

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM STUART TAVERNIER,

Defendant-Appellant.

UNPUBLISHED
January 26, 2012
APPROVED FOR
PUBLICATION
March 6, 2012
9:10 a.m.

No. 302678
Wayne Circuit Court
LC No. 10-006463-FH

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b, operating while intoxicated; occupant under age 16, MCL 257.625(7)(a)(i), and possession of marijuana, MCL 333.7403(2)(d). He was sentenced to two years' incarceration for the felony firearm conviction to be served consecutively to three years' probation for the other convictions. We affirm.

On appeal, defendant contends that the trial court erred when it denied his motion to suppress evidence based on *Arizona v Gant*, 556 US 332; 129 S Ct 1710, 1719; 173 L Ed 2d 485 (2009). We disagree. This Court reviews a trial court's findings of fact at a suppression hearing for clear error and its ultimate decision on a motion to suppress the evidence de novo. *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009); *People v Mullen*, 282 Mich App 14, 21; 762 NW2d 170 (2008). Whether the exclusionary rule should be applied to a violation of the Fourth Amendment is a question of law reviewed de novo. *People v Custer*, 465 Mich 319, 326; 630 NW2d 870 (2001).

In *New York v Belton*, 453 US 454, 460; 101 S Ct 2860; 69 L Ed 2d 768 (1981), the United States Supreme Court held that when an officer lawfully arrests "the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of the automobile" as well as the "contents of any containers found within the passenger compartment." However, in *Arizona v Gant*, 556 US 332, ___; 129 S Ct 1710, 1719; 173 L Ed 2d 485 (2009), the Court held, "we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that

evidence of the offense of arrest might be found in the vehicle.” The *Gant* Court further explained:

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. [*Gant*, 556 US at ___; 129 S Ct at 1723-1724.]

Several cases, including *Gant*, provide guidance in determining reasonableness. In *Terry v Ohio*, 392 US 1, 21-22; 88 S Ct 1868; 20 L Ed 2d 889 (1968), the Court stated that in determining reasonableness, the trial court must consider whether the facts known to the officer at the time of the stop would warrant an officer of reasonable precaution to suspect criminal activity. An officer’s conclusion must be drawn from reasonable inferences based on the facts in light of his training and experience. *Terry*, 392 US at 27. “The reasonableness of an officer’s suspicion is determined case by case on the basis of the totality of all the facts and circumstances.” *People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996). “[T]hose circumstances must be viewed ‘as understood and interpreted by law enforcement officers, not legal scholars’” *People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001), cert den 534 US 1116; 122 S Ct 926; 151 L Ed 2d 889 (2002), quoting *People v Nelson*, 443 Mich 626, 632; 505 NW2d 266 (1993). The United States Supreme Court has said that deference should be given to the experience of law enforcement officers and their assessments of criminal modes and patterns. *United States v Arvizu*, 534 US 266, 273; 122 S Ct 744; 151 L Ed 2d 740 (2002).

The *Gant* Court did not expressly define the meaning of the phrase “reasonable to believe,” nor did it expound on when it is reasonable for an officer to believe that the passenger compartment of a vehicle contains evidence of the crime for which the vehicle’s occupant was arrested, but it did provide strong clues as to what is reasonable. The Court said that offenses of arrest in *Belton* (unlawful possession of marijuana) and *Thornton* (unlawful possession of marijuana and crack cocaine) supplied “a basis for searching the passenger compartment of the arrestee’s vehicle and any containers therein.” *Gant*, 129 S.Ct. at 1719. The Court also gave examples of offenses for which there is no “reason to believe” that evidence relevant to the crime of arrest would be found in the vehicle, such as civil infractions and driving without a valid license. *Gant*, 129 S.Ct. at 1713. *Gant* also specifically states that “the offense of arrest will supply a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein. *Gant*, 129 S.Ct. at 1719.

Here, the legality of the search was based on the second prong of the *Gant* holding, that “it is reasonable to believe the vehicle contains evidence of the offense of arrest.” Upon de novo review, we find that the trial court’s factual findings were consistent with the testimony and other

evidence in the record.¹ Before his search of defendant's vehicle, the arresting officer had information from another police officer that defendant was driving erratically and was possibly driving while intoxicated. When the officer flashed his overhead lights to stop defendant, defendant's vehicle ran over a curb before it stopped. When the officer conducted the field sobriety tests, defendant acted confused and was not able to complete the tasks. Defendant told the officer that he recently had surgery. The officer placed defendant in the police car and determined that defendant was under arrest. Although he was not handcuffed at the time, defendant was not able to exit the police car. Then, the officer received information from defendant's brother that defendant was taking oxycontin for pain. Based on the totality of the circumstances, and his common sense in light of his training and experience, the police officer decided to search defendant's vehicle. The officer stated two reasons why he searched the vehicle: (1) "he was under arrest I was going to impound his vehicle . . . [and] [i]nventory it," and (2) "I was also looking for some sort of narcotic or maybe his pain medication that might have been in the vehicle . . . Something that would show me why he was driving so badly."

In deciding defendant's motion to suppress evidence, the trial court found that the officer had "a sufficient reasonable suspicion based upon all those factors for him to conduct a search to determine whether there was any narcotics or prescription bottles that might have been in the vehicle that would further support his determination that there was — the Defendant had been in fact driving while impaired by drugs."

We hold that the facts known to the police officer at the time of the search, coupled with his common sense, based on his experience, training and the totality of the circumstances, were sufficient for the trial court to conclude that it was reasonable to believe the vehicle might contain evidence of drunk driving, "the offense of arrest." The search of defendant's vehicle did not violate the *Gant* exception to the Fourth Amendment. The court did not clearly err in its factual findings. Upon de novo review, we hold that the trial court did not err in denying defendant's motion to suppress the evidence found during the search of his vehicle.

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

¹ The video of the arrest and search was not supplied to this Court. However, we find that the evidence in the record is sufficient to address and answer this question.