[Cite as *State v. Lanier*, 2010-Ohio-5765.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93983

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

KEITH LANIER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-508157

BEFORE: Boyle, J., Rocco, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: November 24, 2010

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MARY J. BOYLE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Defendant-appellant, Keith Lanier, appeals from the trial court's decision denying his motion to suppress. Finding no merit to the appeal, we affirm.

{¶ 3} Lanier was indicted on drug trafficking, in violation of R.C. 2925.03(A)(2); drug possession, in violation of R.C. 2925.11(A); carrying a concealed weapon, in violation of R.C. 2923.12(A)(2); and having a weapon while under disability, in violation of R.C. 2923.13(A)(3). Some of the counts carried firearm and forfeiture specifications. Lanier initially pled not guilty to the charges, and, along with his co-defendant, Tion Gillenwater, moved to suppress the evidence seized by the police giving rise to the charges. The trial court held a joint suppression hearing, where the following testimony was presented:[1]

{¶ 4} "Detective Thomas Klamert of the Cleveland Police Department was investigating a house at 8800 Meridian for suspected drug activity. In particular, the detective had information that a suspected drug dealer, codefendant Steve Moree, resided in the upstairs portion of the house. Moree had the reputation of 'best cook' of crack cocaine in Cleveland. Drug dealers would bring their powder cocaine to Moree and he would 'cook' it into crack cocaine; in exchange, the drug dealers would let him have some of the drugs. The detective was informed that the process took about 30 minutes, and most of the activity occurred in the afternoon. Moree had been the subject of police investigation since 2006.

[1]In addressing the appeal of Lanier's codefendant, Gillenwater, we have already set forth the testimony adduced at the suppression hearing, which we adopt and incorporate into this opinion. See *State v. Gillenwater*, 8th Dist. No. 93845, 2010-Ohio-5476, ¶3-6.

{¶ 5} "On January 24, 2008, Detective Klamert obtained a search warrant for the house, and at 3:00 p.m., he began surveilling it. At approximately 5:00 p.m., the detective saw two cars — a Buick and a Chevrolet — arrive at the house. One person was in the Buick, and Gillenwater and another codefendant, Keith Lanier, were in the Chevrolet. The three men exited the vehicles and went in a door that the detective knew only led to the upstairs portion of the house.

{¶ 6} "Approximately 20 to 30 minutes later, the men exited the house. The driver of the Buick got back in that car, and Gillenwater and Lanier got back in the Chevrolet, with Gillenwater in the driver's seat and Lanier in the front passenger seat. Both cars drove away, and Detective Klamert immediately radioed for a zone car to stop the vehicles. Klamert testified that the order to stop the vehicles was based, in part, on his uncertainty as to whether Moree was one of the three men who had left the residence and, in part, on the 'activity' he had witnessed, i.e., the men going to the upstairs of the house for 20 to 30 minutes.

{¶ 7} "Officer Christopher Ereg responded to the dispatch to stop the vehicles and pursued the car driven by Gillenwater. While pursuing the car, Ereg saw Gillenwater commit a traffic violation. He testified that he stopped the vehicle both because of Detective Klamert's order and the traffic violation. The officer testified that upon pulling up behind the vehicle, he saw the passenger, codefendant Lanier, make 'furtive movements' like he was 'putting something

under the seat or dashboard. [Footnote omitted.] Ereg and his partner ordered Gillenwater and Lanier out of the vehicle. Ereg's partner searched under the dashboard and recovered a gun and drugs. The defendants were then arrested and advised of their *Miranda* rights. In a written statement, Gillenwater said the gun was his."

{¶ 8} The trial court ultimately denied the motion to suppress. Lanier subsequently pled no contest to the charges. The court found him guilty and sentenced him to four years in prison.

{¶ 9} Lanier now appeals, raising the following assignment of error:

{¶ 10} "The trial court erred by denying appellant's motion to suppress evidence obtained as the result of an unreasonable search and seizure, in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 14 of the Ohio Constitution."

Standard of Review

{¶ 11} A motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. * * * Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. * * * Accepting these facts as true, the appellate court must

then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." (Internal citations omitted.) Id.

Fourth Amendment Jurisprudence

{¶ 12} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them, per se, unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576. An investigative stop, as set forth in *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, is a common exception to the Fourth Amendment warrant requirement. Under *Terry*, both the stop and seizure must be supported by a reasonable suspicion of criminal activity. The state must be able to point to specific and articulable facts that reasonably suggest criminal activity "may be afoot." *Terry* at 9. Inarticulable hunches, general suspicion, or no evidence to support the stop is insufficient as a matter of law. *State v. Smith*, 8th Dist. No. 89432, 2008-Ohio-2361, ¶8.

{¶ 13} Lanier first contends that the stop was improper because it was based on the police observing him and Gillenwater coming and going from 8800 Meridian, a residence "which was soon to be searched pursuant to a search warrant." He argues that the "stop of the vehicle was clearly an unauthorized expansion of the search of the residence at 8800 Meridian." But Officer Ereg testified that he stopped the Chevrolet, in part, because the driver committed a

traffic violation. Specifically, Officer Ereg saw the Chevrolet fail to signal a turn. As we stated in *Gillenwater*, "[s]tops based on even minor traffic violations do not violate the Fourth Amendment even if the stopping officer harbors an ulterior motive of making the stop, such as suspicion that the violator was engaged in more nefarious criminal activity." (Internal citations and quotations omitted.) Id. at ¶10. In light of the traffic violation, Officer Ereg had probable cause to stop the vehicle. Id.

{¶ 14} Lanier next argues that the police did not have probable cause to search the vehicle because the search occurred after he and Gillenwater were taken from the vehicle and placed under arrest. In *Arizona v. Gant* (2009), 556 U.S. __, 129 S.Ct.1710, 1714, 173 L.Ed.2d 485, the United States Supreme Court held that the search-incident-to arrest exception to the Fourth Amendment's warrant requirement "does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle." Relying on *Gant*, Lanier contends that this case is analogous and that the trial court should have granted his motion to suppress.

{¶ 15} But Lanier's factual assertion is inaccurate — neither Gillenwater nor Lanier were under arrest when the car was searched. Rather, the search was conducted for officer safety based on Ereg's belief that Lanier may have concealed a weapon inside the vehicle. Indeed, Officer Ereg testified that upon

pulling up behind the vehicle, he saw Lanier, the passenger, make "furtive movements," like he was "putting something under the seat or dashboard." Further, Officer Ereg was aware, prior to stopping the vehicle, that the occupants were suspected of engaging in drug activity and were "possibly armed." Officer Ereg testified that based on this information and the "furtive movements" by Lanier, he and his partner were "concerned there was a weapon," and therefore ordered Gillenwater and Lanier out of the vehicle and searched it.

{¶ 16} As we found in *Gillenwater*, "[o]n these facts, under the totality of the circumstances, the officers had a reasonable basis to believe that a weapon may have been hidden in the area where Lanier had been sitting. The officers, therefore, were entitled to conduct a protective search for weapons for their safety." Id., 2010-Ohio-5476, at ¶14. See, also, *Michigan v. Long* (1983), 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201, paragraph two of the syllabus ("the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and the suspect may gain immediate control of weapons" in the vehicle upon returning to it).

{¶ 17} Consistent with our holding in *Gillenwater*, Lanier's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and
MARY EILEEN KILBANE, J., CONCUR