[Cite as *State v. Bazrawi*, 2013-Ohio-3015.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	No. 12AP-1043 (C.P.C. No. 12CR-1060)
v.	:	(REGULAR CALENDAR)
Louie H. Bazrawi,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on July 11, 2012

Ron O'Brien, Prosecuting Attorney, and *Steven L. Taylor*, for appellant.

Carpenter Lipps & Leland LLP, Kort Gatterdam and *Erik P. Henry*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

McCORMAC, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from the December 11, 2012 judgment of the Franklin County Court of Common Pleas granting the motion to suppress evidence filed by defendant-appellee, Louie H. Bazrawi.

I. Procedural History

{¶ 2} On February 28, 2012, the state charged Bazrawi with one count of carrying a concealed weapon in violation of R.C. 2923.12 and one count of improperly handling firearms in a moving vehicle in violation of R.C. 2923.16. The charges stem from a December 16, 2011 incident whereby Columbus police recovered a handgun from Bazrawi's Chevy Malibu.

{¶ 3} On June 1, 2012, Bazrawi filed a motion to suppress, challenging the warrantless search of his vehicle which resulted in the gun's discovery. The state filed a memorandum contra on June 18, 2012, asserting the search was justified under both the automobile exception and the plain-view exception to the warrant requirement. The state also claimed the good-faith exception to the federal exclusionary rule would apply and no exclusionary rule existed under the Ohio constitutional provision.

{¶ 4} The trial court conducted a hearing on the motion to suppress on August 27, 2012. The trial court articulated its essential findings and conclusions at a November 13, 2012 hearing pursuant to the state's October 12, 2012 motion for essential findings, and issued an entry granting defendant's motion to suppress evidence on December 11, 2012, concluding the police lacked any justification to search Bazrawi's car in the absence of a warrant.

II. Assignments of Error

{¶ 5} The state timely appeals, setting forth three assignments of error for review:

> FIRST ASSIGNMENT OF ERROR
> THE TRIAL COURT ERRED IN GRANTING THE MOTION TO SUPPRESS BASED ON ITS CONCLUSION THAT THE AUTOMOBILE EXCEPTION DID NOT APPLY BECAUSE THE OCCUPANTS HAD EXITED THE AUTOMOBILE AND THE AUTOMOBILE WAS LOCKED.
>
> SECOND ASSIGNMENT OF ERROR
> THE TRIAL COURT ERRED IN GRANTING THE MOTION TO SUPPRESS BASED ON ITS CONCLUSION THAT THE PROBABLE CAUSE EXISTING TO SEARCH FOR MARIJUANA-RELATED EVIDENCE COULD NOT JUSTIFY THE DISCOVERY AND SEIZURE OF THE FIREARM.
>
> THIRD ASSIGNMENT OF ERROR
> THE TRIAL COURT ERRED WHEN IT FAILED TO ADDRESS AND SUSTAIN THE APPLICABILITY OF THE GOOD-FAITH EXCEPTION TO THE FEDERAL EXCLUSIONARY RULE.

As the state's first and second assignments of error are interrelated, we address them together.

III. First and Second Assignments of Error - Motion to Suppress

{¶ 6} The state's first and second assignments of error challenge the trial court's decision granting Bazrawi's motion to suppress. " ' "Appellate review of a motion to suppress presents a mixed question of law and fact." ' " *State v. Broughton*, 10th Dist. No. 11AP-620, 2012-Ohio-2526, ¶ 14, quoting *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, ¶ 100, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. The trial court, as fact finder, is in the best position to resolve factual questions and evaluate the credibility of witnesses, so we accept the trial court's factual findings if they are supported by competent, credible evidence. *Burnside*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992); *State v. Fanning*, 1 Ohio St.3d 19 (1982). After accepting these facts as true, the appellate court then must determine independently, without deference to the trial court's conclusion, whether the facts "satisfy the applicable legal standard." *Burnside* at 155, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

{¶ 7} The facts culminating in the gun's discovery are largely undisputed. On the afternoon of December 16, 2011, Columbus Police Officers Jeremy Phalen and Kevin George were patrolling the city in a marked police cruiser. At approximately 4:oo p.m., Officer Phalen turned the cruiser eastbound onto Shady Lane Court, a residential street ending in a cul-de-sac, where the officers observed two vehicles "parked facing westbound in the middle portion of the cul-de-sac turn around area." (Aug. 27, 2012 Tr. 6, hereinafter "Aug. Tr. __ ".)

