

2018 IL App (2d) 170557-U  
No. 2-17-0557  
Order filed March 19, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-CM-299
	)	
STEVEN R. DUFFIN,	)	Honorable
	)	Bruce R. Kelsey,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices McLaren and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in granting defendant's motion to suppress: in light of defendant's evasive behavior, an active order of protection specifically warning that defendant posed a threat for illegal use of firearms, and his history of weapons offenses, the officer had reasonable suspicion to justify a protective search of the interior of defendant's vehicle.

¶ 2 The State appeals from the judgment of the circuit court of Du Page County granting defendant Stephen R. Duffin's motion to suppress evidence found in the passenger compartment of his vehicle during a traffic stop. Because the search was justified by reasonable suspicion that

defendant was dangerous and could gain control of a weapon in the vehicle, we reverse and remand.

¶ 3

### I. BACKGROUND

¶ 4 Defendant was charged by complaint with speeding (625 ILCS 5/11-601(b) (West 2014)), operating an uninsured vehicle (625 ILCS 5/3-707 (West 2014)), and possession of firearm ammunition without a valid firearm owner's identification (FOID) card (430 ILCS 65/2(a)(2) (West 2014)). Defendant filed a motion to suppress three 20-gauge shotgun shells found in the passenger compartment of his vehicle during the traffic stop.

¶ 5 After defendant presented his case, the trial court denied the State's motion for a directed finding and granted defendant's motion to suppress evidence. The State appealed. Because the trial court applied an incorrect legal standard and also precluded the State from presenting evidence at the hearing on the motion to suppress, we vacated and remanded for further proceedings. See *People v. Duffin*, 2017 IL App (2d) 160234-U. Upon remand, the court conducted another evidentiary hearing, at which the State introduced its evidence.

¶ 6 The following evidence was established at both hearings. According to Officer Justin Sanchez of the Wheaton Police Department, the only witness to testify, at approximately 1 a.m. on January 24, 2015, he was conducting radar enforcement. His radar indicated that defendant's pickup truck was speeding.

¶ 7 Officer Sanchez stopped the vehicle and advised defendant, who was the driver, why he had been stopped. When Officer Sanchez asked defendant for a driver's license and insurance card, defendant produced the license but said that he did not think that he had an insurance card. Officer Sanchez told him to check in the vehicle to see if there was an insurance card.

¶ 8 Defendant then checked his wallet and the visor but could not locate a card. As defendant began to look in the center console, he told Officer Sanchez that he was going to roll up the driver's-side window. Defendant closed the window before Officer Sanchez could respond. Officer Sanchez acknowledged that it was cold that night.

¶ 9 Because the driver's-side window was tinted and Officer Sanchez could not see into the vehicle, he asked defendant to lower the window. Defendant disregarded that request. Officer Sanchez then repositioned himself so that he could see into the vehicle.

¶ 10 As defendant looked in the center console, he both held up "paperwork" and turned his body, which effectively blocked Officer Sanchez's view of the center console. Defendant provided Officer Sanchez an expired insurance card. When Officer Sanchez asked defendant why he had rolled up the window, defendant "merely shrugged his shoulders."

¶ 11 Officer Sanchez asked defendant if he had any weapons or anything else that he should be concerned about, and defendant said no. Defendant refused Officer Sanchez's request to search the vehicle.

¶ 12 After Officer Sanchez requested identification from the female passenger, he returned to his squad car and conducted a computer check on defendant and the passenger. Officer Sanchez discovered that there was an active order of protection against defendant. The order of protection stated that the issuing court had found, after reviewing whether defendant was likely to use a firearm against the petitioner, that there was a danger of the illegal use of firearms by defendant. The petitioner was not the female in defendant's vehicle during the traffic stop. Officer Sanchez also learned that defendant had a revoked FOID card and had been arrested for several weapons and assault offenses. Officer Sanchez could not recall the dates, nor did he ascertain any dispositions, of those arrests.

¶ 13 As Officer Sanchez performed the computer check, he observed “furtive movements” in the vehicle. He explained that he saw both defendant and the passenger “moving within the passenger compartment of the vehicle towards [*sic*] leaning over the center console area and moving about their seated positions.” It appeared that they were looking down, as opposed to talking with one another.

