

The top-left portion of the slide features a complex, abstract graphic composed of several thin, black, overlapping lines that form various geometric shapes, including triangles and polygons, creating a sense of depth and movement.

FOURTH AMENDMENT, PRIVACY, AND RACE IN THE CRIMINAL LEGAL SYSTEM

Sarah Nelson

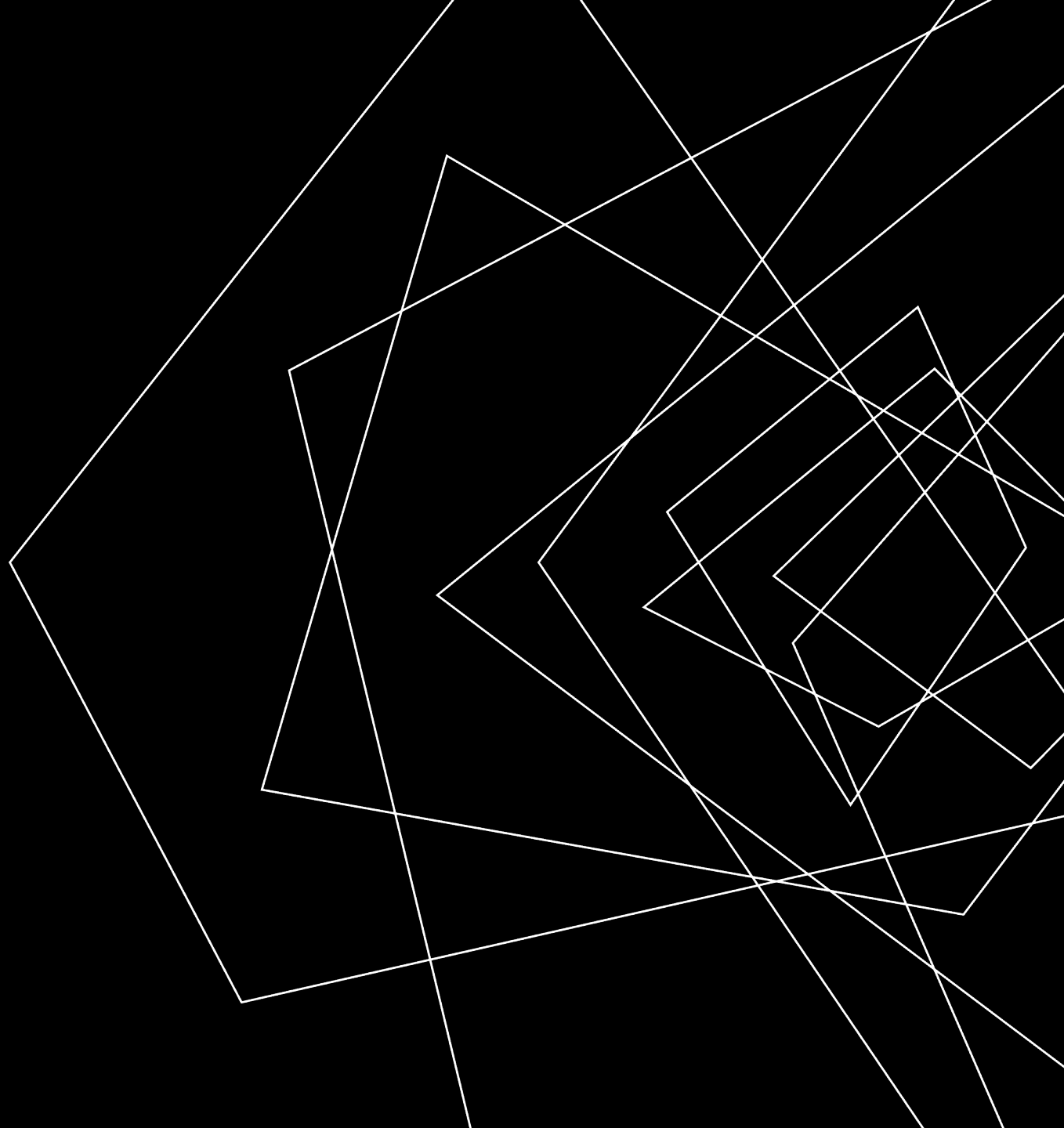
Appellate Attorney, Hamilton County Public Defender

TOPICS

Fourth Amendment

Ohio Case Law

Advocating for Change in Ohio



United States & Ohio Constitutions

The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched. **The Fourth Amendment to the United States Constitution.**

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. **Ohio Constitution, Article I, Section 14.**

United States & Ohio Constitutions

The Ohio Constitution may provide greater protections than the United States Constitution.