{¶ 8} Officer Phalen testified at the motion to suppress hearing that the two cars in the cul-de-sac first drew his attention because they "were parked in a manner that was partially obstructing the turnabout on the roadway," and the Malibu in particular "was protruding more out into the roadway than the other car." (Aug. Tr. 7.) As the cruiser passed by the Malibu, Officer Phalen observed two individuals in the front seats; the officer testified that the driver—later identified as Bazrawi—had a "surprised look" on his face, with his "eyes opened widely." (Aug. Tr. 7.) Officer Phalen drove around to the backside of the cul-de-sac and parked the cruiser without blocking the Malibu; he and Officer George exited the cruiser, "[a]t which point * * * Mr. Bazrawi and [Bazrawi's companion] Mr. Rhea exited the Malibu" and "in unison walked together away from the vehicle." (Aug. Tr. 8.) Officer Phalen testified that he "could smell the burn odor of

marijuana in the air" as he walked by the Malibu, but he focused on engaging the two men as they walked away, while Officer George "approached the passenger side of the vehicle." (Aug. Tr. 8-9.)

{¶ 9} Officer George also testified at the motion to suppress hearing. Consistent with his partner's testimony, Officer George reiterated that the two vehicles in the cul-de-sac "were parked protruding into the flow of the traffic into the street," and the two men in the Malibu "had nervous looks upon their faces" as Officer Phalen drove the cruiser by the car, "so [the officers] turned around, pulled around, and parked." (Aug. Tr. 33.) Upon exiting the cruiser, Officer George noticed the odor of burnt marijuana "[a]s soon as [he] got out" of the cruiser. (Aug. Tr. 46.) While Officer Phalen followed the men away from the Malibu, Officer George "followed the [marijuana] odor that went right out of the car," looked into the vehicle's front passenger window, and saw "in plain view" a quart-sized clear bag on the passenger floorboard which looked to contain marijuana. (Aug. Tr. 46; 34.)

{¶ 10} During this period, both officers testified that the two men were agitated and did not respond to Officer Phalen's requests that they stop walking away. When Officer George spotted the marijuana in the Malibu, the officers detained the men in the cruiser "due to [their] turbulent behavior." (Aug. Tr. 27.) The officers then returned to the Malibu and used Bazrawi's confiscated car keys to enter the locked vehicle. While Officer George retrieved the bag of marijuana from the passenger-side floorboard, Officer Phalen searched the driver's side area. After finding marijuana residue in the driver's side door, a marijuana cigarette in an ashtray, and a digital scale on top of Bazrawi's wallet in the center console, Officer Phalen looked under the driver's seat and discovered a Taurus 9-milimeter handgun loaded with 15 rounds of ammunition. At no time did the officers secure a warrant to search the Malibu or to seize the contraband found therein.

{¶ 11} The sole issue at the suppression hearing was "the ability of the officers to conduct a [warrantless] search based upon the facts here." (Nov. 13, 2012 Tr. 4.) The state asserted that both the automobile exception and the plain-view exception applied to justify the officers' warrantless search and seizure.

{¶ 12} Notably, the record indicates that the trial court accepted the credibility of Officers Phalen and George as witnesses and their accounts of the facts. Nevertheless, the

court granted Bazrawi's motion to suppress based on its interpretation of the law as applied to those facts. Specifically, the trial court concluded that no exception to the Fourth Amendment warrant requirement applied to justify the warrantless search, so the officers' actions violated Bazrawi's constitutional right to be free of unreasonable search and seizure.

