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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2009-2010

CR-09-0399

State of Alabama

v.

Dandre Shamar Jemison

Appeal from Chilton Circuit Court
(CC-09-332)

KELLUM, Judge.

Dandre Shamar Jemison was arrested and charged with one count of unlawful possession of a controlled substance -- N-Benzylpiperazine -- a violation of § 13A-12-212, Ala. Code 1975, and one count of driving while his license was

suspended, a violation of § 32-6-19, Ala. Code 1975. Jemison filed a motion to suppress the package of "Ecstasy"[1] pills recovered by police during what Jemison alleged was an illegal detention and search. Following an evidentiary hearing, the circuit court granted Jemison's motion to suppress. Pursuant to Rule 15.7, Ala. R. Crim. P., the State appeals the circuit court's ruling.

The following evidence was presented by the State at the suppression hearing. On October 12, 2008, Clanton Police Officer David Clackley was patrolling the Second Avenue and Martin Luther King area of Clanton to watch a residence reportedly involved in drug activity. Officer Clackley drove away from the area for a short period, and when he returned, he saw a vehicle, later determined to be driven by Jemison, drive away from the residence. Officer Clackley followed the vehicle approximately four blocks "just to see what the situation was and check on the status of the driver and see if there were any violations to make a traffic stop." (R. 7.) Officer Clackley observed "a DVD player or some type of in-dash screen" in Jemison's car, recorded Jemison's license

[1]"Ecstasy" is the common street name for N-Benzylpiperazine.

plate number, and called the license plate number in to a police dispatcher. According to Officer Clackley, he was about to initiate a traffic stop as the vehicle approached the end of the street and appeared to prepare to be making a right turn; however, Jemison abruptly pulled forward into the driveway of house across the street, which it was later revealed belonged to Jemison's uncle, and "bumped" a vehicle parked in the driveway in the process. Again, Officer Clackley did not initiate a traffic stop, but instead made a right turn and stopped his vehicle approximately 30 feet from the front door of the house. Officer Clackley testified that he believed Jemison pulled into the driveway because he knew a police vehicle was driving behind him; Officer Clackley wanted to "see if in fact that was [Jamison's] residence or whoever came to the door allowed him to come in or turn him away." (R. 9.)

Jemison got out of the car, approached the front door of the house, and began looking in his pocket as if he were trying to locate a key. After a few moments, Jemison looked back over his shoulder at Officer Clackley and began walking toward the rear of the house. Office Clackley explained:

> "At this time, I didn't know if it was actually his house, whose house it was, or if any criminal acts had occurred prior to me getting there.
>
> "....
>
> "I rolled my window down and I said, 'Hey, man, do you live here? Can I talk to you for a second,' to confirm that he lived there, make sure he wasn't drunk or whatever the case may be, make sure he wasn't fixing to break into the house, which is a possibility. And when I said that, he got real nervous and he picked up his pace. As he was walking he said, 'Man, I got to go.' I said, 'I need to talk to you for a second and make sure you live here.' He said, 'Man, I got to go,' and he took off running around the back of the house."

(R. 11.) Officer Clackley ran after Jemison and caught up with him approximately four or five blocks from the house, then placed him in custody. By this time, another officer had arrived on scene and transported Jemison back to Jemison's vehicle so that Officer Clackley could retrace the steps of Jemison's flight. Officer Clackley explained that he re-traced Jemison's steps because:

> "At this point, I wasn't exactly sure what [Jemison's] reason for running was. I knew he ran. I've been a police officer for ten years. I know that people don't just run to be running. I wanted to go back, backtrack where we had ran. I started from where I caught him and check the area to see if there [were] any evidence [Jemison] disposed of, whether it be a gun, evidence of a burglary, a robbery, drugs, whatever."

