

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NOS. 2014-G-3209
	:	and 2014-G-3210
AMY L. YU,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Chardon Municipal Court, Case Nos. 2014 TR C 00352 and 2014 CRB 00056.

Judgment: Affirmed.

Dennis M. Coyne, City of Chardon Prosecutor, 111 Water Street, Chardon, OH 44024 (For Plaintiff-Appellee).

Aaron T. Baker, 38109 Euclid Avenue, Willoughby, OH 44094 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Amy L. Yu, appeals the denial of her Motion to Suppress by the Chardon Municipal Court. The issue before this court is whether eyewitness reports of a motorist's reckless operation of a motor vehicle require corroboration by law enforcement before a stop may be initiated. For the following reasons, we affirm the decision of the court below.

{¶2} On January 21, 2014, Sergeant Brandon Savage of the Middlefield Police Department issued Yu a Traffic Citation, charging her with OVI, in violation of R.C. 4511.19(A)(2)(b) (operating a vehicle under the influence of alcohol and refusing to submit to chemical tests of blood, breath, or urine to determine the alcohol content thereof); OMVI, in violation of R.C. 4511.19(A)(1)(a) (operating a vehicle under the influence of alcohol); and Lanes of Travel, in violation of R.C. 4511.33(A)(1) (failure to drive within a single lane of traffic). These charges were filed under Case No. 2014 TR C 00352.

{¶3} On the same date, Patrolman Dakota Kowalcic filed a Complaint, charging Yu with Open Container, in violation of R.C. 4301.62(B)(4) (possessing an opened container of alcohol while operating a motor vehicle). This charge was filed under Case No. 2014 CR B 00056.

{¶4} On March 4, 2014, Yu, through counsel, filed a Motion to Suppress in both cases.

{¶5} On May 7, 2014, a hearing was held on Yu's Motion.

{¶6} Sergeant Savage testified on behalf of the State that, on January 21, 2014, he received "a called-in complaint from our dispatcher that a vehicle was going left of center, * * * hit a mailbox and was travelling in the opposite lane towards oncoming traffic." The vehicle was reported by an eyewitness to have hit a mailbox on East High Street near Glen Valley Drive. Sergeant Savage did not know the identity of the complainant.

{¶7} Sergeant Savage also received a dispatch “that a vehicle was almost hit head on” from “a truck driver who was witnessing this.” Sergeant Savage did not know the identity of the second complainant.

{¶8} Sergeant Savage activated his lights and siren upon receiving the dispatch. Dispatch described the vehicle as a maroon Subaru, traveling east on Route 87. A later dispatch advised that the vehicle might be a Toyota, but still red in color. Sergeant Savage pursued Yu for several minutes before sighting her vehicle on Route 87 east of Route 528. After passing several other vehicles (Route 87 is a two-lane road), Sergeant Savage brought his cruiser behind Yu’s Subaru. The Subaru touched both the center and edge lines before stopping near the intersection with Hayes Road.

{¶9} The municipal court denied Yu’s Motion to Suppress based on Sergeant Savage’s observation of Yu’s driving and damage to her vehicle.

{¶10} Yu entered a plea of no contest to the charges in both cases.

{¶11} Also on May 7, 2014, Yu was sentenced in Chardon Municipal Court. In Case No. 2014 TR C 00352, the court imposed a fine of \$350, costs in the amount of \$1,110.61, a 180-day jail sentence (150 days suspended), a 180-day OL suspension, and two years of probation. In Case No. 2014 CR B 00056, the court ordered Yu to pay costs in the amount of \$116.

{¶12} On May 15, 2014, Yu filed a Notice of Appeal from each case (App. Nos. 2014-G-3209 and 2014-G-3210).

{¶13} On May 16, 2014, the municipal court granted Yu’s Motion for Stay of Sentence Pending Appeal.

{¶14} On July 14, 2014, the court sua sponte consolidated both appeals for purposes of briefing, oral argument, and disposition.