{¶ 13} The Fourth Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment, and Ohio Constitution, Article I, Section 14 requires adherence to judicial processes and proscribes unreasonable searches and seizures. *U.S. v. Ross*, 456 U.S. 798, 825 (1982); *State v. Ford,* 10th Dist. No. 07AP-803, 2008-Ohio-4373, ¶ 19. Searches conducted outside the judicial process, without a warrant, are "per se unreasonable" under the Fourth Amendment and "[e]vidence is inadmissible if it stems from an unconstitutional search or seizure." *Ford* at ¶ 19, citing *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993), quoting *Thompson v. Louisiana*, 469 U.S. 17, 20 (1984); *Wong Sun v. U.S.*, 371 U.S. 471, 484-85 (1963). However, the warrant requirement is subject to a " ' "few specifically established and well delineated exceptions." ' " *Dickerson* at 372. "Those seeking exemption from the warrant requirement bear the burden of establishing the applicability of one of the recognized exceptions." *State v. Fisher*, 10th Dist. No. 10AP-746, 2011-Ohio-2488, ¶ 17, citing *State v. Lowry,* 4th Dist. No. 96CA2259 (June 17, 1997).

{¶ 14} This case presents three distinct search actions for purposes of Fourth Amendment analysis. First, we examine Officer George's initial search, then the officers' seizure of the marijuana, and then the seizure of the handgun.

A. *Initial View of Marijuana*

{¶ 15} There is no dispute that Officer George approached the Malibu while it was parked on a public street and "observed a bag containing what he believed to be marijuana on the passenger floorboard" simply by looking in the car's front passenger-side window. (Bazrawi's brief, at 3.) While the Fourth Amendment protects against unreasonable government intrusions into areas of recognized privacy expectations, "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection" since "what is in open view cannot be said to be embraced by any reasonable expectation of privacy." *Katz v. U.S.,* 389 U.S. 347,

351 (1967); *Dunn's Lane, Inc. v. Liquor Control Comm.*, 10th Dist. No. 89AP-1431 (Oct. 11, 1990). *See also State v. Claytor*, 85 Ohio App.3d 623, 633 (4th Dist.1993) (Harsha, J., concurring) (noting, "[w]hen others have access to an area, the accused assumes the risk that others will observe items left in open view," so "[w]hile the accused may have a subjective expectation of privacy in his car while parked in a business lot, it is not one which this court, or more importantly, society is prepared to recognize as reasonable"). In accordance with this principle, sometimes referred to as the "open view" doctrine, where an officer can observe contraband without making a prior physical intrusion into a constitutionally protected area, such as when an officer "sees an object * * * within a vehicle," there "has been no search at all." *State v. Harris*, 98 Ohio App.3d 543, 547 (8th Dist.1994), quoting 1 LaFave, Search and Seizure 321-22, Section 2.2(a) (2d Ed.1987). *See also State v. Copper*, 4th Dist. No. 95 CA 2120 (Jan. 29, 1996) (noting the distinction between the traditional "plain view doctrine, in which there is a prior justification for a search, and the open view doctrine, in which there is no search at all").

{¶ 16} Therefore, where Officer George could see the marijuana on the Malibu's floorboard in open view, Bazrawi possessed "no legitimate expectation of privacy shielding that portion of the interior of an automobile which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers." (Internal citations deleted.) *Texas v. Brown*, 460 U.S. 730, 740 (1983). *See also State v. McClain,* 2d Dist. No. 19710, 2003-Ohio-5329, ¶ 20 (holding officer's "conduct in then looking into the open passenger window while standing outside the vehicle does not constitute a search for Fourth Amendment purposes); *State v. Reeder*, 12th Dist. No. CA2002-04-017, 2002-Ohio-6680, ¶ 13 (holding officer's "observation of an open container of alcohol through the window of a parked vehicle, even with the aid of a flashlight, does not constitute a 'search' under the Fourth Amendment, as the item is in 'open' view for all to see"); *State v. Lang*, 117 Ohio App.3d 29, 35 (1st Dist.1996) (holding "observation of contraband in a vehicle on a public street without physical intrusion does not constitute a search"); *State v. Snyder*, 6th Dist. No. WD-94-098 (Aug. 25, 1995) (finding "no Fourth Amendment violation occurred" where incriminating evidence was in "open view" in a vehicle "parked in a mall parking lot, clearly a nonprotected public area, and therefore [defendant]

assumes the risk that items left in open view may be observed"); *State v. Gove*, 8th Dist. No. 91972, 2009-Ohio-3463, ¶ 24 (holding "observation of contraband, such as a heroin needle, that indicates drug activity in a vehicle on a public street without physical intrusion does not constitute a search"). Accordingly, Officer George's observation of marijuana in the car was not a search within the meaning of the Fourth Amendment and the state was not required to establish the search fell within some exception to the warrant requirement.