¶ 14 After completing the computer check, Officer Sanchez requested back-up. Officer Sanchez then approached the vehicle and asked defendant to exit so that he could speak with him about “his movements and [Officer Sanchez’s] discovery of his background and current status.” Officer Sanchez directed defendant to go to the rear of defendant’s vehicle, on the side away from traffic.

¶ 15 Officer Sanchez then patted down defendant for weapons but found none. He did not handcuff defendant. He also had the passenger exit the vehicle, patted her down, but discovered no weapons. He did not handcuff the passenger. According to Officer Sanchez, after patting them down, he did not fear for his safety “from them.” Although the record is not entirely clear as to when they arrived, three additional officers had arrived around the time he completed the pat-downs.

¶ 16 Following the pat-downs, Officer Sanchez searched the passenger compartment, including the center console, the seats, the doors, and the top of the dashboard. He found several knives in the console and around the driver’s area. According to Officer Sanchez, none of the knives were illegal. When he looked in the side pocket of the driver’s door, he found three 20-gauge shotgun shells.

¶ 17 Officer Sanchez described defendant’s demeanor during the initial contact as “very short” and said that he did not appear to be “making eye contact with [him] too much.” According to

Officer Sanchez, defendant appeared to be annoyed at being stopped. Officer Sanchez was concerned for his safety, because of defendant's demeanor, his rolling up of the tinted window, his apparent attempts to obstruct Officer Sanchez's view of the center console, and the information obtained via the computer check.

¶ 18 Before Officer Sanchez's testimony at the hearing on remand, the State, relying on *Michigan v. Long*, 463 U.S. 1032 (1983), again moved for a directed finding. The trial court, finding that defendant had established a *prima facie* case of a warrantless search, denied the motion for a directed finding. Following the State's presentation of evidence, the court granted defendant's motion to suppress. The State filed a certificate of impairment (see Ill. S. Ct. R. 604(a)(1) (eff. Mar. 8, 2016)) and a timely notice of appeal.

¶ 19

## II. ANALYSIS

¶ 20 On appeal, the State contends that the search was valid under *Long*, as Officer Sanchez had reasonable suspicion that defendant was potentially dangerous and could gain control of a weapon in the vehicle. Defendant responds that (1) the facts of this case are distinguishable from *Long* and insufficient to establish reasonable suspicion that defendant had a weapon in the vehicle, particularly after Officer Sanchez found no weapons during the pat-down, and (2) under *Arizona v. Gant*, 556 U.S. 332 (2009), there was no reason to believe that defendant could access a weapon in the vehicle, because he had been removed from the vehicle and several officers were present.

¶ 21 In reviewing a trial court's ruling on a motion to suppress evidence, a reviewing court applies a two-part standard. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006) (citing *Ornelas v. United States*, 517 U.S. 690, 699 (1996)). Under that standard, a trial court's findings of fact should be reviewed only for clear error, and a reviewing court must give due weight to any

inferences drawn from those facts by the fact finder. *Luedemann*, 222 Ill. 2d at 542. Put another way, a reviewing court gives great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Luedemann*, 222 Ill. 2d at 542. A reviewing court, however, remains free to independently assess the facts in relation to the issues and may draw its own conclusions when deciding what relief should be granted. *Luedemann*, 222 Ill. 2d at 542. Accordingly, a court reviews *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Luedemann*, 222 Ill. 2d at 542-43.

¶ 22 A police officer may conduct a reasonable search for weapons when he has reason to believe that a subject is armed and dangerous. *People v. Colyar*, 2013 IL 111835, ¶ 35 (citing *Terry v. Ohio*, 391 U.S. 1, 27 (1968)). The principles of *Terry* have been extended to permit the protective search of the passenger compartment of a vehicle during a traffic stop. *Colyar*, 2013 IL 111835, ¶ 38 (citing *Long*, 463 U.S. 1032). That is so because roadside encounters are especially dangerous and an officer might reasonably believe that he is in danger from the possible presence of accessible weapons inside the vehicle. *Colyar*, 2013 IL 111835, ¶ 38.