{¶15} On appeal, Yu raises the following assignment of error:

{¶16} “[1.] The trial court erred in denying appellant’s motion to suppress where law enforcement received an anonymous tip followed by a lack of corroboration of that tip prior to making the traffic stop.”

{¶17} At a suppression hearing, “the trial court is best able to decide facts and evaluate the credibility of witnesses.” *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216, ¶ 41. Where the trial court’s factual findings are inadequate to support the judgment, the reviewing court may affirm “if there is sufficient evidence [in the record] demonstrating that the trial court’s decision was legally justified and supported by the record.” *State v. Scandreth*, 11th Dist. Trumbull No. 2009-T-0039, 2009-Ohio-5768, ¶ 50, quoting *State v. Brown*, 64 Ohio St.3d 476, 482, 597 N.E.2d 97 (1992); *State v. Pate*, 1st Dist. Hamilton Nos. C-130490 and C-130492, 2014-Ohio-2029, ¶ 11. A reviewing court must then “independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.” *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8; *State v. Korb*, 11th Dist. Lake No. 2013-L-126, 2014-Ohio-4543, ¶ 13.

{¶18} “[W]here a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity.” *Dayton v. Erickson*, 76 Ohio St.3d 3, 11, 665 N.E.2d

1091 (1996). This court has applied the holding in *Erickson* by focusing on “whether [a] particular officer in fact had probable cause to believe that a traffic offense had occurred, regardless of whether this was the only basis or merely one basis for the stop.” *State v. Howard*, 11th Dist. Lake No. 2009-L-158, 2010-Ohio-2817, ¶ 21. “The stop is reasonable if there was probable cause, and it is irrelevant what else the officer knew or suspected about the traffic violator at the time of the stop.” *Id.*

{¶19} Sergeant Savage began pursuing Yu with the determination to stop her based solely on the dispatch. Prior to effecting the stop, he observed erratic driving in that Yu’s vehicle touched both the center and edge lines before she complied with the order to stop. The United States Supreme Court acknowledges that “the foremost method of enforcing traffic and vehicle safety regulations . . . is acting upon observed violations.” (Citation omitted.) *Whren v. United States*, 517 U.S. 806, 817, 116 S.Ct. 1769, 135 L.E.2d 89 (1996). Therefore, Sergeant Savage could rely on his own observation of Yu’s driving as well as the dispatch in effecting the stop.

{¶20} “Where an officer making an investigative stop relies solely upon a dispatch, the state must demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity.” *Maumee v. Weisner*, 87 Ohio St.3d 295, 720 N.E.2d 507 (1999), paragraph one of the syllabus. “A telephone tip can, by itself, create reasonable suspicion justifying an investigatory stop where the tip has sufficient indicia of reliability.” *Id.* at paragraph two of the syllabus.

{¶21} “Where * * * the information possessed by the police before the stop stems solely from an informant’s tip, the determination of reasonable suspicion will be

limited to an examination of the weight and reliability due that tip.” *Id.* at 299. “Factors considered “highly relevant in determining the value of [the informant’s] report” are the informant’s veracity, reliability, and basis of knowledge.” (Citations omitted.) *Id.*

{¶22} “To assess the existence of these factors, it is useful to categorize informants based upon their typical characteristics.” *Id.* at 300. An anonymous informant is “comparatively unreliable and his tip, therefore, will generally require independent police corroboration.” *Id.* An identified citizen informant is accorded “higher credibility” and, where the informant is a victim or witnesses the crime, his tip “is presumed reliable, particularly if the citizen relates his or her basis of knowledge.” (Citation omitted.) *Id.* at 300-301. The Ohio Supreme Court has emphasized, however, that categorization of the informant is not determinative of the issue, but “is one element of our totality of the circumstances review of [the] informant’s tip.” *Id.* at 302.

