

[Cite as *State v. Yoder*, 2009-Ohio-4013.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JAVAN L. YODER

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 2008CA00197

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Massillon Municipal Court,
Stark County, Ohio Case No. 2008TRC579

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 10, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Javan L. Yoder appeals the July 21, 2008 Judgment Entry of the Massillon Municipal Court denying his motion to suppress evidence. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On January 18, 2008, James Grogan, a citizen informant, observed Appellant urinating in the parking lot of Phil's Bistro on Fulton Road, Canton, Ohio. Grogan further observed Appellant staggering to the driver's side door of his vehicle.

{¶3} Grogan called 1-800-GRABDUI, providing his name, contact information, and the current location of Appellant. Grogan gave the dispatcher a description of and the license plate number of Appellant's vehicle. Grogan further stated he observed Appellant having trouble walking to his vehicle and staggering badly, prior to driving the vehicle. Grogan followed Appellant's vehicle to the parking lot of Pro Shine Car Wash, and waited for the police to respond.

{¶4} Officer Marketich and Officer Crookston of the Jackson Township Police Department responded to the call. Upon arriving at the car wash, Officer Crookston parked near the exit of the car wash. The officers waited for Appellant's vehicle to exit the car wash. As Appellant's vehicle left the car wash and traveled toward the exit leading to Fulton Road, the officers stopped his vehicle. Officer Crookston approached the driver's side door of the vehicle, and asked for Appellant's driver's license, observing a strong odor of alcoholic beverage coming from inside the vehicle and Appellant's "thick-tongue type" of speech. The officer then asked Appellant to step out of the vehicle in order to perform some field sobriety tests. The officers administered

standard field sobriety tests, and a chemical test, to which Appellant complied. Appellant was subsequently charged with one count of OVI, in violation of R.C. 4511.19(A)(1)(h), a misdemeanor of the first degree.

{¶15} On May 23, 2008, Appellant filed a motion to suppress the evidence obtained during the stop. Via Judgment Entry of July 21, 2008, the trial court overruled the motion to suppress.

{¶16} On August 8, 2008, Appellant entered a plea of no contest to the charge, wherein the trial court found Appellant guilty. The trial court sentenced Appellant to 180 days of incarceration, suspending all but 20 days. The trial court further required Appellant complete the AOD program at the Stark County Jail, and imposed a \$500 fine. Appellant's license was suspended for three years.

{¶17} Appellant now appeals, assigning as error:

{¶18} "I. THE TRIAL COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS ALL EVIDENCE OBTAINED FROM THE ILLEGAL STOP OF APPELLANT."

{¶19} 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. See: *State v. Klein* (1991), 73 Ohio App.3d 486, *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See: *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, an appellant may argue the trial court has incorrectly applied the law in deciding the ultimate or final issue raised in the motion to suppress. In reviewing this type of claim, an appellate court must give deference to the trial court and is governed by an abuse of discretion standard; i.e., it must determine whether the trial court's subjective determination of the ultimate issue in the case was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. It is with this framework in mind that we address the appellant's first and second assignments of error.

{¶10} An investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion “the person stopped is, or is about to be, engaged in criminal activity.” *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621. Reasonable suspicion can arise from information that is less reliable than that required to show probable cause. *Alabama v. White* (1990), 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301. But it requires something more than an “inchoate and unparticularized suspicion or ‘hunch’.” *Terry v. Ohio* (1968), 392 U.S. 1, 27, 88 S.Ct. 1868, 20 L.Ed.2d 889. “[T]he Fourth Amendment requires at least a minimal level of objective justification for making the stop.” *Illinois v. Wardlow* (2000), 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570.

{¶11} Where the information possessed by the police before the stop was solely from an informant's tip, the determination of reasonable suspicion will be limited to an examination of the weight to be given the tip and the reliability of the tip. *Id.* at 299, 720 N.E.2d 507. Courts have generally identified three classes of informants: the

anonymous informant, the known informant from the criminal world who has provided previous reliable tips, and the identified citizen informant. *Id.* at 300, 720 N.E.2d 507. An identified citizen informant may be highly reliable, and therefore a strong showing as to other indicia of reliability may be unnecessary. *Id.* Thus, courts have routinely credited the identified citizen informant with greater reliability. *Id.*

{¶12} In the case sub judice, the trial court determined Grogan to be a reliable identified citizen informant. Appellant does not contest that finding; rather, Appellant asserts the officers lacked sufficient probable cause to effectuate the stop as the officers did not themselves observe Appellant's impaired driving. Appellant cites in support the Tenth District Court of Appeals' decision in *State v. Brant*, 2001-Ohio 3994. In *Brant*, the Tenth District held:

{¶13} "In this case, we must determine if Officer Fraley had a reasonable suspicion, based on articulable facts, to stop Brant's vehicle. Brant argues that Officer Fraley lacked sufficient information to justify a *Terry* stop. In particular, Brant argues that the officer had no personal knowledge which would lead him to believe that Brant was violating the law. Specifically, Brant contends that the facts provided by Mr. Bunting, even if known to Officer Fraley, were not sufficient enough to demonstrate a reasonable and articulable suspicion that Brant was engaged in unlawful behavior. We agree.