B. *Seizure of Marijuana*

{¶ 17} While the initial viewing of the marijuana does not implicate the Fourth Amendment, the officers' warrantless seizure of the marijuana from the Malibu does. On appeal, the state reiterates its contention that the automobile exception applies to justify the officers' actions.

{¶ 18} The automobile exception is a "specifically established and well delineated" exception to the warrant requirement. *Ross* at 825, citing *Carroll v. U.S.*, 267 U.S. 132 (1925). "[U]nder the automobile exception to the warrant requirement, the police may search a motor vehicle without a warrant if they have probable cause to believe that the vehicle contains contraband." *State v. Battle*, 10th Dist. No. 10AP-1132, 2011-Ohio-6661, ¶ 33. Courts define probable cause in the context of an automobile search as " 'a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction.' " *State v. Parrish*, 10th Dist. No. 01AP-832, 2002-Ohio-3275, ¶ 27, quoting *State v. Kessler,* 53 Ohio St.2d 204, 208 (1978), quoting *Carroll* at 149. Accordingly, "[t]he determination of probable cause is fact-dependent and turns on what the officer knew at the time he made the stop and/or search." *Battle* at ¶ 34.

{¶ 19} In addition to Officer George's testimony that he saw marijuana in the car, the state elicited testimony from the officer as to his training and experience in identifying marijuana. "[T]he assessment of probable cause * * * include[s] the specialized knowledge and experience of police officers," and "an officer may rely on specialized knowledge and training 'to draw inferences and make deductions that might well elude an untrained person.' " *State v. Halczyszak*, 25 Ohio St.3d 301, 307 (1986), citing *Brown* at 742-43. Officer George stated that he has been an officer with the Columbus Division of Police for

12 and one-half years, and "in [his] experience as a police officer, [he has] made numerous arrests involving anywhere up to 26 pounds of marijuana all the way down to marijuana roaches and marijuana seeds." (Aug. Tr. 31-32.) His testimony indicates he immediately, and without reservation, ascertained that the clear bag on the Malibu's floorboard contained marijuana. Officer George's assertions are supported by Officer Phalen's testimony that Officer George "notified [Officer Phalen] that he observed marijuana in the vehicle" before either officer entered the car. (Aug. Tr. 9.)

{¶ 20} Thus, the record indicates Officer George identified the marijuana before the officers proceeded to enter the car and seize the contraband. "The viewing of drugs or other contraband in open view within a vehicle constitutes probable cause" pursuant to the automobile exception. *State v. Miller,* 11th Dist. No. 2011-T-0016, 2011-Ohio-5860, ¶ 61 (Trapp, J., concurring), citing *Lang* at 34-35 (finding, where officer viewed crack cocaine on the front passenger seat while "standing upright and from the outside of the car, which was parked on a public street," his observation "created the necessary probable cause to intrude into the automobile and seize the [drugs]"); *State v. Fadenhotz*, 8th Dist. No. 60865 (June 13, 1991). *See also Copper* (noting that if an officer "saw evidence in open view, the automobile exception to the warrant requirement would generally allow the immediate seizure of that evidence" since a "warrantless search of an automobile is permissible when a police officer, based on his observations, has probable cause to believe a vehicle contains contraband or evidence of a crime"); *State v. Jackson*, 8th Dist. No. 85639, 2005-Ohio-5688, ¶ 22 (holding that if police officer "had seen the drugs prior to getting into the car he would have had the necessary probable cause to enter the car and seize the drugs"); *Brown* at 738, fn. 4 (noting "[t]he information obtained as a result of observation of an object in plain sight may be the basis for probable cause or reasonable suspicion of illegal activity").