¶ 23 Such a protective search of the passenger compartment should be limited to the areas where a weapon might be located. *Colyar*, 2013 IL 111835, ¶ 39. The search is permissible only when the officer has a reasonable belief, based on specific, articulable facts and reasonable inferences from those facts, that the individual is dangerous and could gain control of a weapon. *Colyar*, 2013 IL 111835, ¶ 39. The issue is whether a reasonably prudent person under the circumstances would be warranted in believing that his, or others', safety is threatened. *Colyar*, 2013 IL 111835, ¶ 39. To justify such a search for weapons, an officer's level of suspicion need not rise to the level of probable cause. *Colyar*, 2013 IL 111835, ¶ 40. Nonetheless, it must be more than a mere hunch. *Colyar*, 2013 IL 111835, ¶ 40. When reviewing an officer's conduct,

we apply an objective standard in deciding whether the facts available to the officer would lead a person of reasonable caution to believe that the action was appropriate. *Colyar*, 2013 IL 111835, ¶ 40.

¶ 24 Here, we consider whether Officer Sanchez had the required reasonable suspicion to support the search. He did. There were several facts that, when viewed together, gave rise to a reasonable suspicion that defendant was potentially dangerous and could gain access to a weapon in his vehicle. First, defendant acted suspiciously when he avoided eye contact and provided short answers. Second, he suddenly rolled up the tinted window before looking in the center console, ignored Officer Sanchez's request to open the window, and, when asked, offered no explanation as to why he had done so. Third, when Officer Sanchez repositioned himself to see into the passenger compartment, defendant held up paperwork and positioned his body so as to obstruct Officer Sanchez's view. Because Officer Sanchez's un rebutted testimony was that defendant held up paperwork, the trial court's finding that defendant did not do so was against the manifest weight of the evidence. See *People v. Litwin*, 2015 IL App (3d) 140429, ¶ 39 (finding is against the manifest weight of the evidence when the opposite conclusion is evident). Fourth, when Officer Sanchez conducted a computer check, he learned that, as part of a proceeding to obtain an order of protection, defendant had been assessed as a likely risk to illegally use a firearm against the protected party. Although that party was not present during the traffic stop, it was reasonable for Officer Sanchez to conclude that defendant posed a risk to use a firearm. That conclusion was reinforced by the fact that defendant had been arrested in the past for weapons and assault offenses. Fifth, while conducting the computer check, Officer Sanchez observed defendant and his passenger engaging in suspicious movements within the passenger compartment. All of those articulated facts, when viewed collectively, constituted a reasonable

suspicion that defendant was potentially dangerous and could access a weapon in the vehicle. See *Long*, 463 U.S. at 1051-52. Although there might have been innocent explanations for some of the individual factors, the factors viewed in combination constituted reasonable suspicion. See *People v. Biagi*, 2017 IL App (5th) 150244, ¶ 52 (even if innocent explanations could exist for individual factors viewed in isolation, the factors viewed in combination may constitute reasonable suspicion); see also *People v. Timmsen*, 2016 IL 118181, ¶ 44 (where possibly innocent conduct also could indicate criminal activity, an investigative stop is justified to resolve the ambiguities).

¶ 25 Although in *Colyar* the officer saw a bullet in plain view in the passenger compartment, there is nothing in that, or any other case, to suggest that an officer must first view a weapon or something related to a weapon before having the reasonable suspicion necessary to search the passenger compartment for weapons. In this case, although Officer Sanchez never observed any weapon before searching, there were ample facts supporting reasonable suspicion.

¶ 26 We note that Officer Sanchez testified that he did not fear for his safety from either defendant or the passenger after he patted them down. He did not testify, however, that he no longer was concerned that there might be a weapon in the vehicle. Naturally, after Officer Sanchez patted down the two occupants, it was unlikely that they had weapons on their persons. Nonetheless, the possibility of an accessible weapon inside the vehicle still existed. The Supreme Court addressed this precise situation in *Long*, when it noted, “Just as a *Terry* suspect on the street may, despite being under the brief control of a police officer, reach into his clothing and retrieve a weapon, so might a *Terry* suspect in *Long*’s position break away from police control and retrieve a weapon from his automobile. In addition, if the suspect is not placed under arrest, he will be permitted to reenter his automobile, and he will then have access to weapons



inside.” *Long*, 463 U.S. at 1051-52. Therefore, notwithstanding that he did not find a weapon on the occupants, Officer Sanchez’s continued to be justified in considering defendant dangerous and searching those areas of the passenger compartment where a weapon might be readily accessible, including the side pockets of the doors. Moreover, Officer Sanchez’s subjective state of mind as to whether defendant or the passenger was a threat to his safety because they were not carrying weapons on their persons is not relevant to the issue of whether the circumstances, when viewed objectively, justified his actions in searching the vehicle. See *People v. Wear*, 229 Ill. 2d 545, 566 (2008).