(R. 12.) While he retraced their steps, Officer Clackley found a small plastic bag filled with small, different colored pills around the corner of the house approximately 20 feet from Jemison's vehicle. Officer Clackley testified that although he did not see Jemison drop the bag of pills, the bag of pills was recovered along the route Jemison ran. The pills were later field-tested by the Department of Forensics Sciences and were determined to be Ecstasy, a controlled substance. Officer Clackley proceeded to search Jemison's vehicle, in which he found approximately $9,000 in cash.

During the direct examination of Officer Clackley, the trial court questioned him about why he arrested Jemison. Officer Clackley explained that he arrested Jemison because he believed that Jemison's flight down the center of a public street constituted disorderly conduct, specifically, "under the subsection of blocking or interrupting a pedestrian or vehicle or traffic in a public highway." (R. 18.) Furthermore, Officer Clackley stated he wanted to determine "what, if any, criminal activity [Jemison] had partaken in prior to running from [Officer Clackley]" and "why exactly [Jemison] did run." (R. 18, 19.) When asked by the State if

he would have continued with his investigatory stop even if he did not charge Jemison with disorderly conduct, Officer Clackley said, "Oh, yes, definitely. Could have been a stolen vehicle, could have just performed a robbery. Really I had no idea when he initially ran why exactly he was running." (R. 20.) Officer Clackley admitted that when he initiated contact with Jemison, he believed Jemison "had committed, was committing, or was about to commit" some offense. (R. 21.)

When asked on cross-examination whether he stopped Jemison to investigate Jemison's vehicle bumping the other vehicle parked in the driveway into which Jemison pulled his car, Officer Clackley explained:

> "The whole situation led me to believe that something was going on with him, whether he had been drunk, stolen vehicle, just committed domestic violence. I really had no clue as to what was going on. The bumping into the other vehicle was a major indicator to me something was going on in this situation."

(R. 22.) Officer Clackley admitted that he did not reference the bumping of the parked vehicle in his incident report, but explained that he did not do so because neither car was damaged. In asking for clarification regarding why Officer

Clackley initiated contact with Jemison, Officer Clackley and defense counsel had the following exchange:

> "[Defense counsel]: So tell me now, because I'm confused, what was the original basis upon which you had to initiate contact with my client? What was your reasoning?"
>
> "[Officer Clackley]: Like I said, it wasn't a traffic stop. I simply asked him if I could speak with him. I never commanded him to stop and talk to me. When I asked, 'Hey, man, can I talk to you a minute,' he fled. In my experience, when people run from me upon a simple question --
>
> "[Defense counsel]: You never ordered him to stop and talk to you?
>
> "[Officer Clackley]: Once when we got on Taylor Avenue is when I started giving commands.
>
> "[Defense counsel]: I'm trying to understand the disorderly conduct. If you had not instructed him that he had to stay there and talk with you and if there was no custodial situation, what was the basis upon your chase of him at this point?
>
> "[Officer Clackley]: I have as much a right to run as he does. Once I observed him running in the highway, then he was violating the section that I charged him with, which was disorderly conduct. Up to that point we were both just going for a run.
>
> "[Defense counsel]: Up to that point, you were just going for a run?
>
> "[Officer Clackley]: Yes, ma'am. I was observing him."

(R. 24-25.)

On December 16, 2009, the trial court granted Jemison's motion to suppress without explanation. This appeal ensued.

In State v. Landrum, 18 So. 3d 424 (Ala. Crim. App. 2009), this Court explained:

> "'This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute. See State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996); State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999).' State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004). In State v. Hill, 690 So. 2d 1201 (Ala. 1996), the trial court granted a motion to suppress following a hearing at which it heard only the testimony of one police officer. Regarding the applicable standard of review, the Alabama Supreme Court stated, in pertinent part, as follows:
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> > "'"Where the evidence before the trial court was undisputed the ore tenus rule is inapplicable, and the Supreme Court will sit in judgment on the evidence de novo, indulging no presumption in favor of the trial court's application of the law to those facts." Stiles v. Brown, 380 So. 2d 792, 794 (Ala. 1980) (citations omitted). The trial judge's ruling in this case was based upon his interpretation of the term "reasonable suspicion" as applied to an undisputed set of facts; the proper interpretation is a question of law.'
>
> "State v. Hill, 690 So. 2d at 1203-04."

