B)(1) and 2935.04 embrace the federal and state constitutional requirements that arrests be supported by probable cause, by authorizing warrantless arrests only when "there is reasonable ground to believe" that an offense has been committed and "reasonable cause to believe" that the person to be arrested is guilty of the offense. *See Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949), quoting *McCarthy v. De Armit*, 99 Pa. 63, 69 (1881) (" 'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt' "); *see also State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 38-39 (equating the phrases "reasonable ground to believe" and "reasonable cause to believe," found in R.C. 2935.04, with probable cause). Although in *Elmore* we correctly found R.C. 2935.04's "reasonable belief" language to be synonymous with probable cause, we nevertheless applied R.C. 2935.04 to a warrantless arrest made by law-enforcement officers—like the majority opinion does in this case. However, just like the majority opinion here, this court in *Elmore* did not address how R.C. 2935.04 can apply to police when the statute is read in pari materia with R.C. 2935.03.

delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and shall file or cause to be filed an affidavit describing the offense for which the person was arrested") *and* R.C. 2935.06 ("A private person who has made an arrest pursuant to section 2935.04 of the Revised Code or detention pursuant to section 2935.041 of the Revised Code shall forthwith take the person arrested before the most convenient judge or clerk of a court of record or before a magistrate, or deliver such person to an officer authorized to execute criminal warrants who shall, without unnecessary delay, take such person before the court or magistrate having jurisdiction of the offense. The officer may, but if he does not, the private person shall file or cause to be filed in such court or before such magistrate an affidavit stating the offense for which the person was arrested") *with* R.C. 2935.08 ("Upon the filing of an affidavit or complaint as provided in sections 2935.05 or 2935.06 of the Revised Code such judge, clerk, or magistrate shall forthwith issue a warrant to the peace officer making the arrest, or if made by a private person, to the most convenient peace officer who shall receive custody of the person arrested. All further detention and further proceedings shall be pursuant to such affidavit or complaint and warrant"); *see also* Crim.R. 4(E)(2); *State v. Gedeon*, 9th Dist. Summit No. 29153, 2019-Ohio-3348, ¶ 36 (defendant entitled to a prompt judicial determination of probable cause in the wake of warrantless arrest); *Gerstein v. Pugh*, 420 U.S. 103, 113-114, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).

{¶ 43} But importantly, regarding the question now before the court, the language "until a warrant can be obtained" also presupposes that there was not time,

or that it was otherwise impracticable, to obtain an arrest warrant prior to the arrest. Our case law has long supported this understanding and indeed could not be clearer. In our discussion of R.S. 7129 and 7130—precursors to present-day R.C. 2935.03 and 2935.04, respectively—we stated:

> Nor do we deny the power of officers, and even private persons, to arrest criminals, under some circumstances, without warrant or charge on oath or affirmation. This power is recognized in our statutes (66 Ohio L. 291; 74 Ohio L. 317; Rev. Stats. §§ 7129, 7130), has long existed, and is not prohibited by any constitutional provision. But these statutes provide, in effect, that the person so arrested can only be detained "until a legal warrant can be obtained," and such warrant can only be issued on oath or affirmation. *In other words, such power to detain without warrant exists to the end that there may not be a failure of justice through the escape of criminals, and the power is measured by, and ends with, the necessity on which it is based.*

(Emphasis added.) *Eichenlaub v. State*, 36 Ohio St. 140, 143-144 (1880). In *Leger v. Warren*, we made similar pronouncements:

> *The right to make arrests without warrant is conferred by the statute in order to prevent the escape of criminals where that is likely to result from delay in procuring a writ for their apprehension; and it was not the purpose to dispense with the necessity of obtaining such writ as soon as the situation will reasonably permit.* To afford protection to the officer or person making the arrest, the authority must be strictly pursued; and no unreasonable delay in procuring a proper warrant for the prisoner's detention *can be excused or tolerated. Any other rule would leave the power open to great abuse and oppression.*

(Emphasis added.) 62 Ohio St. 500, 508, 57 N.E. 506 (1900); *see also Munzebrock v. State*, 10 Ohio Dec.Rep. 277, 278, 1886 WL 2635 (C.P.1886) ("An arrest without a

warrant has never been lawful except in such cases as is expressly authorized by statute, on the ground that public security required it under certain circumstances").

{¶ 44} In this case, the police acted outside of their authority to execute a warrantless arrest when they had ample time to procure a warrant prior to Jordan's arrest but failed to do so. There was no exigency that justified their conduct.

{¶ 45} There were eight days between when the burglary offense was committed on December 12, 2016, and when the police arrested Jordan without a warrant on December 20, 2016. All information available to the police, which the lower courts concluded amounted to probable cause, was known to the officers within a couple of days after the burglary.