{¶ 21} What is more, both officers testified to their extensive experience in detecting the odor of burnt marijuana, and attested to smelling that odor in the air after exiting their cruiser. Officer George even stated that he "followed the [marijuana] odor" and determined it was coming "right out of the [Malibu]." (Tr. 46.) "[T]he detection of the odor of marijuana by an experienced law enforcement officer is sufficient to establish probable cause to conduct a reasonable search of a vehicle." *State v. Dowlar*, 2d Dist. No.

18887 (Jan. 25, 2002), citing *State v. Moore*, 90 Ohio St.3d 47, 49 (2000). *See also State v. Burke*, 188 Ohio App.3d 777, 2010-Ohio-3597, ¶ 16-21 (8th Dist.) (holding officer's testimony "that he detected a strong odor of marijuana emanating from the vehicle," by itself, "provided the officer with probable cause to search the passenger compartment of the vehicle without a warrant"). Accordingly, the officers had ample probable cause to believe the Malibu contained contraband based on their knowledge and observations.

{¶ 22} In granting Bazrawi's motion to suppress, the trial court recognized "the rationale for going into the vehicle, was that [the officers] were going to get the marijuana," but the court nevertheless determined the automobile exception did not apply. (Oct. 11, 2012 Tr. 6.) The court found, "[a]s long as [Bazrawi and Rhea] were outside the vehicle and the vehicle was secured, the marijuana was not going anywhere," so there were "no extraordinary circumstances existing in this case that would not have allowed [the officers] to go and obtain the search warrant if they wanted to search the vehicle further." (Aug. Tr. 51; Nov. 13, 2012 Tr. 5.) On appeal, Bazrawi likewise asserts the state failed to establish the warrantless search and seizure was justified under the automobile exception, despite the evidence of probable cause, because "no exigency existed to search the vehicle" without a warrant since it was parked, unoccupied, and secured. (Bazrawi's brief, at 14.)

{¶ 23} However, "the concept of exigency" is implicit in the automobile exception, as the "inherent mobility of the automobile create[s] a danger that the contraband would be removed before a warrant could be issued": accordingly, exigency is not "a separate requirement to be demonstrated in order to meet the [automobile] exception." *Moore* at 52, citing *South Dakota v. Opperman,* 428 U.S. 364, 367 (1976); *Battle* at ¶ 29. *See also Maryland v. Dyson,* 527 U.S. 465, 467-68 (1999) (stating the court "made [it] clear" that the auto exception "has no separate exigency requirement" when it held that "in cases where there was probable cause to search a vehicle 'a search is not unreasonable if based on facts that would justify the issuance of a warrant, even though a warrant has not been actually obtained,' " citing *Ross* at 809). Thus, a vehicle's "ready mobility," by itself, creates "an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996),

citing *California v. Carney*, 471 U.S. 386, 390-91 (1985); *Carroll*. This justification for the automobile exception, coupled with an "individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation," has compelled the United States Supreme Court to hold, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Labron* at 940, citing *Carney* at 393.

{¶ 24} Notably, in determining whether a vehicle is "readily mobile" within the automobile exception's meaning, "a vehicle's inherent mobility—not the probability that it might actually be set in motion—is the foundation of the mobility rationale." *Battle* at ¶ 30, quoting *U.S. v. Navas*, 597 F.3d 492, 498 (C.A.2, 2010). In this way, the appropriate inquiry is not, as Bazrawi contends, whether the state presented evidence that his Malibu in particular "would become mobile before the officers could seek a warrant." (Bazrawi's brief, at 15.) " '[T]he mobility rationale articulated in *Carroll* does not turn on case-by-case determinations * * * regarding either the probability that a vehicle could be mobilized or the speed with which movement could be achieved.' " *Battle* at ¶ 30, quoting *Navas* at 498, quoting *U.S. v. Howard*, 489 F.3d 484, 493 (2d Cir.2007). *See also Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (holding that the justification to conduct a warrantless search does not "depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant"); *U.S. v. Chadwick*, 433 U.S. 1, 12 (1977) (noting that the Supreme Court has sustained "warrantless searches of vehicles * * * in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not nonexistent"), *overruled on other grounds* in *California v. Acevedo*, 500 U.S. 565 (1991). Nor does the vehicle's immobilization by investigating officers negate its ready mobility. *See Battle* at ¶ 30, citing *State v. Mackey*, 2d Dist. No. 97 CA 42 (Dec. 31, 1997) (holding a suspect's arrest does not detract from the exigency created by an automobile's inherent mobility because, from a practical sense, a vehicle will generally be immobile when officers conduct a search, since the former occupant will be removed and confined prior to the search; the critical inquiry is whether the vehicle was readily mobile at the time of the