18 So. 3d at 426. Because the evidence presented at the suppression hearing is not in dispute, the only issue before this Court is whether the circuit court correctly applied the

law to the facts presented at the suppression hearing, and we afford no presumption in favor of the circuit court's ruling.

Initially, we note that the circuit court offered no explanation in granting Jemison's motion to suppress. In his motion to suppress, and again on appeal, Jemison argued that both the seizure of his person and the searches that yielded the bag of Ecstasy and the money in his vehicle violated his Fourth Amendment rights

I.

The State contends that the circuit court erred in granting Jemison's motion to suppress because, it says, Officer Clackley in no way "unlawfully or illegally seize[d]" Jemison. (State's brief, at 15.) However, Jemison argues that the circuit court properly suppressed the evidence seized in this case and directs this Court's attention to "five points at which the individual constitutional rights and freedoms of Jemison intersect with the authority granted to law enforcement" that he says show an "overall unconstitutional and unreasonable encounter." (Jemison's brief, at 12, 32.) The first four points listed by Jemison relate to the facts leading up to Jemison's arrest by Officer

Clackley and question the legality of the seizure; the fifth point relates to the search of the yard in which the drugs were found and the search of Jemison's car after his arrest.

In Terry v. Ohio, 392 U.S. 1 (1968), the United States Supreme Court explained:

> "The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?"

392 U.S. at 22 (emphasis added). Additionally, in State v. Green, 992 So. 2d 82 (Ala. Crim. App. 2008), this Court stated:

> "The United States Supreme Court in United States v. Sokolow, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989), stated:
>
> > "'The Fourth Amendment requires "some minimal level of objective justification" for making the stop. INS v. Delgado, 466 U.S. 210, 217 (1984). That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence. We have held that probable cause means "a fair probability that contraband

> or evidence of a crime will be found," Illinois v. Gates, 462 U.S. 213, 238 (1983), and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause, see United States v. Montoya de Hernandez, 473 U.S. 531, 541, 544 (1985).'"

992 So. 2d at 84.

Throughout his brief, Jemison highlights alleged inconsistencies and holes in Officer Clackley's testimony in support of his contention that Officer Clackley failed to articulate a reasonable, objective basis for pursuing and ultimately detaining Jemison. In his fourth point, in which he challenges Officer Clackley's eventual arrest of Jemison for disorderly conduct, Jemison alleges that the charge of disorderly conduct was "an afterthought." (Jemison's brief, at 21.) To the extent that Jemison contends that his stop and detention were pretextual and thus unconstitutional, we note that "[a]s long as the police officer is doing only what is objectively authorized and legally permitted, the officer's subjective intent in doing it is irrelevant." Ex parte Scarbrough, 621 So. 2d 1006, 1010 (Ala. 1993). Thus, we will not speculate as to Officer Clackley's subjective intentions but will focus only on the reasonableness of his actions with

respect to the objective factors observed over the course of the interaction between Officer Clackley and Jemison.

Finally, at the heart of Jemison's various claims of Fourth Amendment infringement lies the argument that Officer Clackley's targeting, pursuit, and eventual detention of Jemison were not based upon sufficient reasonable suspicion or probable cause but were based upon Officer Clackley's "curiosity and broad range of suspicions unsupported by objective justifications." (Jemison's brief, at 45.) According to Jemison, the facts of this case could not have created within Officer Clackley the reasonable suspicion or probable cause necessary to conduct a lawful detention that comports with the requirements of the Fourth Amendment.

As we proceed through the events that culminated in Jemison's arrest, we will continue to revert to the most pertinent inquiry a reviewing court must ask in analyzing the constitutionality of a police seizure: "[W]ould the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" Terry, 392 U.S. at

22. With this "man of reasonable caution" standard in mind, we turn to the events the culminated in Jemison's arrest.

A.