{¶ 46} On the day of the burglary, the victims recounted to Detective Longworth the reasons that they suspected their son Michael and his friend "Dre"—later determined to be Jordan—had been responsible for the burglary. They also told the detective exactly where Jordan worked and what type of car he drove. Detective Longworth was able to locate a vehicle fitting the description provided by the victims parked outside of Jordan's workplace and observed Jordan leaving his work and getting into that vehicle. A couple of days later, while interviewing Michael, Detective Longworth learned that Michael and Jordan were together on the day of the burglary. From phone records, Detective Longworth learned that Michael had made several calls to Jordan around the time of the offense. Detective Longworth testified that he then spent several days simply observing Jordan getting in and out of the car near his place of employment until finally, the officers decided to execute a warrantless

arrest as Jordan was leaving a cell-phone store on December 20, 2016. It is important to note that nothing happened during these several days that would have justified law enforcement's failure to get a warrant. The commission of the burglary was long over and nothing about Jordan's behavior would have indicated to the police that he was then engaged in any criminal activity or that he would be likely to flee in the time it might have taken to get a warrant. In fact, Jordan's behavior of showing up to work and leaving around the same time each day, tended to show the opposite—that he was not then engaged in criminal activity and had responsibilities associated with his employment that required him to maintain a steady schedule. And because the police knew where he worked and understood his schedule, the police would have known exactly where to find him once they obtained an arrest warrant. It is clear that under the circumstances, the police had ample time to submit the information they had to a neutral and detached judicial officer and if that judicial officer found the information sufficient to issue an arrest warrant, secure one to make the arrest. No exigency existed at the time of Jordan's arrest that required it be made without a warrant. The officers therefore completely bypassed the protections afforded citizens by the law requiring arrest warrants and acted outside of their statutorily prescribed warrantless-arrest authority when they arrested Jordan.

{¶ 47} In *State v. Brown*, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, ¶ 23, we recognized that Article I, Section 14 of the Ohio Constitution protects against searches and seizures conducted by members of law enforcement who lack authority to make an arrest. Specifically, we noted our precedent that "[a]n arrest made in

violation of a statute limiting the police officer's authority to make the arrest infringes on '[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures' as guaranteed by Article I, Section 14 of the Ohio Constitution." *Id.* at ¶ 18, quoting Ohio Constitution, Article I, Section 14. Under our decision in *Brown*, it is clear that in acting outside of their arrest authority, the police here violated the rights conferred to Jordan under Article I, Section 14 of the Ohio Constitution. Today's majority opinion not only sanctions this constitutional violation; it also eliminates the need for police officers to ever obtain an arrest warrant. Whereas before today's decision, the police were required to submit evidence of a suspected crime to a neutral and detached judicial officer for a determination whether the information satisfied the constitutional requirements for an arrest warrant to issue, the police can now bypass this judicial review without reason or exigent circumstance and need only wait until a person who is suspected of committing a crime leaves his home or otherwise ventures into the public sphere. Once in public, that person can be arrested under this newly created type of "lawful" arrest, regardless of the quantity or the quality of the information the police officers have, and the person arrested can then be subjected to all other law-enforcement procedures, some of which are extremely invasive, that flow from an arrest.

Conclusion

{¶ 48} For the foregoing reasons, I find that the police acted outside of their statutory authority when they made a warrantless arrest of Jordan even though they

had ample time to secure an arrest warrant. In doing so, the police violated Article I, Section 14 of the Ohio Constitution. Accordingly, I would reverse the decision of the court of appeals.

BRUNNER, J., concurs in the foregoing opinion.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Philip R. Cummings, Assistant Prosecuting Attorney, for appellee.

Raymond T. Faller, Hamilton County Public Defender, and Sarah E. Nelson, Assistant Public Defender, for appellant.

Ron O'Brien, former Franklin County Prosecuting Attorney, and Steven L. Taylor, Assistant Prosecuting Attorney, urging affirmance for amicus curiae Ohio Prosecuting Attorneys Association.

Timothy Young, Ohio Public Defender, and Patrick T. Clark, Assistant Public Defender, urging reversal for amicus curiae Office of the Ohio Public Defender.

THE SUPREME COURT OF OHIO

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO	APPEAL NOS. C-180559 C-180560
Plaintiff-Appellee,	TRIAL NOS. B-1702130 B-1607185A
vs.	
LEANDRE JORDAN,	JUDGMENT ENTRY
Defendant-Appellant.	ENTERED FEB 28 2020

This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed and cause remanded for the reasons set forth in the Opinion filed this date.

Further, this court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs are taxed under App. R. 24.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on February 28, 2020 per Order of the Court.

By: s/ R J Mock

Presiding Judge

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO	APPEAL NOS. C-180559 C-180560
Plaintiff-Appellee,	TRIAL NOS. B-1702130 B-1607185A
vs.	
LEANDRE JORDAN,	OPINION.
Defendant-Appellant.	PRESENTED TO THE CLERK OF COURTS FOR FILING FEB 28 2020 COURT OF APPEALS

Criminal Appeals From: Hamilton County Court of Common Please

Judgments Appealed From Are: Affirmed and Cause Remanded

Date of Judgment Entry on Appeal: February 28, 2020

Joseph T. Deters, Hamilton County Prosecuting Attorney, and Melynda J. Machol, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and Sarah E. Nelson, Assistant Public Defender, for Defendant-Appellant.

ENTERED
FEB 28 2020

CROUSE, Judge.

