

[Cite as *State v. Williamson*, 2010-Ohio-2331.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAMAHL WILLIAMSON

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2009CA00185

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Canton Municipal Court,
Case No. 2009-CRB-02377

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 24, 2010

APPEARANCES:

For Plaintiff-Appellee

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Farmer, J.

{¶1} On April 11, 2009, Canton City Police Officers Todd Gillilan and Michael Carpenter responded to a call regarding an altercation with a possible weapon involved. Upon arriving on the scene, the officers made contact with two individuals in a vehicle. The passenger, appellant herein, Jamahl Williamson, exited the vehicle and informed the officers that he had a weapon, it was underneath the passenger seat, and he had a valid concealed carry permit for the weapon. Appellant was patted down and placed in a police cruiser.

{¶2} After the driver was removed from the vehicle, Officer Gillilan recovered a weapon underneath the passenger seat and an empty holster on the floor board of the passenger side of the vehicle. The officers searched the vehicle for additional weapons. Officer Carpenter searched a jacket in the back seat and discovered appellant's wallet and a bag containing marijuana.

{¶3} On May 19, 2009, the Stark County Grand Jury indicted appellant on one count of possessing marijuana in violation of Canton City Code 513.03 (R.C. 2925.11), and transferred the case to the Canton Municipal Court.

{¶4} On June 16, 2009, appellant filed a motion to suppress, claiming an illegal search of his jacket. A hearing was held on July 7, 2009. By judgment entry filed same date, the trial court denied the motion.

{¶5} On July 9, 2009, appellant pled no contest to the charge. The trial court found appellant guilty and sentenced him to thirty days in jail, all but two days suspended conditioned upon good behavior for two years, suspended his driver's license for six months, and ordered him to pay court costs.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶7} "THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS ILLEGALLY OBTAINED (SIC) EVIDENCE."

I

{¶8} Appellant claims the trial court erred in denying his motion to suppress because the search of his jacket was unlawful. We disagree.

{¶9} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19; *State v. Klein* (1991), 73 Ohio App.3d 485; *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93; *State v. Claytor* (1993), 85 Ohio App.3d 623;

Guysinger. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 116 S.Ct. 1657, 1663, "...as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶10} Appellant argues the search of his jacket was incident to his arrest and therefore, the holding of *Arizona v. Gant* (2009), 129 S.Ct. 1710, applies. In *Gant* at 1723-1724, the United States Supreme Court reviewed a similar fact pattern as in this case and held the following:

{¶11} "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

{¶12} In *Gant*, the court analyzed the holding of *Chimel v. California* (1969), 395 U.S. 752, wherein the *Chimel* court held the following at 762-763:

{¶13} "A similar analysis underlies the 'search incident to arrest' principle, and marks its proper extent. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of

course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'-construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

{¶14} Twelve years later, the United States Supreme Court extended the *Chimel* reasoning to vehicle searches:

{¶15} "While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant. Our reading of the cases suggests the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'
Chimel, 395 U.S., at 763, 89 S.Ct., at 2040. In order to establish the workable rule this category of cases requires, we read *Chimel's* definition of the limits of the area that may be searched in light of that generalization. Accordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile,***he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.***

{¶16} "****

{¶17} "It is not questioned that the respondent was the subject of a lawful custodial arrest on a charge of possessing marihuana. The search of the respondent's jacket followed immediately upon that arrest. The jacket was located inside the passenger compartment of the car in which the respondent had been a passenger just before he was arrested. The jacket was thus within the area which we have concluded was 'within the arrestee's immediate control' within the meaning of the *Chimel* case.***The search of the jacket, therefore, was a search incident to a lawful custodial arrest, and it did not violate the Fourth and Fourteenth Amendments." *New York v. Belton* (1981), 453 U.S. 454, 460 and 462-463, respectively. (Footnotes omitted.)

{¶18} In *Thornton v. United States* (2004), 541 U.S. 615, the United States Supreme Court extended the *Belton* decision, concluding "*Belton* governs even when an officer does not make contact until the person arrested has left the vehicle." In other words, "[s]o long as an arrestee is the sort of 'recent occupant' of a vehicle such as petitioner was here, officers may search that vehicle incident to the arrest." *Id.* at 623-624.