Officer Clackley initially became interested in Jemison because he saw Jemison drive away from a house at which drug activity reportedly took place. This Court has recognized that the association of a suspect with a facility known or suspected of drug activity is a factor that may give rise to reasonable suspicion or probable cause. See, Ex parte Kelly, 870 So. 2d 711, 725 (Ala. 2003)(officer's background knowledge concerning the association of a facility with narcotics dealing was "legitimately included in his calculus of probable cause"). Thus, by observing Jemison driving away from a house where drug activity was suspected, Officer Clackley decided to follow and observe Jemison; that decision was justified and reasonable.

Jemison attacks this factor within his first of his aforementioned five instances of infringement of Jemison's Fourth Amendment rights. Here, Jemison relies on B.J.C. v. State, 992 So. 2d 90 (Ala. Crim. App. 2008), in arguing that whatever tip the police received regarding the drug activity

at the house Officer Clackley was watching lacked the "indicia of reliability critical to allow the officer to infringe on the Fourth Amendment rights of Jemison." (Jemison's brief, at 12.) In B.J.C., this Court held that a Terry stop was constitutionally impermissible pursuant to Florida v. J.L., 529 U.S. 266 (2000), when the initial detention was based solely upon an anonymous tip and the tip lacked any "'indicia of reliability as of the kind as contemplated in [Adams v. Williams, 407 U.S. 143 (1972),] and [Alabama v. White, 496 U.S. 325 (1990)]'" B.J.C., 992 So. 2d at 64, quoting J.L., 529 U.S. at 74. At this point, Officer Clackley did not detain Jemison, nor did he ultimately detain Jemison based upon this tip alone; thus, the holding of B.J.C. has no bearing on this case. Accordingly, Jemison's first allegation of a constitutional infringement by Officer Clackley is meritless.

B.

Next, we consider Officer Clackley's observations regarding Jemison's driving. Officer Clackley testified that he followed Jemison for approximately a quarter of a mile. As Jemison approached the end of the street, Officer Clackley

explained that it appeared as if Jemison was going to make a right turn; instead, Jemison abruptly drove forward into a residential driveway, bumping a parked vehicle in the process. Officer Clackley believed that Jemison knew that Officer Clackley was following him. This Court has recognized that erratic or evasive driving is a factor that can be considered when determining whether an officer has reasonable suspicion. See, Martin v. State, 529 So. 2d 1032 (Ala. Crim. App. 1988). After bumping the parked car, Jemison approached the house, knocked on the front door, looked over his shoulder at Officer Clackley, and began walking toward the rear of the house. At this point, Officer Clackley called out to Jemison to determine what Jemison was up to. Officer Clackley asked Jemison if he lived there, and he said that Jemison "got real nervous," "picked up his pace," and told Officer Clackley that he "had to go." (R. 11.) Officer Clackley told Jemison that he needed to talk to him to "make sure you live here," Jemison again said he "had to go," and then "took off running." (R. 11.) This Court has repeatedly held that "'nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.'" State v. McPherson, 892

So. 2d 448, 454 (Ala. Crim. App. 2004), quoting Illinois v. Wardlow, 528 U.S. 119, 124, 120 S.Ct. 673 (2000). See also Smith v. State, 19 So. 3d 912 (Ala. Crim. App. 2009); W.D.H. v. State, 16 So. 3d 121 (Ala. Crim. App. 2008); and Camp v. State, 983 So. 2d 1141 (Ala. Crim. App. 2007)(all quoting Wardlow to support the same proposition). Because Jemison's erratic driving, nervousness, and evasive behavior were all suspicious actions, Officer Clackley acted reasonably in continuing to investigate.

C.