{¶1} Defendant-appellant LeAndre Jordan appeals his convictions for aggravated trafficking in drugs. In two assignments of error, he argues that the trial court erred in denying his motion to suppress, and in failing to document a three-year license suspension in its sentencing entry. For the following reasons, Jordan's first assignment of error is overruled and his second assignment of error is sustained.

Factual Background

{¶2} The majority of the relevant facts revolve around a burglary that Jordan was accused of committing, but the cases before us relate to drugs and other evidence seized from Jordan's residence after police executed a search warrant looking for evidence related to the burglary.

{¶3} Shortly after 4:30 p.m. on December 12, 2016, James and Emiko Locke returned home to find that their home had been burglarized. The only item missing was a safe containing $40,000 in cash. Cincinnati Police Detective Mark Longworth investigated the burglary. Longworth determined that the burglar's entry and exit point was a broken window in the back of the house. Since there was only one entry and exit point, and no valuables missing besides the safe, Longworth determined that it was likely that the burglar knew what he was looking for when he entered the house.

{¶4} Longworth testified that the burglary was believed to have occurred between 4:15 p.m. and 4:30 p.m. when no one was at home. Longworth testified that the Lockes informed him that only two other people knew what was inside the safe

and where it was hidden: their son Michael and their godson Demarco Daniels. Michael had been "kicked out" of the house by his parents, and had "just recently come back around." The Lockes informed Longworth that Michael had called them on the phone a couple of times around the time of the burglary, trying to determine whether they were home. Longworth testified that the Lockes were "very suspicious" of Michael's attempts to determine if they were home. With Michael's permission, Longworth looked at Michael's phone call history and discovered that he had called his parents at 4:23 p.m. and 4:29 p.m.

{¶5} Longworth testified the Lockes told him that after they discovered the burglary, Michael came to the house and was "kind of fishing around for information about what had happened, what they knew." A neighbor came over and told the Lockes that he had seen a suspicious crème-colored Chrysler 300 parked near their house around the time of the burglary. When the neighbor told the Lockes about the Chrysler, Michael became upset and "yelled at [the neighbor] and told him to get out." Longworth testified that the car's movements, as described by the neighbor, raised his suspicion that it may have been involved in the burglary. Longworth testified that the Lockes informed him that as soon as the neighbor described the car, they knew that it was "Dre's" car. They told Longworth that Michael had been hanging out with Dre lately, and that they thought Dre was trouble.

{¶6} Dre is LeAndre Jordan. The Lockes informed Longworth that Jordan worked at a barbershop on Warsaw Avenue by a Kroger store. Longworth located a crème-colored Chrysler in the parking lot of the Kroger, by the barbershop.

Longworth described the car as "unique," and discovered that the car was registered to Jordan's mother. He took photographs of the car and confirmed with Michael that it was Jordan's car. Michael also confirmed that he was friends with Jordan, and that he had been with Jordan the day of the burglary. Upon further review of Michael's phone call history, Longworth discovered that on the day of the burglary Michael had called Jordan at 4:36 p.m. and 4:49 p.m., and Jordan had called Michael at 5:03 p.m.

{¶7} Longworth placed Jordan under surveillance. Jordan parked the Chrysler in the same spot every day—in the Kroger parking lot across from the barbershop. Police watched him come and go from the car and barbershop for several days. Eight days after the burglary, Longworth arrested Jordan, without a warrant, as Jordan walked to a different car he was driving that day, a black Lexus. Following the arrest, police searched Jordan and discovered keys to his residence. Longworth obtained a search warrant for the residence. When officers searched the residence, they found $2,907, heroin, cocaine, a scale, and an inoperable pistol.

Motion to Suppress

{¶8} In his first assignment of error, Jordan argues that the trial court erred in denying his motion to suppress the evidence seized from his apartment. Specifically, Jordan argues that his arrest was illegal because it was not based on probable cause and was made without a warrant. Jordan contends that all evidence seized from his residence must be suppressed as "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

{¶9} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Olagbemiro*, 1st Dist. Hamilton Nos. C-170451 and C-170452, 2018-Ohio-3540, ¶ 9. "We defer to the trial court's factual findings if they are supported by competent and credible evidence, but we review de novo the court's application of the law to those facts." *Id.*

{¶10} "A warrantless seizure is per se unreasonable unless it falls within one of the recognized exceptions to the warrant requirement." *State v. Pies*, 140 Ohio App.3d 535, 539, 748 N.E.2d 146 (1st Dist.2000). One such exception is a warrantless arrest in a public place, which does not violate the Fourth Amendment if the police officer had probable cause to believe that the person committed or was committing a felony. *State v. Brown*, 115 Ohio St. 3d 55, 2007-Ohio-4837, 873 N.E.2d 858, ¶ 66, citing *United States v. Watson* 423 U.S. 411, 427, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976); R.C. 2935.04.