{¶19} The *Gant* court at 1721 rejected any further extensions of *Chimel* as done in *Belton* and *Thornton*:

{¶20} "Contrary to the State's suggestion, a broad reading of *Belton* is also unnecessary to protect law enforcement safety and evidentiary interests. Under our view, *Belton* and *Thornton* permit an officer to conduct a vehicle search when an arrestee is within reaching distance of the vehicle or it is reasonable to believe the vehicle contains evidence of the offense of arrest. Other established exceptions to the warrant requirement authorize a vehicle search under additional circumstances when

safety or evidentiary concerns demand. For instance, *Michigan v. Long*, 463 U.S. 1032 (1983), permits an officer to search a vehicle's passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is 'dangerous' and might access the vehicle to 'gain immediate control of weapons.' *Id.*, at 1049 (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). If there is probable cause to believe a vehicle contains evidence of criminal activity, *United States v. Ross*, 456 U.S. 798, 820 – 821 (1982), authorizes a search of any area of the vehicle in which the evidence might be found. Unlike the searches permitted by Justice Scalia's opinion concurring in the judgment in *Thornton*, which we conclude today are reasonable for purposes of the Fourth Amendment, *Ross* allows searches for evidence relevant to offenses other than the offense of arrest, and the scope of the search authorized is broader. Finally, there may be still other circumstances in which safety or evidentiary interests would justify a search. C.f. *Maryland v. Buie*, 494 U.S. 325, 334 (1990) (holding that, incident to arrest, an officer may conduct a limited protective sweep of those areas of a house in which he reasonably suspects a dangerous person may be hiding).

{¶21} "These exceptions together ensure that officers may search a vehicle when genuine safety or evidentiary concerns encountered during the arrest of a vehicle's recent occupant justify a search. Construing *Belton* broadly to allow vehicle searches incident to any arrest would serve no purpose except to provide a police entitlement, and it is anathema to the Fourth Amendment to permit a warrantless search on that basis. For these reasons, we are unpersuaded by the State's arguments that a broad reading of *Belton* would meaningfully further law enforcement interests and justify a substantial intrusion on individuals' privacy.***" (Footnote omitted.)

{¶22} The *Gant* court further held at 1723:

{¶23} "The experience of the 28 years since we decided *Belton* has shown that the generalization underpinning the broad reading of that decision is unfounded. We now know that articles inside the passenger compartment are rarely 'within "the area into which an arrestee might reach," ' 453 U.S., at 460, and blind adherence to *Belton's* faulty assumption would authorize myriad unconstitutional searches. The doctrine of *stare decisis* does not require us to approve routine constitutional violations."

{¶24} As held in *Chimel*, there are two justifications for a search incident to an arrest: officer safety and the prevention of destruction of evidence. Searches conducted prior to arrest are tested under the *Benton* rule and rest on a determination of probable cause. See, *United States v. Powell* (2007), 483 F.3d 836; *United States v. Smith* (2004), 389 F.3d 944.

{¶25} It is within this framework that we will review the facts sub judice.

{¶26} It is uncontested that the officers were responding to a report of an altercation with a possible weapon involved. T. at 6, 27. Upon arrival, the officers were directed to a vehicle wherein appellant was a passenger. T. at 6-7, 27. Appellant immediately exited the vehicle and informed the officers that he had a concealed carry permit and his weapon was underneath the passenger seat. T. at 7, 28. Appellant was patted down and placed into the back seat of a police cruiser, although he was not under arrest. T. at 7, 10. The driver of the vehicle was placed on the ground in front of the vehicle. T. at 28. He was not handcuffed. T. at 35. No evidence was presented to establish that the driver was arrested at the scene. The trial court found "the driver is within reaching distance of the vehicle at the time of the search." T. at 51.

{¶27} Officers Gillilan and Carpenter began to search the vehicle for appellant's weapon based upon officer safety. T. at 8, 9, 15, 29. A weapon without a holster was found underneath the passenger seat. T. at 9, 13, 29. An empty holster was found "on the floor board on the passenger side of the vehicle." T. at 29.

{¶28} Simultaneously, Officer Carpenter observed a jacket lying in the rear seat of the vehicle. T. at 22, 30. The vehicle was a Camero with split front seats. T. at 30. The jacket contained appellant's wallet and a bag of marijuana. T. at 9, 29-30.

{¶29} Both officers testified they searched the vehicle for their safety because "where there's one gun there can be more guns, so I'm gonna continue to search for my safety to make sure for the public that there isn't anymore guns in that vehicle," and because they thought the weapon found underneath the passenger seat was not the same weapon appellant had mentioned as being in a holster. T. at 14, 33-35.

{¶30} In order for *Gant* to apply, appellant must have been under arrest and neither he nor the driver could have had immediate access to the vehicle.

{¶31} Clearly, appellant, at a minimum, was in custody because he was placed in the police cruiser. The driver was not under arrest, and no evidence was presented to suggest he ever was arrested. Based upon the fact that the driver, presumably the person with permission to operate the vehicle, could have proceed on his way, we find the *Chimel* test applies as to officer safety.

{¶32} Upon review, we find the trial court did not err in denying appellant's motion to suppress.

{¶33} The sole assignment of error is denied.

{¶34} The judgment of the Canton Municipal Court of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ John W. Wise

JUDGES

SGF/sg 510

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JAMAHL WILLIAMSON	:	
	:	
Defendant-Appellant	:	CASE NO. 2009CA00185

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Canton Municipal Court of Stark County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer_____

s/ W. Scott Gwin_____

s/ John W. Wise_____

JUDGES

