

[Cite as *State v. Lassiter*, 2009-Ohio-3893.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92278

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

ERIC LASSITER

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-511084

BEFORE: Rocco, J., Cooney, A.J., and Dyke, J.

RELEASED: August 6, 2009

**JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

KENNETH A. ROCCO, J.:

{¶ 1} The State of Ohio appeals from a common pleas court decision granting the defendant, Eric Lassiter's, motion to dismiss the indictment, with prejudice. The state asserts that the court erred by dismissing the indictment at the defendant's request after the court granted the motion to suppress. We agree and reverse and remand for further proceedings.

{¶ 2} Lassiter was charged in a three-count indictment filed May 29, 2008. He was charged with two counts of criminal simulation, including firearm and forfeiture specifications, and carrying a concealed weapon. Lassiter filed a motion on August 29, 2008 to suppress "any and all evidence resulting from the warrantless seizure of defendant and the subsequent search of defendant's person and his vehicle." The court held a hearing on this motion on September 15, 2008, at the conclusion of which the court granted the motion.

{¶ 3} The state requested a continuance of the trial so that it could appeal the court's ruling. The court denied this motion. Lassiter then moved to dismiss the case. The court granted this motion and dismissed the indictment, with prejudice. The state now appeals this ruling.

{¶ 4} Pursuant to R.C. 2945.67(A), the state has the right to appeal from an order granting a motion to suppress. Crim.R. 12(K) requires the state to file the notice of appeal within seven days after the order granting the motion has

been entered, together with certification that (1) the appeal is not taken for the purpose of delay and (2) the ruling on the motion to suppress “has rendered the state’s proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed.”

{¶ 5} If a trial court finds a Fourth Amendment violation, the remedy is suppression of the wrongfully obtained evidence, not dismissal. “[I]t is not for the trial court to determine the sufficiency of the state’s evidence to proceed with the prosecution and hence enter a judgment of acquittal.” *State v. Fraternal Order of Eagles, Aerie 0337*(1991), 58 Ohio St.3d 166, 169. “The trial court and the court of appeals do not possess adequate or complete prosecutorial information and, therefore, are unable to make an informed judgment as to whether sufficient evidence remains to prosecute after the controverted evidence has been suppressed. * * * Before the trial has taken place it is, generally, solely within the prosecutor’s province to know the exact and complete quantity, credibility, and sufficiency of the evidence against the defendant.” *State v. Bertram* (1997), 80 Ohio St.3d 281, 284.

{¶ 6} Although neither the *Fraternal Order of Eagles* case nor the *Bertram* case involve circumstances precisely analogous to the case before us, at least three of our sister courts of appeals have found that the trial court erred by dismissing the charges after granting a motion to suppress. *State v. Marcum*, Butler App. Nos. CA2005-10-431 and CA2005-20-446, 2006-Ohio-2514; *State v.*

Malone, Erie App. No. E-03-060, 2004-Ohio-3794; *State v. Couch* (June 25, 1999), Montgomery App. No. 17520. “While the State may have a tougher row to hoe without the availability of the suppressed evidence, it does not necessarily follow that, as a matter of law, the defendant is entitled to dismissal of the charge.” *Couch*, *supra*, at 14.

{¶ 7} Accordingly, we reverse and remand for further proceedings.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, A.J., and
ANN DYKE, J., CONCUR