According to Officer Clackley, after Jemison told him a second time that he had to go, Jemison took off in headlong flight away from Officer Clackley. In Wardlow, the United States Supreme Court observed that "[h]eadlong flight -- wherever it occurs -- is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is clearly suggestive of such." 528 U.S. at 124-25. In Jemison's third allegation he contends that he was well within his rights to "leave" after answering Officer Clackley's questions. (Jemison's brief, at 19.) Jemison relies upon Florida v. Royer, 460 U.S. 491 (1983), to justify his "picking up his

pace" while leaving because he was free "to go on his way." (Jemison's brief, at 20.) As best we can understand, Jemison appears to argue that his exercising his right to terminate the interaction should in no way be considered suspicious or in no way would have justified a stop by Officer Clackley. However, the United States Supreme Court in Wardlow recognized that its holding was consistent with Royer in that "[f]light, by its very nature, is not 'going about one's business'; in fact, it is just the opposite." 528 U.S. at 125. Contrary to his assertion, Jemison's decision to run from Officer Clackley was not akin to Jemison's declining to answer questions and go on about his way. Jemison took off in headlong flight away from Officer Clackley, an action that would have, taking into consideration all the circumstances attendant to the situation, given Officer Clackley a reasonable suspicion that criminal activity was afoot. Accordingly, Jemison's headlong flight away from Officer Clackley suggested that he was involved with some sort of criminal activity; thus, Officer Clackley was justified in pursuing Jemison to investigate further.

Throughout his first three allegations of constitutional violations, Jemison repeatedly contends that Officer Clackley's purportedly inconsistent testimony evidenced no reasonable basis for him to stop Jemison. Specifically, within Jemison's second allegation, he contends that Officer Clackley's various justifications for following and ultimately stopping Jemison evidenced a lack of a reasonable basis to initiate a stop. However, in the situations described in Jemison's first three points, no detention had taken place. Officer Clackley testified that he was approximately 30 feet away from Jemison when he began asking Jemison questions at the residence. Up until the moment Officer Clackley caught up with a fleeing Jemison and arrested him, Officer Clackley had not stopped or detained, and thus had not seized, Jemison in any meaningful sense. A Fourth Amendment seizure takes place only "when there is a governmental termination of freedom of movement through intentionally applied means." Brower v. County of Inyo, 489 U.S. 593, 597 (1989). Thus, Officer Clackley did not seize Jemison by following him in his police vehicle, see Brower (the show of police authority inherent in a police chase does not, in and of itself and without actually

causing a traffic stop, constitute a seizure under the Fourth Amendment); by speaking to him and attempting to ask questions, see Royer, 460 U.S. at 497 ("law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions"); or by giving chase to Jemison once he fled the scene. See California v. Hodari D., 499 U.S. 621 (1991)(a police officer running after a suspect and ordering him to halt does not seize the suspect when the suspect refuses to comply with the officer's orders and continues fleeing). Because up until the point of actual arrest Officer Clackley had not seized Jemison under any standard articulated by the United States Supreme Court, no Fourth Amendment violation took place during the events proceeding the actual arrest. Accordingly, no claim raised within Jemison's first three claims of Fourth Amendment infringement entitles him to relief.

D.

Officer Clackley finally apprehended Jemison after giving chase for approximately four or five blocks. Officer Clackley handcuffed Jemison and placed him under arrest for disorderly conduct, specifically "under the subsection of blocking or interrupting a pedestrian or vehicle traffic in a public highway." (R. 18.) In his fourth point, Jemison argues that his arrest was unconstitutional because, he says, Officer Clackley did not have the requisite reasonable suspicion or probable cause to arrest him. Specifically, Jemison contends that Officer Clackley's testimony regarding disorderly conduct was "an afterthought." (Jemison's brief, at 21.) Moreover, Jemison also argues that the State failed to prove a prima facie case of disorderly conduct.

Section 13A-11-7(a)(5) states that a person commits the crime of disorderly conduct if, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he ... [o]bstructs vehicular or pedestrian traffic." Additionally, § 15-10-3(a)(1), Ala. Code 1975, states, in pertinent part: "An officer may arrest a person without a warrant, on any day and at any time ... [i]f a

public offense has been committed or a breach of the peace threatened in the presence of a police officer."