stop); *Thomas* at 261 (holding that the justification to conduct a warrantless search "does not vanish once the car has been immobilized"). Instead, a vehicle is readily mobile if it has the inherent "*capacity*" for mobility. (Emphasis added.) *Carney* at 390.

{¶ 25} The trial court did not make an explicit finding as to whether the Malibu was readily mobile, but the record contains strong circumstantial evidence of the vehicle's ready mobility. First, the officers witnessed Bazrawi sitting in the Malibu's driver's seat—with his companion in the passenger seat—as they approached in their cruiser. While Rhea resided on Shady Lane Court, Bazrawi did not, yet Bazrawi acknowledges the Malibu is "[his] vehicle" and Rhea had been "his passenger." (Bazrawi's brief, at 15, 17.) Considered together, that Bazrawi's car was parked on the street and the officers watched him exit the driver's seat are factors which suggest Bazrawi drove the car there. Furthermore, the fact that Bazrawi's "wallet containing his driver's license was * * * inside the vehicle," raises the inference that Bazrawi had operated the car recently. (Bazrawi's brief, at 3.) *See also Miller* at ¶ 33 (finding "circumstantial evidence of the vehicle's mobility" existed where defendant was carrying his car key with him on a keychain and an officer found defendant's driver's license in the center console, "indicating recent use of the vehicle by [defendant]"). Based on the totality of the circumstances, the evidence indicates that the Malibu was an inherently mobile vehicle capable of ready mobility "by the turn of an ignition key." *Carney* at 393.

{¶ 26} While Bazrawi claims the United States Supreme Court "addressed and rejected [the] argument" that "the automobile exception still applie[d] even though no traffic stop took place and the vehicle was unoccupied" in its plurality opinion, his reliance on *Coolidge* is misplaced. (Bazrawi's brief, at 15.) *Coolidge v. New Hampshire,* 403 U.S. 443 (1971). The *Coolidge* court based its decision on a holding that, even where there is probable cause to search an automobile, if "police knew of the presence of the automobile and planned all along to seize it" when they arrested defendant in his home, then "there was no 'exigent circumstance' to justify their failure to obtain a warrant." *Coolidge* at 478. As discussed, current Supreme Court precedent emphasizes that no special exigency is required to conduct a warrantless search of an automobile when the car is mobile and

the searching officer has probable cause to believe contraband may be present in the automobile. *See, e.g.*, *Dyson* at 466; *Labron* at 940.

{¶ 27} Accordingly, under the particular circumstances here present, the fact that the subject search did not occur as the result of a traffic stop and the vehicle was parked and locked when Officer George first observed the marijuana does not preclude application of the automobile exception, since these considerations do not detract from the Malibu's inherent mobility, or render inapposite the officers' probable cause to believe the vehicle contained contraband. *See, e.g.*, *Miller* at ¶ 33 (finding automobile exception applied to vehicle police discovered locked and unoccupied in apartment building parking lot since officers had probable cause and there was circumstantial evidence of the vehicle's mobility); *State v. Cunningham*, 2d Dist. No. 20059, 2004-Ohio-3088 (holding officer's search of unoccupied, locked, and secured car in carryout's parking lot was justified under the automobile exception where officer had probable cause to believe marijuana was present in car and had witnessed defendant leave car in establishment's parking lot with its keys still in the ignition); *State v. Underwood*, 12th Dist. No. CA2003-03-057, 2004-Ohio-504, ¶ 14-20 (upholding search of parked and unoccupied vehicle where police had probable cause to believe the vehicle contained contraband and defendant did not challenge vehicle's ready mobility); *State v. Friedman*, 194 Ohio App.3d 677, 2011-Ohio-2989, ¶ 11 (9th Dist.) (finding "no meaningful distinction" between "the search of [defendant's] vehicle, which was locked and parked in a public area," and "a vehicle search conducted in the course of a valid traffic stop").