{¶11} The test for establishing probable cause to arrest without a warrant is "whether the facts and circumstances within an officer's knowledge were sufficient to warrant a prudent individual in believing that the defendant had committed or was committing an offense." *State v. Deters*, 128 Ohio App.3d 329, 333, 714 N.E.2d 972 (1st Dist.1998). "Probable cause is a lesser standard of proof than that required for a conviction, which is proof beyond a reasonable doubt. Probable cause only requires the existence of circumstances that warrant suspicion." *State v. Hackney*, 1st Dist. Hamilton No. C-150375, 2016-Ohio-4609, ¶ 26. It "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *State*

v. Thorton, 1st Dist. Hamilton Nos. C-170586 and C-170587, 2018-Ohio-2960, ¶ 21, quoting *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), fn. 13. Probable cause is a "practical, nontechnical concept." *Gates* at 287. It does not require officers to rule out an innocent explanation for suspicious facts. *Thorton* at ¶ 22.

{¶12} Jordan first argues that the trial court erred by relying on facts learned by police post-arrest in finding that probable cause existed for the arrest. When a court relies on post-arrest evidence in its denial of a motion to suppress, this court must disregard that evidence to determine if the remaining evidence gave the officer probable cause to arrest. *See City of Washington Court House v. Wagner*, 12th Dist. Fayette No. CA91-01-001, 1991 WL 149551, *2 (Aug. 5, 1991); *State v. Johnson*, 11th Dist. Lake No. 2003-L-210, 2005- Ohio-2077, ¶ 13-16.

{¶13} When the trial court overruled Jordan's motion to suppress, it based its decision, in part, on the fact that "Mr. Jordan himself acknowledge[d] the fact that he drove both cars." Jordan did admit that the Chrysler was his mother's and that he drove it from time to time, but those admissions were made during the post-arrest interview, and so were not known to police at the time of the arrest. Therefore, it was error for the court to rely on Jordan's admissions when ruling on the motion to suppress. The state concedes this error, but argues that other evidence established probable cause to arrest Jordan even without Jordan's post-arrest statements.

{¶14} Jordan argues that after discounting the post-arrest admissions, the remaining evidence relied upon by the court in overruling the motion to suppress was subjective and unreliable. He points to the lack of certain evidence, such as the license

plate number of the Chrysler. But, the test is not about what evidence was missing; rather it is about what evidence was before the court.

{¶15} Longworth is a 19-year veteran of the police department. He testified that he determined there was probable cause to arrest Jordan based on "the phone records, the interview with Michael Locke, the interview with the family, the interview with the neighbor, the observations that I made that corroborated those things."

{¶16} It is clear that the Lockes did not like Jordan and thought he was trouble, but their suspicions of Jordan were not based solely on their dislike of him or pure speculation. Rather, once the neighbor told them he had seen a suspicious crème-colored Chrysler near the house around the time of the burglary, they told Longworth that Jordan drove that kind of car, and that Michael (who they suspected was involved in the burglary based on his knowledge of the safe and the phone calls) had been hanging out with Jordan recently.

{¶17} Although the court's consideration of Jordan's post-arrest admissions was error, once we excise the admissions, we are left with evidence sufficient to cause a prudent person to believe that a burglary had been committed, and that Jordan was involved in the burglary.

{¶18} Next, Jordan argues that police failed to obtain an arrest warrant, and that no exigency existed to excuse that requirement. Jordan cites to a Second District case, *State v. VanNoy*, 188 Ohio App. 3d 89, 2010-Ohio-2845, 934 N.E.2d 413, ¶ 23 (2d Dist.), for the proposition that Longworth should have obtained an arrest warrant

even though he made the arrest in a public place and with probable cause. In *VanNoy*, the court held that "in order for an officer to lawfully perform a warrantless arrest in a public place, the arrest must not only be supported by probable cause, it must also be shown that obtaining an arrest warrant beforehand was impracticable under the circumstances, *i.e.*, that exigent circumstances exist." *Id.*, citing *State v. Heston*, 29 Ohio St.2d 152, 280 N.E.2d 376 (1972), paragraph two of the syllabus.

{¶19} However, the proposition in *VanNoy* and *Heston* is at odds with Ohio Supreme Court precedent. "A warrantless arrest that is based upon probable cause and occurs in a public place does not violate the Fourth Amendment." *Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, at ¶ 66, citing *Watson*, 423 U.S. at 427, 96 S.Ct. 820, 46 L.Ed.2d 598.

{¶20} As stated by *State v. Taylor*, 10th Dist. Franklin No. 18AP-7, 2019-Ohio-2018, ¶ 14, the Second District's position in *VanNoy* is a minority position. There is even dispute within the Second District as to *VanNoy's* viability. *See State v. Armstead*, 2d Dist. Montgomery No. 26640, 2015-Ohio-5010, ¶ 40, 50 N.E.3d 1073 (Welbaum, J., dissenting) (explaining that Heston has been discredited by Watson and Brown, and exigent circumstances or an undue delay requirement cannot be imposed on warrantless arrests made with probable cause).

{¶21} This court follows the majority approach. *See State v. Evans*, 1st Dist. Hamilton No. C-080129, 2009-Ohio241, ¶ 13, citing *Watson* at 427 ("a warrantless arrest of a person is proper if it is supported by probable cause"). Therefore, the state was not required to show that exigent circumstances existed when it arrested Jordan.