In Powell v. State, 796 So. 2d 404 (Ala. Crim. App. 1999), aff'd, 796 So. 2d 434 (Ala. 2001), this Court stated:

> "'The level of evidence needed for a finding of probable cause is low. "An officer need not have enough evidence or information to support a conviction [in order to have probable cause for arrest].... '[O]nly the probability, and not a prima facie showing, of criminal activity is the standard of probable cause.'" Stone v. State, 501 So. 2d 562, 565 (Ala. Cr. App. 1986). "'Probable cause exists where "the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.'" Young v. State, 372 So. 2d 409, 410 (Ala. Cr. App. 1979)(quoting Draper v. United States, 358 U.S. 307, 313, 79 S.Ct. 329, 333, 3 L.Ed.2d 327 (1959)).'"

796 So. 2d at 424, quoting State v. Johnson, 682 So. 2d 385, 387-88 (Ala. 1996).

According to Officer Clackley, Jemison ran through the yards of houses in that neighborhood and in the center of Taylor Avenue before finally being apprehended six blocks away. Officer Clackley witnessed these events as he gave

chase and eventually caught Jemison. These observations were sufficient to give Officer Clackley sufficient probable cause to arrest Jemison. Contrary to Jemison's argument on appeal, the State was not required to present evidence sufficient to sustain a conviction for disorderly conduct in order to render lawful the warrantless arrest. Accordingly, Officer Clackley's warrantless arrest of Jemison was lawful.

On a daily basis, police officers are required to use their training and experiences to investigate crimes and to catch those suspected of wrongdoing. In many cases, including this one, seemingly innocent or otherwise noncriminal activities may catch the attention of a police officer and spark within that officer a belief that further investigation is required. In these instances, reviewing courts are called to be careful and defer to the judgment of the police officers. See, Williams v. State, 716 So. 2d 753, 756 (Ala. Crim. App. 1998)("When reviewing the degree of suspicion that attaches to noncriminal behavior, courts should give great deference to the training and experience of police officers."). Courts reviewing interactions between police and potential criminals have repeatedly instructed that such

interactions cannot be viewed in a vacuum, but must be analyzed considering the "totality of the circumstances." In asking if a reasonable man standing at the same vantage point as Officer Clackley, witnessing the same behavior of a suspect, would believe that Officer Clackley's pursuit and seizure of Jemison were appropriate, we answer that inquiry in the affirmative.

Officer Clackley never seized Jemison under the plain meaning of the Fourth Amendment before he placed Jemison under custodial arrest. Furthermore, Officer Clackley's arrest of Jemison was lawful. Based on the foregoing, we conclude that Jemison was never subjected to an illegal seizure during the course of his interaction with Officer Clackley. Thus, we now turn to the search that uncovered the Ecstasy underlying this prosecution.

II.

The State argues that no illegal search took place in this case. Specifically, the State contends that the bag of Ecstasy was not found pursuant to any sort of search but was recovered on the ground along the route of Jemison's flight. Furthermore, the State contends, even if the recovery of the

bag of Ecstasy could be construed to be the result of a search, the search in no way involved an area in which Jemison had a reasonable expectation of privacy. Jemison contends that the State failed to show "exigent circumstances or an applicable exception [to the warrant requirement]" in order to conduct a warrantless search of Jemison's uncle's yard.

"'In the context of the Fourth Amendment, a search implies probing into secret places for that which is hidden [and] implies force, actual or constructive, or a forceable dispossession of property of one by exploratory acts.'" Williams v. State, 3 So. 3d 285, 289 (Ala. Crim. App. 2008), quoting Vogel v. State, 426 So. 2d 863, 872 (Ala. Crim. App. 1980)(internal citations omitted).

Here, the actions taken by Officer Clackley do not fit within the parameters of a "search" as described by this Court in Williams. The bag of Ecstasy was found along Jemison's flight route close to the corner of the house on a pile of leaves adjacent to the driveway. In no way could Officer Clackley's actions be described as "probing" or "exploratory." Accordingly, no search falling within the meaning of the Fourth Amendment took place.