{¶23} Yu’s position is that the dispatches in the present case were the reports of anonymous informants, in that they were not identified by name, and, consequently, required independent corroboration before they could serve as the basis for an investigatory stop. We disagree. In the present case, two informants, both eyewitnesses, reported Yu’s dangerously erratic driving. The informants were identifying a public safety threat. One reported that she had struck a mailbox and the other that she had almost struck oncoming traffic. The reports were made contemporaneously with the events described. The informants were able to identify the make and color of her vehicle and, crucially, its location (without an accurate report of Yu’s direction Sergeant Savage could not have overtaken her). All these factors establish that the dispatches possessed sufficient indicia of reliability to justify the stop.

{¶24} With respect to the character of the informants, the Ohio Supreme Court has noted that “[c]ourts have been lenient in their assessment of the type and amount of information needed to identify a particular informant.” *Id.* at 301. It is clear that an informant’s name and address are not necessary for the informant to be categorized as a citizen informant. In *Weisner*, the Ohio Supreme Court cited to *State v. Ramey*, 129 Ohio App.3d 409, 717 N.E.2d 1153 (1st Dist.1998), where “the court held that an unnamed informant who flagged down an officer to provide information concerning a suspected drunk driver was in no way ‘anonymous’: ‘There is nothing even remotely anonymous, clandestine, or surreptitious about a citizen stopping a police officer on the street to report criminal activity.’” *Id.*, citing *Ramey* at 416.

{¶25} The Ohio Supreme Court also cited to the factually similar case of *State v. Carstensen*, 2d Dist. Miami No. 91-CA-13, 1991 Ohio App. LEXIS 6116 (Dec. 18, 1991), where the “court found a stop based upon a 911 call describing a drunk driver sufficiently justified, although the informant there was unidentified.” *Id.*, citing *Carstensen* at 5-6. The Ohio Supreme Court further noted the Second District’s reasoning that “‘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.’” *Id.* at 300, citing *Carstensen* at 5, and 302 (“[t]ypically, a personal observation by an informant is due greater reliability than a secondhand description”).

{¶26} Post-*Weisner*, there have been several appellate decisions confirming that the eyewitness reports of ordinary citizens, otherwise unidentified, are entitled to high credibility. *State v. Cisternino*, 8th Dist. Cuyahoga No. 94674, 2010-Ohio-6027, ¶ 16 (“[w]hether an informant is ‘anonymous’ depends on whether the informant himself took

steps to maintain anonymity, not on whether the police had time to get his name”); *State v. Goslin*, 5th Dist. Fairfield No. 08 CA 42, 2009-Ohio-3487, ¶ 26 (“Officer Finan responded to a 911 call from a citizen informant who personally observed Appellant’s drunken behavior and gave a detailed description of Appellant’s erratic driving, along with a description of his car and location to dispatch”); *State v. Clark*, 8th Dist. Cuyahoga No. 88731, 2007-Ohio-3777, ¶ 31 (“Officer Goodwin responded to a 911 call from a citizen informant who personally observed Clark’s drunken behavior and gave a description of Clark’s van and behavior to dispatch”).

{¶27} Other factors identified in *Weisner* also favor the conclusion that the dispatch provided Sergeant Savage with a reasonable suspicion to stop Yu. Both informants contacted the police contemporaneously with the events observed. *Weisner* at 302 (“immediacy lends further credibility to the accuracy of the facts being relayed, as it avoids reliance upon the informant’s memory”). Both informants were also reporting dangerous erratic driving. As did the court in *Weisner*, then, it is reasonable to infer that the informants were “not [motivated] by dishonest and questionable goals, but by [the] desire to eliminate a risk to the public’s safety.” *Id.*

{¶28} Accordingly, the informants’ tips in the present case were from citizens who based their knowledge of the facts upon their own observations of the events as they were occurring and, as a result, merited a high degree of credibility sufficient to withstand a Fourth Amendment challenge without independent police corroboration.

{¶29} This court determines, based on the dispatch, the corroboration of witnesses and Sergeant Savage’s observation as well as the Supreme Court case law

regarding unidentified citizen informants, that the sole assignment of error is without merit.

{¶30} For the foregoing reasons, the denial of Yu's Motion to Suppress by the Chardon Municipal Court is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.