[Cite as *State v. Morgan*, 2010-Ohio-5013.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94371

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KENNETH MORGAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-515232

BEFORE: Sweeney, J., Stewart, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: October 14, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1.

{¶ 2} Defendant-appellant, Kenneth Morgan ("defendant"), appeals the court's denial of his motion to suppress evidence. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 3} On August 27, 2008, between 8:30 and 9:00 p.m., Cleveland Police Officer Jeffrey Weaver responded to a call of shots fired at East 127th Street and Marston Avenue. A resident of this area called 911 with the following information: he saw a black Cadillac drive down the street, stop, and back up; he then heard "a volley of gunshots." Because Officer Weaver was not the first

to respond to the call, he decided to "tour" the area looking for suspects. Less than five minutes after receiving the call, he saw a black Cadillac approximately four blocks from the scene. Officer Weaver radioed the vehicle's information to the police department, stated that he thought this may be the vehicle involved, and requested assistance to make a safe stop.

{¶ 4} Officer Weaver followed the car for 30 blocks, until the backup unit arrived, and then stopped the Cadillac. He ordered the occupants out of the vehicle over a loud speaker. Defendant, who was driving the Cadillac, and a passenger were patted down for weapons and detained. When Officer Weaver approached the Cadillac to further check for weapons, he smelled a "heavy odor" of marijuana. Through the car's window he saw a white plastic bag in plain view on the floor, behind the passenger seat. The bag was made of "thinner gauge plastic," and he could see that inside was a clear freezer bag containing marijuana.

{¶ 5} On September 24, 2008, defendant was indicted for various drug related offenses. After a hearing, the court denied defendant's motion to suppress. Defendant pled no contest to the indictment and was sentenced to community control sanctions.

{¶ 6} Defendant appeals and raises one assignment of error for our review. "I. The trial court erred by denying the defendant's motion to suppress."

{¶ 7} "Appellate review of a trial court's ruling on a motion to suppress presents mixed questions of law and fact. An appellate court is to accept the trial court's factual findings unless they are clearly erroneous. We are therefore required to accept the factual determinations of a trial court if they are supported by competent and credible evidence. The application of the law to those facts, however, is subject to de novo review." *State v. Polk*, Cuyahoga App. No. 84361, 2005-Ohio-774, at ¶2 (internal citations omitted).

{¶ 8} Warrantless searches are presumptively unconstitutional, subject to a limited number of specific exceptions. In *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 299, 720 N.E.2d 507, the Ohio Supreme Court permitted "police stops of motorists in order to investigate a reasonable suspicion of criminal activity." The standard for reasonable suspicion involves analyzing the totality of the circumstances, including "both the content of information possessed by police and its degree of reliability." Id., citing *Alabama v. White* (1990), 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301.

{¶ 9} The *Weisner* court also held that information received from "an identified citizen who based his knowledge of the facts he described upon his own observations as the events occurred, * * * merits a high degree of credibility and value, rendering it sufficient to withstand the Fourth Amendment challenge without independent police corroboration." *Weisner*, at 302-303.

{¶ 10} This Court has upheld the investigatory stop of a vehicle based on an anonymous tip reporting gunshots. *State v. Bankston*, Cuyahoga App. No.

80378, 2002-Ohio-3446. In *Bankston*, police received a radio call that shots were fired from a gray Chrysler Concorde near a particular intersection. As they approached the area they saw and stopped a vehicle matching this description. "The urgency inherent in a report of recently-fired gunshots * * * heightens the need for immediate action by the police and further supports the reasonable suspicion under the totality of circumstances." Id., at ¶17. See, also, *State v. Wilson* (1991), 77 Ohio App.3d 718, 720, 603 N.E.2d 305 (affirming reasonable suspicion of criminal activity to justify stopping a vehicle based on an anonymous call to police that a "red Mustang had been involved in a shooting").

{¶ 11} In *State v. Jackson* (Oct. 23, 1997), Cuyahoga App. Nos. 71249 and 71250, this Court further explained that a tip to the police, standing alone, "provided reasonable suspicion of criminal activity * * * when the tip concerns firearms."

{¶ 12} The *Jackson* court upheld the denial of a motion to suppress evidence when the police stopped a car described in an anonymous tip reporting gunshots within ten minutes of the tip being called in. "[T]he close proximity in time and space between the tip and the discovery of the car was sufficient to justify the stop of the car but only because of the urgency of recent gunshots." The *Jackson* court continued: "[w]e agree with [*U.S. v. Clipper* (D.C. Cir.1992), 973 F.2d 944], [*U.S. v. Bond* (2nd Cir.1994), 19 F.3d 99], and [*U.S. v. Gibson* (11th Cir.1995), 64 F.3d 617] to the extent that a report of recent gunshots must be taken into consideration under the totality of the circumstances test. * * * The

fact the tip reported recently fired gunshots increases the need for more immediate action by the police."

{¶ 13} In the instant case, Officer Weaver testified that while he was at the scene of the shooting, he personally spoke with the 911 caller, a neighbor, whom he knew to be reliable from prior calls to the police. As the Ohio Supreme Court stated in *Weisner*, "courts have routinely credited the identified citizen informant with greater reliability" than an anonymous or known criminal informant. *Weisner*, 87 Ohio St.3d at 300. The neighbor gave Officer Weaver the same information that was dispatched over the radio: a black Cadillac drove down the street, stopped, backed up, and then there were the sounds of gunshots.

{¶ 14} Moments later, Officer Weaver saw and stopped a black Cadillac a few blocks from the intersection where the identified citizen caller reported seeing a black Cadillac and hearing gunshots. Officer Weaver testified that he did not observe the driver of this black Cadillac violate any traffic laws, nor did he see the car speeding away from the scene. Asked if there was anything specific "that would set this black Cadillac apart from all the scores of other black Cadillacs that you would perhaps see on your route," Officer Weaver responded, "It was the first one we came across. Other than that, there was nothing special."

{¶ 15} We hold that the content of this information — specifically the exigent danger of firearms — and the reliability of the source are sufficient to justify a reasonable suspicion of criminal activity. Given this, we overrule

defendant's sole assignment of error and uphold the court's denial of his motion to suppress.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

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

JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and
MARY J. BOYLE, J., CONCUR