Moreover, assuming, arguendo, that Officer Clackley's recovery of the bag of Ecstasy did constitute a search, Jemison lacks standing to challenge the search of his uncle's yard. In Jones v. State, 946 So. 2d 903(Ala. Crim. App. 2006), this Court explained:

> "'An appellant wishing to establish standing to challenge the introduction of evidence obtained as a result of an alleged violation of the Fourth Amendment must demonstrate that he has a legitimate expectation of privacy in the area searched. Cochran v. State, 500 So. 2d 1161 (Ala.Cr.App. 1984), rev'd in part on other grounds, 500 So. 2d 1179 (Ala. 1985), on remand, 500 So. 2d 1188 (Ala.Cr.App. 1986), aff'd, 500 So. 2d 1064 (Ala. 1986), cert. denied, 481 U.S. 1033, 107 S.Ct. 1965, 95 L.Ed.2d 537 (1987).... "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." Rakas v. Illinois, 439 U.S. 128, 134, 99 S.Ct. 421, 425, 58 L.Ed.2d 387 (1978). "For a search to violate the rights of a specific defendant, that defendant must have a legitimate expectation of privacy in the place searched, and the burden is squarely on the defendant asserting the violation to establish that such an expectation existed." Kaercher v. State, 554 So. 2d 1143, 1148 (Ala.Cr.App.), cert. denied, 554 So. 2d 1152 (Ala. 1989).'

> "Harris v. State, 594 So. 2d 725, 727 (Ala. Crim. App. 1991).

946 So. 2d at 919-20 (emphasis added). The record is devoid of any evidence indicating that Jemison had a legitimate expectation of privacy in his uncle's yard. Jemison offers no argument otherwise. Accordingly, Jemison did not have standing to challenge the search of his uncle's yard.

Finally, Jemison argues that the trial court properly suppressed the bag of Ecstasy recovered from the scene on the ground that Officer Clackley did not see Jemison throw the bag on the ground during the chase. Officer Clackley admitted during the suppression hearing that he did not see Jemison abandon anything as he was fleeing from the scene. To the extent that the trial court suppressed the bag of Ecstasy on the ground that Officer Clackley did not actually see Jemison in possession of the drugs before he discarded them, we hold that such a consideration is an improper justification for suppressing this evidence.

A suppression hearing serves as a means through which a party may challenge the admission of evidence purportedly obtained through an illegal seizure or search. See Rule 15.6(a), Ala. R. Crim. P. ("A defendant aggrieved by an

allegedly unlawful search or seizure may move the court to suppress for use as evidence anything so obtained."). In a case like the one at hand, where the defendant moves to suppress evidence on the ground that the evidence was obtained in violation of the Fourth Amendment, the inquiry begins and ends with the questions regarding the constitutionality of the search and/or seizure: if the search and/or seizure was unconstitutional, the motion is due to be granted and the evidence suppressed; however, if the search and/or seizure was constitutionally permissible, the motion is due to be denied, and the evidence survives Fourth Amendment scrutiny. Any question regarding the weight or veracity of the evidence must be decided by the jury, as this inquiry falls outside of the scope of the suppression hearing. Cf. Bryant v. State, 428 So. 2d 641, 645 (Ala. Crim. App. 1982) ("The purpose of a suppression hearing is to determine the voluntariness of a statement, not its content.").