Jordan's arrest occurred in a public place and Longworth had probable cause to believe that Jordan had committed a felony. Because Jordan's arrest did not violate the Fourth Amendment, the trial court did not err in denying the motion to suppress. Jordan's first assignment of error is overruled.

License Suspension

{¶22} In Jordan's second assignment of error, he argues that the trial court erred where it announced a three-year license suspension at the sentencing hearing, but imposed a five-year license suspension in its sentencing entry. The state concedes the error.

{¶23} The five-year license suspension in the judgment entry is clearly a clerical error, as the record shows that the trial court imposed a three-year license suspension at the sentencing hearing. We sustain Jordan's second assignment of error, and remand this cause to the trial court to make an entry nunc pro tunc correcting the clerical error in the sentencing entry so that the entry reflects a three-year license suspension. *See* Crim.R. 36; *State v. Cooper*, 1st Dist. Hamilton No. C-180401, 2019-Ohio-2813, ¶ 1.

Conclusion

{¶24} We sustain Jordan's second assignment of error and remand this cause for a nunc pro tunc entry correcting the license-suspension portion of his sentence. We overrule Jordan's first assignment of error, and the judgment of the trial court is affirmed.

Judgment affirmed and cause remanded.

MYERS, P.J., and **WINKLER, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.

THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

date: 09/17/2018

code: GJC

judge: 23

ENTERED SEP 24 2018

s/ Gorman, J.

Judge: Robert Gorman

STATE OF OHIO

VS.

LEANDRE K JORDAN

Case Nos. B 1607185-A

JUDGMENT ENTRY: COSTS

Defendant was present in Open Court with Counsel **RODNEY J HARRIS** on the **17th** day of **September 2018** for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

count 1: TRAFFICKING IN HEROIN, 2925-03A2/ORCN,F3

count 2: AGGRAVATED TRAFFICKING IN DRUGS, 2925-03A2/ORCN,F3

count 3: POSSESSION OF HEROIN, 2925-11A/ORNC,F4

count 4: AGGRAVATED POSSESSION OF DRUGS, 2925.11A/ORCN,F5

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

It is therefore ordered and adjudged by the Court that the defendant pay Costs of this prosecution, for which execution is awarded:

COUNTS #1, #2, #3, AND #4 ARE MERGED WITH COUNRT #2 IN CASE B 1702130 FOR THE PURPOSE OF SENTENCING

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF

PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

THE STATE OF OHIO, HAMILTON COUNTY

COURT OF COMMON PLEAS

date: 09/17/2018	ENTERED SEP 24 2018
code: GJEI	s/ Gorman, J.
judge: 23	Judge: Robert Gorman
STATE OF OHIO	Case Nos. B 1702130
VS.	JUDGMENT ENTRY:
LEANDRE K JORDAN	SENTENCE: INCARCERATION

Defendant was present in Open Court with Counsel **RODNEY J HARRIS** on the **17th** day of **September 2018** for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

count 2: POSSESSION OF COCAINE WITH SPECIFICATION #1, 2925-11a/ORCN,F1

count 1: TRAFFICKING IN COCAINE WITH SPECIFICATION #1, 2925-03a2/ORCN,F1, JUDGMENT ENTRY OF ACQUITAL

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the

defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

Defendant is sentenced to be imprisoned as follows:

count 2: CONFINEMENT ON M.D.O. SPECIFICATION: 11 Yrs

DEPARTMENT OF CORRECTIONS

DRIVER'S LICENSE SUSPENSION: 5 Yrs

COUNT #2 IS MERGED WITH M.D.O. SPECIFICATION #1 TO COUNT #2 AND WITH COUNTS #1, #2, #3, AND #4 IN CASE B1607185-A.

THE TOTAL AGGREGATE SENTENCE IS ELEVEN (11) YEARS IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR ONE HUNDRED SEVENTY (170) DAYS TIME SERVED

MANDATORY FINE IN THE AMOUNT OF $10,000.00 IS REMITTED

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE

COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

AS PART OF THE SENTENVE IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE (5) YEARS.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTH PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OF TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED

THE STATE OF OHIO

COURT OF COMMON PLEAS

CRIMINAL DIVISION

State of Ohio,

v.

Leandre Jordan

Case Nos. B1607185

B1702130

(Judge Luebbers)

(Judge Gorman)

ENTRY OVERRULING DEFENDANT'S MOTION TO SUPPRESS

This matter came on upon Defendant's Motion to Suppress, and the Court being fully advised in the premises after a hearing, overrules the motion.

s/ Gorman, J.

Robert H. Gorman, Judge

Hamilton County Court of Common Pleas

ENTERED APRIL 02 2018

EXCERPT FROM THE TRANSCRIPT

OF PROCEEDINGS FOR APPEAL

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

Volume 13 of 19

STATE OF OHIO,	)	
	)	
Plaintiff,	)	
	)	CASE NO: B1702130(A)
vs.	)	B1607185
	)	APPEAL NO: C1800559
LEANDRE JORDAN,	)	
	)	
Defendant.	)	

(Pages: 149 thru 235)

COMPLETE TRANSCRIPT OF PROCEEDINGS FOR APPEAL

- - -

APPEARANCES:

SETH TIEGER, ESQ.