¶ 27 Nor are we troubled that Officer Sanchez continued to search the passenger compartment after he found the knives in the console. As discussed, the scope of such a search is limited to those areas of the passenger compartment where a weapon might be located. *Colyar*, 2013 IL 111835, ¶ 39. The fact that Officer Sanchez had searched elsewhere in the passenger compartment did not eliminate the justification to search the door pockets.<sup>1</sup>

¶ 28 Defendant contends that, if Officer Sanchez truly feared for his safety, he would have secured the knives that he found in the vehicle. That contention lacks merit for several reasons. First, the record does not indicate the exact number or nature of the knives, other than that they were not illegal. Indeed, Officer Sanchez never testified that any of the knives were particularly dangerous. Second, the order of protection concerned the illegal use of firearms. Thus, the discovery of the knives did not mitigate the reasonable suspicion that there might be a firearm in the vehicle. Finally, even if Officer Sanchez considered the knives to be dangerous, his failure to

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<sup>1</sup> We note that defendant does not contend that the door pocket was beyond the scope of what was necessary to search for weapons.

secure them does not show a lack of reasonable fear for his safety. If anything, the knives would have prompted a reasonable officer to complete the search of the vehicle for other weapons.

¶ 29 Relying on *Gant*, defendant contends that, because he and the passenger were located at the rear of his vehicle and there were other officers present, there was no safety need to search the vehicle for a weapon. Defendant's reliance on *Gant* is misplaced for two reasons.

¶ 30 First, *Gant* addressed a different justification for a search of a vehicle without probable cause. In *Gant*, the police searched the passenger compartment of a vehicle pursuant to the lawful, custodial arrest of the driver. *Gant*, 556 U.S. at 351. In holding that the search was not justified by the search-incident-to-a-lawful-arrest doctrine, when the driver was handcuffed and locked in a squad car, the Court observed that other established exceptions to the warrant requirement, such as the one recognized in *Long*, authorize a search when an officer has a reasonable suspicion that an individual, whether or not an arrestee, is dangerous and might access the vehicle to gain immediate control of a weapon. *Gant*, 556 U.S. at 346-47 (citing *Long*, 463 U.S. at 1049). Clearly, the purported justification for the warrantless search at issue in *Gant* was different from the justification addressed in *Long*. See *Gant*, 556 U.S. at 352 (Scalia, J., concurring) (noting that the rule in *Long* was not at issue). Here, as in *Long*, the justification for the search is reasonable suspicion, as opposed to a custodial arrest. Thus, the rule in *Gant* does not apply to this case.

¶ 31 Second, even if the legal rule in *Gant* applied to this case, *Gant* is factually distinguishable. The driver in *Gant* was handcuffed and locked in a squad car, where he had no ready access to a weapon in his vehicle. *Gant*, 556 U.S. at 336. Hence, the need for a search of the vehicle for officer safety and to preserve evidence was no longer present. *Gant*, 556 U.S. at 344. Further, because the driver was under custodial arrest, he was not allowed to return to his

vehicle. Here, on the other hand, defendant was neither handcuffed nor locked in a squad car. Instead, he was standing near the rear of his vehicle. His close proximity to his vehicle, combined with the lack of physical restraint, provided him with the opportunity to gain immediate access to the passenger compartment of his vehicle. Although there were several officers present, the absence of any physical restraint left him free to suddenly gain access to the passenger compartment of his vehicle. See *Long*, 463 U.S. at 1051. Importantly, unlike in *Gant*, once the stop terminated, defendant would have been free to return to his vehicle and gain control of a weapon. See *Long*, 463 U.S. at 1051-52 (noting that an individual who is not placed under custodial arrest will be allowed to reenter his vehicle, thereby gaining access to a weapon therein). Therefore, the facts of this case are significantly different from those of *Gant*.

¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated, we reverse the judgment of the circuit court of Du Page County and remand for further proceedings.

¶ 34 Reversed and remanded.