By analogy, this Court has recognized that Rule 13.5(c)(1), Ala. R. Crim. P. does not authorize "a trial court to dismiss an indictment based on the court's pretrial determination of the sufficiency of the State's case." State

v. Worley, [Ms. CR-06-1879, November 13, 2009] ___ So. 3d ___, ___ (Ala. Crim. App. 2009). Under Rule 13.5(c)(1), an indictment may be dismissed only "based upon objections to the venire, the lack of legal qualifications of an individual grand juror, the legal insufficiency of the indictment, or the failure of the indictment to charge an offense." Worley, ___ So. 3d at ___, quoting State v. Foster, 935 So. 2d 1216 (Ala. Crim. App. 2005), and citing Rule 13.5(c)(1), Ala. R. Crim. P. Thus, whereas Rule 13.5(c)(1) allows for the pretrial dismissal of an indictment only on limited ground, but not dismissal based upon a pretrial determination of the sufficiency of the State's evidence, Rule 15.6(a) likewise allows only for the suppression of evidence obtained pursuant to an illegal search or seizure, but does not authorize suppression based upon the trial court's determination of the sufficiency of the State's evidence. Accordingly, to the extent the trial court suppressed the evidence of the bag of Ecstasy on the ground that the State failed to prove the existence of a nexus linking Jemison to the drugs, that suppression was in error because it fell outside the bounds of the motion to suppress.

Finally, we note that in Jemison's original motion to suppress he claimed that the State failed to prove the chain of custody of the evidence in this case. Apparently, this issue was not contested at the suppression hearing because the only testimony relating to a chain-of-custody claim can be found in Officer Clackley's statement that he turned over the drugs to the Alabama Department of Forensic Sciences for testing. No other inquiries were made. Accordingly, the record is devoid of evidence indicating suppression was warranted based upon the failure of the State's chain-of-custody evidence.

Nor does the United States Supreme Court's decision in Arizona v. Gant, ___ U.S. ___, 129 S.Ct. 1710 (2009), justify the trial court's grant of Jemison's motion to suppress, given that the search of Jemison's vehicle occurred in October 2008 -- roughly six moths before the April 2009 decision in Gant. Thus, at the time Officer Clackley searched Jemison's vehicle, he did so in reliance on established precedent; namely, the "automobile exception" to the general warrant requirement. Although Alabama courts have not decided whether Gant applies retroactively to a search occurring before that decision was

issued, the United State Court of Appeals for the Eleventh Circuit -- the circuit encompassing Alabama -- has concluded that Gant does not apply retroactively, and it has applied a good-faith exception to searches incident to a lawful arrest that occurred when law-enforcement officials were acting in good-faith reliance on well established precedent. See United States v. Davis, 598 F.3d 1259, 1263-67 (11th Cir. 2010). Based on the Eleventh Circuit's rationale in Davis, we likewise elect to hold that Gant does not apply retroactively to the search of Jemison's vehicle.

Here, the State presented evidence establishing that Officer Clackley searched Jemison's vehicle pursuant to the automobile exception to the warrant requirement. Under Alabama law, the automobile exception requires only probable cause, and not additional exigent circumstances. See Harris v. State, 948 So. 2d 583, 594-595 (Ala. Crim. App. 2006). Moreover, sufficient probable cause alone authorizes the search of a vehicle. State v. Black, 987 So. 2d 1177, 1180 (Ala. Crim. App. 2006)(citing Maryland v. Dyson, 527 U.S. 465, 466-67 (1999)); accord State v. Cowling, 32 So. 3d 717, 721 (Ala. Crim. App. 2009). Officer Clackley testified that

before he searched Jemison's vehicle, he had already discovered the bag containing the Ecstasy pills while retracing Jemison's flight route. Given the circumstances, sufficient probable cause existed to justify Officer Clackley's warrantless search of Jemison's vehicle.

As previously discussed, Officer Clackley did not subject Jemison to an unlawful seizure. Likewise, the bag containing the Ecstasy pills was not recovered during a search implicating any Fourth Amendment right of Jemison. Accordingly, the trial court erred in granting Jemison's motion to suppress. Based on the foregoing, the judgment of the trial court is reversed and this case remanded for the circuit court to set aside its order granting Jemison's motion to suppress and to restore Jemison's case to its active docket.

REVERSED AND REMANDED.

Wise, P.J., and Welch and Windom, JJ., concur. Main, J., concurs in the result.