On behalf of the Plaintiff.

RODNEY HARRIS, ESQ.

On behalf of the Defendant.

BE IT REMEMBERED that upon the hearing of this cause, on March 7th, 2018, before the Honorable Robert Gorman, a said visiting judge of the said court, the following proceedings were had.

* * *

THE COURT: All right, thank you. I find that, based upon the evidence that I've heard this morning from Detective Longworth, that he did have probable cause based upon the report of a burglary, his conversations with the Lockes and with Michael Locke, the telephone conversations on his cell phone, and the fact that Mr. Jordan himself acknowledges the fact that he drove both cars, which there may be a question as to which car was being used on that day.

But based upon the information that he had on the 12th, from the witness who saw the car and described the car on the street, and the fact that Mr. Jordan did acknowledge the fact that it was the white Chrysler or cream-colored Chrysler was his mother's, and that he drove it from time to time, I find that there's probable cause to justify a warrantless search at the time. And I have no information as far as suppression of the warrant other than whether or not there was -- the search warrant, other than that there was probable cause to make it, which I find, and this is ^assumed from my finding as to the warrantless arrest. So the motion to suppress is overruled.

MR. HARRIS: Yes, sir.

THE COURT: And I appreciate counsel's presentation and the arguments in this case, both of you.

Do you want me to set this case for trial?

MR. HARRIS: I would, Your Honor.

THE COURT: All right. We'll give you a date.

* * *

CERTIFICATE

I, Tracy Coleman, RMR, CRR, the undersigned, an Official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the same time and place stated herein I recorded in stenotype and thereafter transcribed the within 87 pages, and that the foregoing transcript of proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 2nd day of January, 2019.

s/ Hope for Tracy C.

Tracy Coleman, RMR, CRR

Official Court Reporter

Court of Common Pleas

Hamilton County, Ohio

Ohio Revised Code § 2935.03

Authority to arrest without warrant – pursuit outside jurisdiction

(A)(1) A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint police district, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, veterans' home police officer appointed under section 5907.02 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended, shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction,

college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(2) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the peace officer's, state fire marshal law enforcement officer's, or individual's territorial jurisdiction, a law of this state.

(3) The house sergeant at arms, if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, and an assistant house sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (D)(1)(a) of section 101.311 of the Revised Code or while providing security pursuant to division (D)(1)(f) of section 101.311 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(4) The senate sergeant at arms and an assistant senate sergeant at arms shall arrest and detain, until a warrant can be obtained, a person found violating, within the limits of the sergeant at arms's or assistant sergeant at arms's territorial jurisdiction specified in division (B) of section 101.312 of the Revised Code, a law of this state, an ordinance of a municipal corporation, or a resolution of a township.

(B)(1) When there is reasonable ground to believe that an offense of violence, the offense of criminal child enticement as defined in section 2905.05 of the Revised Code, the offense of public indecency as defined in section 2907.09 of the Revised Code, the offense of domestic violence as defined in section 2919.25 of the Revised Code, the offense of violating a protection order as defined in section 2919.27 of the Revised Code, the offense of menacing by stalking as defined in section 2903.211 of the Revised Code, the offense of aggravated trespass as defined in section 2911.211 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans' home operated under Chapter 5907. of the Revised Code, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the

limits of the territorial jurisdiction of the peace officer, a peace officer described in division (A) of this section may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation.

(2) For purposes of division (B)(1) of this section, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation:

(a) A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass;

(b) A written statement by the administrator of the interstate compact on mental health appointed under section 5119.71 of the Revised Code alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code;

(c) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in violation of section 2921.34 of the Revised Code.

(3)(a) For purposes of division (B)(1) of this section, a peace officer described in division (A) of this section has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense if any of the following occurs:

(i) A person executes a written statement alleging that the person in question has committed the offense of domestic violence or the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit the offense of domestic violence or the offense of violating a protection order.

(b) If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that a particular person is guilty of committing the offense, it is the preferred course of action in this state that the officer arrest and detain that person pursuant to division (B)(1) of this section until a warrant can be obtained.

If pursuant to division (B)(3)(a) of this section a peace officer has reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and reasonable cause to believe that family or household members have committed the offense against each other, it is the preferred course of action in this state that the officer, pursuant to division (B)(1) of this section, arrest and detain until a warrant can be obtained the family or household member who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor. There is no preferred course of action in this state regarding any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor, but, pursuant to division (B)(1) of this section, the peace officer may arrest and detain until a warrant can be obtained any other family or household member who committed the offense and whom the officer does not have reasonable cause to believe is the primary physical aggressor.

(c) If a peace officer described in division (A) of this section does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of domestic violence or the offense of violating a protection order when it is the preferred course of action in this state pursuant to division (B)(3)(b) of this section that the officer arrest that person, the officer shall articulate in the written report of the incident required by section 2935.032 of the Revised Code a clear

statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained.