The Supreme Court of Ohio will harmonize its 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)

Legal Principles

- Consensual Encounter: if a reasonable person would feel free to go about his or her business, the encounter is consensual, and no reasonable suspicion is required.
- Seizure: When an officer by means of physical force or show of authority restrains the liberty of a citizen.
- Reasonable Suspicion: officer's reasonable belief that an individual may be armed and dangerous
 - “Reasonable suspicion is an elusive concept, and precisely defining reasonable suspicion is not possible. It is not readily reduced to a neat set of legal rules. It is a less demanding standard than probable cause. But it is something more than an ‘inchoate and unparticularized suspicion or hunch.’ ”

CONSENSUAL ENCOUNTER & REASONABLE SUSPICION

State v. Henson, 1st Dist. Hamilton No. C-210244, 2022-Ohio-1571.

- Police were dispatched to a dead-end street in Cincinnati in response to a Shot Spotter alert.
- A plain-clothes officer arrived on scene and observed Mr. Henson, whom he perceived to be “alone” on the street. Uniformed officers arrived within minutes. They approached Mr. Henson and inquired about the sound gunfire. Mr. Henson replied that he had not heard any gunfire.
- **Consensual Encounter.** “None of the facts and circumstances demonstrated a show of authority sufficient to turn a consensual encounter into a seizure.”

CONSENSUAL ENCOUNTER & REASONABLE SUSPICION

State v. Henson, 1st Dist. Hamilton No. C-210244, 2022-Ohio-1571.

- Immediately following the consensual encounter, police conducted a pat down for weapons.
- **No Reasonable Suspicion** to cause a reasonable officer to conclude that Mr. Henson was armed and dangerous to support the pat-down.
 - Shot Spotter vs. officer personally observing the sound of gunfire. See State v. Hairston, 165 Ohio St.3d 363, 2019-Ohio-1622, 126 N.E.3d 1132 (officers personally observed sound of gunfire); State v. Carter, 2d Dist. Montgomery No. 29091, 2022-Ohio-91, 183 N.E.3d 611 (shot spotter radius)
 - Time of police arrival.
 - Alone in a high-crime area.

FOURTH AMENDMENT, PRIVACY, AND RACE

Alternate Facts

Henson

- Consensual encounter
- Officer testifies to specific circumstances supporting a “high crime area” finding.
 - Mere presence in a high-crime area not enough.
 - High-crime plus “suspicious” behaviors.
- 911 call reporting shots fired

TRAFFIC STOPS

State v. Jackson, 1st Dist. Hamilton No. C-190676, 2021-Ohio-517 (1st Dist.); appeal allowed, State v. Jackson, 163 Ohio St.3d 1439, 2021-Ohio-1869.

- Jackie Jackson was pulled over by a marked cruiser for a window tint violation. Bike cops arrived on scene, a total of eight officers were present for the stop. *Counsel waived challenges to the stop.*
- Mr. Jackson asked, “what am I being pulled over for,” and “all these police for window tint?” He was then instructed to produce his license and insurance information. Allowing one second to comply, the officer opened Mr. Jackson’s door and ordered him out of the vehicle. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). The officer left the car door open while other officers on scene conducted a pat-down search.
- After a fruitless pat-down, another officer approached the open driver’s side of the vehicle, where he observed a marijuana joint in an area that would have been concealed had the door been closed.

TRAFFIC STOPS

State v. Jackson, 1st Dist. Hamilton No. C-190676, 2021-Ohio-517 (1st Dist.); appeal allowed, State v. Jackson, 163 Ohio St.3d 1439, 2021-Ohio-1869.