{¶ 28} Therefore, since the record indicates the Malibu was readily mobile and probable cause existed to believe it contained contraband, the officers could seize the marijuana on the passenger-side floorboard pursuant to the automobile exception. The trial court erred in concluding the police lacked authority to search the vehicle without a warrant on the basis that no compelling circumstances prevented them from obtaining a warrant first.

C. *Seizure of the Firearm*

{¶ 29} After seizing the marijuana found on the passenger-side floorboard, the officers continued to search the Malibu's passenger compartment. Pursuant to this search,

Officer Phalen discovered the loaded Taurus 9-millimeter handgun under the driver's side seat.

{¶ 30} The trial court found, "[e]ven if [the officers] had a limited ability to search [based on the marijuana in plain sight], they had, quote, obtained the contraband," so "continuing the search to search and find the weapon in this case, I think, exceeded their authority." (Nov. 13, 2012 Tr. 4.) However, if probable cause justifies the search of a vehicle, "it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *State v. Bell*, 10th Dist. No. 01AP-7 (Sept. 20, 2001), citing *State v. Kilgore*, 12th Dist. No. CA98-09-201 (June 28, 1999); *Ross*, supra.

{¶ 31} Accordingly, Officers Phalen and George were justified in searching other areas of the car which may have contained marijuana pursuant to their discovery and seizure of the marijuana on the passenger-side floorboard and their detection of an odor of burnt marijuana. Officer Phalen testified that he had discovered marijuana-related contraband in three other locations in the vehicle, including in the driver's side door, when he looked under the driver's seat and saw a handgun. Based upon the totality of the circumstances, Officer Phalen had probable cause to believe that additional evidence of marijuana use and possession might be concealed under the car seats.

{¶ 32} The state contends that "[o]nce Phalen lawfully searched under the driver's seat, he saw the firearm in plain view and could seize it." (Appellant's brief, at 34.) Indeed, under the "plain view" exception to the warrant requirement, police do not need a search warrant to seize incriminating evidence which they discover in a place where they have a right to be. *Horton v. California*, 496 U.S. 128, 136 (1990); *State v. Williams*, 55 Ohio St.2d 82, 84 (1978). Pursuant to the plain-view exception, "police may seize evidence in plain view during a lawful search if: (1) the seizing officer is lawfully present at the place from which the evidence can be plainly viewed; (2) the seizing officer has a right of access to the object itself; and (3) the object's incriminating character is immediately apparent." *State v. Alihassan,* 10th Dist. No. 11AP-578, 2012-Ohio-825, ¶ 11, citing *Horton* at 136-37.

{¶ 33} On review, the facts presented at the hearing indicate Officer Phalen was in the Malibu lawfully and discovered the gun in plain view while performing a legitimate search for additional marijuana. Furthermore, the facts indicate that the nature of the gun was immediately apparent to Officer Phalen. Thus, the gun was seized lawfully pursuant

to the plain-view exception to the warrant requirement and should not have been suppressed by the trial court.

{¶ 34} Because we hold the officers' warrantless search did not violate Bazrawi's constitutional rights and the trial court erred in suppressing the handgun, the state's first and second assignments of error are sustained. Consequently, the state's third assignment of error regarding the good-faith exception to the federal exclusionary rule is rendered moot.

IV. Disposition

{¶ 35} Having sustained the state's first and second assignments of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand for further proceedings consistent with this decision.

Judgment reversed
and cause remanded.

SADLER and CONNOR, JJ., concur

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).