(d) In determining for purposes of division (B)(3)(b) of this section which family or household member is the primary physical aggressor in a situation in which family or household members have committed the offense of domestic violence or the offense of violating a protection order against each other, a peace officer described in division (A) of this section, in addition to any other relevant circumstances, should consider all of the following:

(i) Any history of domestic violence or of any other violent acts by either person involved in the alleged offense that the officer reasonably can ascertain;

(ii) If violence is alleged, whether the alleged violence was caused by a person acting in self-defense;

(iii) Each person's fear of physical harm, if any, resulting from the other person's threatened use of force against any person or resulting from the other person's use or history of the use of force against any person, and the reasonableness of that fear;

(iv) The comparative severity of any injuries suffered by the persons involved in the alleged offense.

(e)(i) A peace officer described in division (A) of this section shall not require, as a prerequisite to arresting or charging a person who has committed the offense of domestic violence or the offense of violating a protection order, that the victim of the offense specifically consent to the filing of charges against the person who has committed the offense or sign a complaint against the person who has committed the offense.

(ii) If a person is arrested for or charged with committing the offense of domestic violence or the offense of violating a protection order and if the victim of the offense does not cooperate with the involved law enforcement or prosecuting authorities in the prosecution of the offense or, subsequent to the arrest or the filing of the charges, informs the involved law enforcement or prosecuting authorities that the victim does not wish the prosecution of the offense to continue or wishes to drop charges against the alleged offender relative to the offense, the involved prosecuting authorities, in determining whether to continue with the prosecution of the offense or whether to dismiss charges against the alleged offender relative to the offense and notwithstanding the victim's failure to cooperate or the victim's wishes, shall consider all facts and circumstances that are relevant to the offense, including, but not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of the charges and of all witnesses to that incident.

(f) In determining pursuant to divisions (B)(3)(a) to (g) of this section whether to arrest a person pursuant to division (B)(1) of this section, a peace officer described in division (A) of this section shall not consider as a factor any possible shortage of cell space at the detention facility to which the person will be taken subsequent to the person's arrest or any possibility that the person's arrest might cause, contribute to, or exacerbate overcrowding at that detention facility or at any other detention facility.

(g) If a peace officer described in division (A) of this section intends pursuant to divisions (B)(3)(a) to (g) of this section to arrest a person pursuant to division (B)(1) of this section and if the officer is unable to do so because the person is not present, the officer promptly shall seek a warrant for the arrest of the person.

(h) If a peace officer described in division (A) of this section responds to a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon that was used, threatened to be used, or brandished constitutes contraband, and, to the extent possible, the officer shall seize the deadly weapon as contraband pursuant to Chapter 2981. of the Revised Code. Upon the seizure of a

deadly weapon pursuant to division (B)(3)(h) of this section, section 2981.12 of the Revised Code shall apply regarding the treatment and disposition of the deadly weapon. For purposes of that section, the "underlying criminal offense" that was the basis of the seizure of a deadly weapon under division (B)(3)(h) of this section and to which the deadly weapon had a relationship is any of the following that is applicable:

(i) The alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded;

(ii) Any offense that arose out of the same facts and circumstances as the report of the alleged incident of the offense of domestic violence or the alleged incident of the offense of violating a protection order to which the officer who seized the deadly weapon responded.

(4) If, in the circumstances described in divisions (B)(3)(a) to (g) of this section, a peace officer described in division (A) of this section arrests and detains a person pursuant to division (B)(1) of this section, or if, pursuant to division (B)(3)(h) of this section, a peace officer described in division (A) of this section seizes a deadly weapon, the officer, to the extent described in and in accordance with section 9.86 or 2744.03 of the Revised Code, is immune in any civil action for damages for injury,

death, or loss to person or property that arises from or is related to the arrest and detention or the seizure.

(C) When there is reasonable ground to believe that a violation of division (A)(1), (2), (3), (4), or (5) of section 4506.15 or a violation of section 4511.19 of the Revised Code has been committed by a person operating a motor vehicle subject to regulation by the public utilities commission of Ohio under Title XLIX of the Revised Code, a peace officer with authority to enforce that provision of law may stop or detain the person whom the officer has reasonable cause to believe was operating the motor vehicle in violation of the division or section and, after investigating the circumstances surrounding the operation of the vehicle, may arrest and detain the person.

(D) If a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code, special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code, special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility described in division (A) of this section, township constable, police officer of a township or joint police district, state university law enforcement officer appointed

under section 3345.04 of the Revised Code, peace officer of the department of natural resources, individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code, the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code, or an assistant house sergeant at arms is authorized by division (A) or (B) of this section to arrest and detain, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a person until a warrant can be obtained, the peace officer, outside the limits of that territory, may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

(1) The pursuit takes place without unreasonable delay after the offense is committed;

(2) The pursuit is initiated within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or those areas of a municipal corporation that have been agreed to by a regional

transit authority and a municipal corporation located within its territorial jurisdiction, port authority, municipal airport or other municipal air navigation facility, college, or university in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer;

(3) The offense involved is a felony, a misdemeanor of the first degree or a substantially equivalent municipal ordinance, a misdemeanor of the second degree or a substantially equivalent municipal ordinance, or any offense for which points are chargeable pursuant to section 4510.036 of the Revised Code.