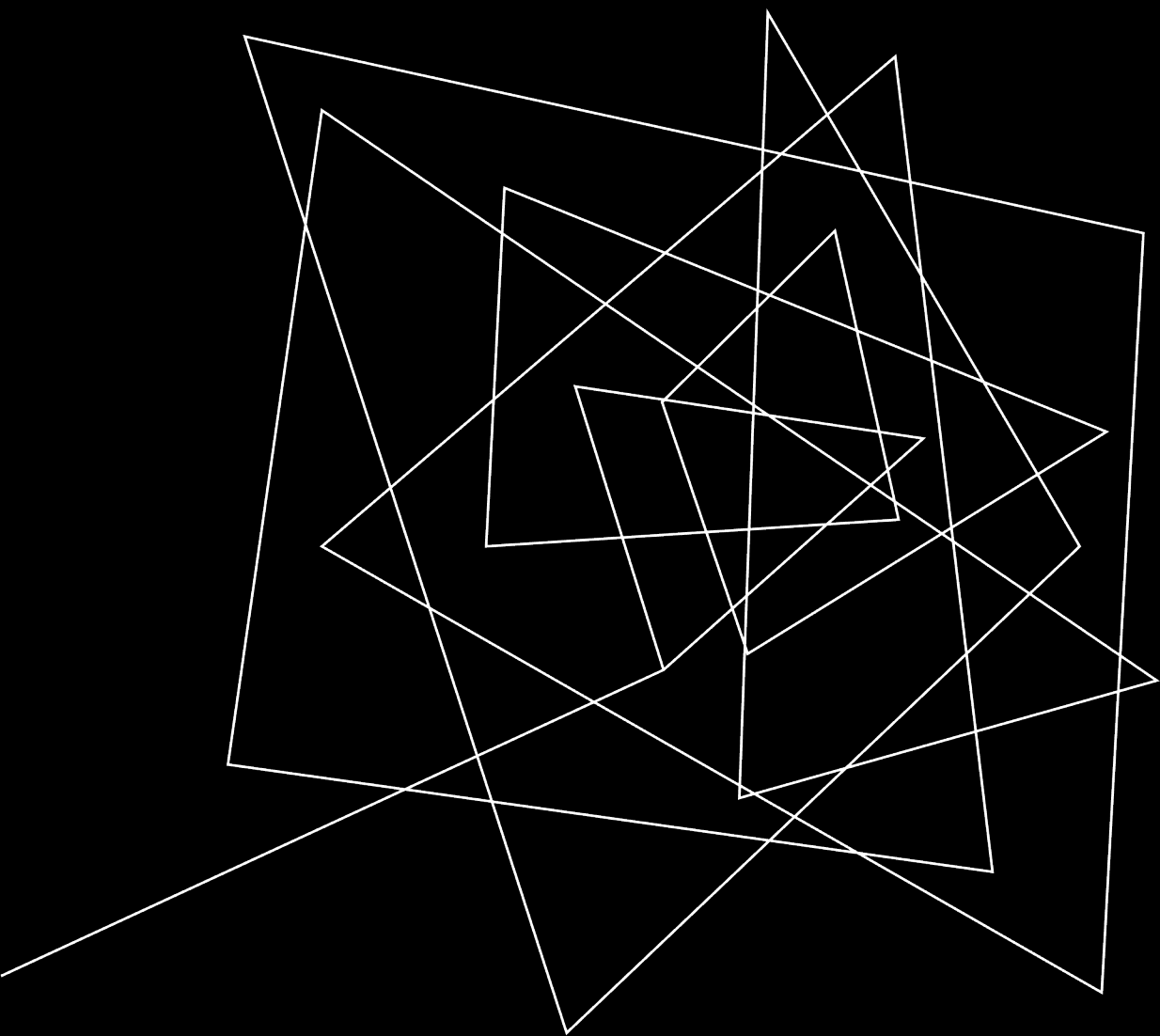
- Lawful to order Mr. Jackson out of the vehicle.
- Fruitless pat-down did not lead to the discovery of the marijuana joint.
- Officer was outside the vehicle and therefore in a lawful position to observe the marijuana joint. The door being left open by an officer at the scene was a “distinction without a difference.” A subsequent search of the interior of the vehicle revealed a firearm and was upheld.
- **Proposition of Law No. 1:** An officer’s act of opening a driver’s door and ordering the driver to step outside the vehicle constitutes a search under the Fourth Amendment and Article I, Section 14 of the Ohio Constitution.
- **Proposition of Law No. 2:** A Mimms order does not provide a lawful right of access to search a vehicle’s interior. After a driver is asked to step out of the vehicle, the responding officer must have an independent justification to search the interior of the vehicle in order for an item to be properly observed in plain view.

FOURTH AMENDMENT, PRIVACY, AND RACE

Other Considerations

Jackson

- SCO questioned whether Mr. Jackson could tell law enforcement “please shut my door” to protect his right to privacy. Consent?
- State characterized Mr. Jackson as being noncompliant and fiddling with his phone, when he was using his phone to access his insurance and to record the police encounter.
- Pretextual stops and officer’s subjective motivations



ADVOCATING FOR
CHANGE IN OHIO

ADVOCATING FOR CHANGE

Ohio Constitution Article 1, Section 14

- Ohio Constitution may afford more protections when there are persuasive reasons for doing so

Scientific & Empirical Evidence

- Implicit Bias Studies
- Behavioral Science Data
- Local & National Police Data

Investigation

- <https://www.courtclerk.org/records-search/criminal-case-listings-section-number/>
- <https://www.themarshallproject.org/2022/11/21/ohio-cleveland-traffic-tickets-black-drivers-bratenahl>

Client Interview & Narrative

- Reasonableness through the client's perspective
- Appeal to emotions



QUESTIONS?

snelson@hamiltoncountypd.org