{¶14} "This court has previously held that 'the simple corroboration of neutral details describing the suspect or other conditions existing at the time of the tip, without more, will not produce reasonable suspicion for an investigatory stop.' *State v. Ramsey* (Sept. 20, 1990), Franklin App No. 89AP-1298, unreported. 'A tip which standing alone would lack sufficient indicia of reliability may establish reasonable suspicion to make an

investigatory stop if it is sufficiently corroborated through independent police work.’ *Id.*; *Adams v. Williams* (1972), 407 U.S. 143, 147 (when a tip lacks an indicia of reliability, further investigation is required before an investigatory stop of the suspect's vehicle will be authorized).

{¶15} “The Supreme Court of Ohio, in *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, identified three types of informants: (1) the anonymous informant; (2) the known informant (someone from whom the police have previously received reliable tips); and (3) the identified citizen informant. *Id.* at 300. Mr. Bunting is known as an identified citizen informant. Many Ohio appellate courts consider identified citizen informants to be highly reliable and credible. ‘Information from an ordinary citizen who has personally observed what appears to be criminal conduct carries with it indicia of reliability and is presumed to be reliable.’ *State v. Loop* (Mar. 14, 1994), Scioto App. No. 93CA2153, unreported, quoting *State v. Carstensen* (Dec. 18, 1991), Miami App. No. 91-CA-13, unreported. Under the totality of the circumstances, a tip from an identified citizen will establish reasonable suspicion if it is sufficiently reliable. *Ramsey, supra*. Reasonable suspicion is dependant upon both the content of the tip and its degree of reliability. *Alabama v. White* (1990), 496 U.S. 325.

{¶16} “Careful review of the record indicates that although the tip was reliable, it lacked sufficient information to provide reasonable suspicion that Brant was operating a motor vehicle while under the influence of alcohol. Mr. Bunting provided the Grove City Police Department dispatcher with the color of Brant's vehicle along with the license plate number. Mr. Bunting also indicated that Brant was honking his horn for ten minutes, his shirt was on backwards and inside out and his speech was very slow.

While it is not clear if the dispatcher relayed all of this information to Officer Fraley, Mr. Bunting nonetheless failed to indicate that he witnessed any traffic violations, unlawful behavior, or evidence of impaired driving. Additionally, even though Officer Fraley attempted to further investigate the tip, his independent police work proved to be fruitless. If Officer Fraley had observed erratic driving, then sufficient indicia of reliability would have been present to conduct the investigatory stop. Under the totality of the circumstances, Officer Fraley lacked a reasonable and articulable suspicion to stop Brant's vehicle. *Ramsey, supra*. Since Officer Fraley's personal observations failed to confirm Mr. Bunting's belief that Brant was intoxicated, we believe that Brant's Fourth Amendment rights were violated and, as such, Brant's sole assignment of error is well-taken and is sustained.”

{¶17} In *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, the Ohio Supreme Court held:

{¶18} “Having resolved this issue, we emphasize that our categorization of the informant as an identified citizen informant does not itself determine the outcome of this case. Instead it is one element of our totality of the circumstances review of this informant's tip, weighing in favor of the informant's reliability and veracity. Continuing our review, we believe that the informant's basis of knowledge also furthers his credibility. Typically, a personal observation by an informant is due greater reliability than a secondhand description. *Gates*, 462 U.S. at 233-234, 103 S.Ct. at 2329-2330, 76 L.Ed.2d at 545. Here, the citizen's tip constituted an eyewitness account of the crime. His version of that night was not mere rumor or speculation-it was a firsthand report of the events as they happened. Also significant is the fact that the tip was an exact relay

of the circumstances as they were occurring. Immediately upon witnessing the events, the citizen described them to the dispatcher. This immediacy lends further credibility to the accuracy of the facts being relayed, as it avoids reliance upon the informant's memory.

{¶19} “We also believe that the informant's motivation supports the reliability of his tip. According to the evidence, the informant reported that Weisner was weaving all over the road. He made this report from the perspective of a motorist sharing the road with an another motorist driving erratically. We can reasonably infer from these circumstances that he considered Weisner a threat to him personally as well as to other motorists and that he was motivated, therefore, not by dishonest and questionable goals, but by his desire to eliminate a risk to the public's safety.

{¶20} “Taken together, these factors persuade us that the informant's tip is trustworthy and due significant weight. The informant was an identified citizen who based his knowledge of the facts he described upon his own observations as the events occurred. As a result, his tip merits a high degree of credibility and value, rendering it sufficient to withstand the Fourth Amendment challenge without independent police corroboration. Accordingly, the dispatch based upon this tip was issued on sufficient facts to justify Patrolman Roberts's investigative stop.”

{¶21} Upon review, we find the case sub judice distinguishable from the facts presented in *Brant*. Here, Grogan, an identified citizen informant, witnessed Appellant urinating in public and staggering to his vehicle. Coupled with Grogan's indication he feared for his own safety, as in *Maumee*, supra, Grogan's statements provide sufficient, contemporaneous and reliable information to support a reasonable suspicion Appellant

had engaged in unlawful behavior, including public indecency, public intoxication and/or disorderly conduct, as well as DUI. Unlike *Brant*, Grogan's statements did not merely corroborate neutral details.

{¶22} Accordingly, the trial court did not err in finding there was reasonable articulable suspicion for the stop based on suspicion of criminal activity.

{¶23} Appellant's sole assignment of error is overruled, and the July 21, 2008 Judgment Entry of the Massillon Municipal Court is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ John W. Wise
HON. JOHN W. WISE