(E) In addition to the authority granted under division (A) or (B) of this section:

(1) A sheriff or deputy sheriff may arrest and detain, until a warrant can be obtained, any person found violating section 4503.11, 4503.21, or 4549.01, sections 4549.08 to 4549.12, section 4549.62, or Chapter 4511. or 4513. of the Revised Code on the portion of any street or highway that is located immediately adjacent to the boundaries of the county in which the sheriff or deputy sheriff is elected or appointed.

(2) A member of the police force of a township police district created under section 505.48 of the Revised Code, a member of the police force of a joint police district created under section 505.482 of the Revised Code, or a township constable

appointed in accordance with section 509.01 of the Revised Code, who has received a certificate from the Ohio peace officer training commission under section 109.75 of the Revised Code, may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the township police district or joint police district, in the case of a member of a township police district or joint police district police force, or the unincorporated territory of the township, in the case of a township constable. However, if the population of the township that created the township police district served by the member's police force, or the townships and municipal corporations that created the joint police district served by the member's police force, or the township that is served by the township constable, is sixty thousand or less, the member of the township police district or joint police district police force or the township constable may not make an arrest under division (E)(2) of this section on a state highway that is included as part of the interstate system.

(3) A police officer or village marshal appointed, elected, or employed by a municipal corporation may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section on the portion of any street or highway that is located immediately

adjacent to the boundaries of the municipal corporation in which the police officer or village marshal is appointed, elected, or employed.

(4) A peace officer of the department of natural resources, a state fire marshal law enforcement officer described in division (A)(23) of section 109.71 of the Revised Code, or an individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code may arrest and detain, until a warrant can be obtained, any person found violating any section or chapter of the Revised Code listed in division (E)(1) of this section, other than sections 4513.33 and 4513.34 of the Revised Code, on the portion of any street or highway that is located immediately adjacent to the boundaries of the lands and waters that constitute the territorial jurisdiction of the peace officer or state fire marshal law enforcement officer.

(F)(1) A department of mental health and addiction services special police officer or a department of developmental disabilities special police officer may arrest without a warrant and detain until a warrant can be obtained any person found committing on the premises of any institution under the jurisdiction of the particular department a misdemeanor under a law of the state.

A department of mental health and addiction services special police officer or a department of developmental disabilities special police officer may arrest without a

warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code and who is found committing on the premises of any institution under the jurisdiction of the particular department a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution.

(2)(a) If a department of mental health and addiction services special police officer or a department of developmental disabilities special police officer finds any person who has been hospitalized, institutionalized, or confined in an institution under the jurisdiction of the particular department pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code committing a violation of section 2921.34 of the Revised Code that involves an escape from the premises of the institution, or if there is reasonable ground to believe that a violation of section 2921.34 of the Revised Code has been committed that involves an escape from the premises of an institution under the jurisdiction of the department of mental health and addiction services or the department of developmental disabilities and if a department of mental health and addiction services special police officer or a department of developmental disabilities special police officer has reasonable cause to believe that a particular person who has been hospitalized, institutionalized, or confined in the institution pursuant to or under

authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain that person for that violation of section 2921.34 of the Revised Code, until a warrant can be obtained, if both of the following apply:

(i) The pursuit takes place without unreasonable delay after the offense is committed;

(ii) The pursuit is initiated within the premises of the institution from which the violation of section 2921.34 of the Revised Code occurred.

(b) For purposes of division (F)(2)(a) of this section, the execution of a written statement by the administrator of the institution in which a person had been hospitalized, institutionalized, or confined pursuant to or under authority of section 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code alleging that the person has escaped from the premises of the institution in violation of section 2921.34 of the Revised Code constitutes reasonable ground to believe that the violation was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation.

(G) As used in this section:

(1) A "department of mental health and addiction services special police officer" means a special police officer of the department of mental health and addiction services designated under section 5119.08 of the Revised Code who is certified by the Ohio peace officer training commission under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(2) A "department of developmental disabilities special police officer" means a special police officer of the department of developmental disabilities designated under section 5123.13 of the Revised Code who is certified by the Ohio peace officer training council under section 109.77 of the Revised Code as having successfully completed an approved peace officer basic training program.

(3) "Deadly weapon" has the same meaning as in section 2923.11 of the Revised Code.

(4) "Family or household member" has the same meaning as in section 2919.25 of the Revised Code.

(5) "Street" or "highway" has the same meaning as in section 4511.01 of the Revised Code.

(6) "Interstate system" has the same meaning as in section 5516.01 of the Revised Code.

(7) "Peace officer of the department of natural resources" means an employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to section 1501.013 of the Revised Code, a forest-fire investigator appointed pursuant to section 1503.09 of the Revised Code, a natural resources officer appointed pursuant to section 1501.24 of the Revised Code, or a wildlife officer designated pursuant to section 1531.13 of the Revised Code.

(8) "Portion of any street or highway" means all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder.