

[Cite as *State v. Crump*, 2002-Ohio-3284.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19021

vs. : T.C. CASE NO. 00TRC13442

GEOFFREY L. CRUMP : (Criminal Case from Municipal Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 28<sup>th</sup> day of June, 2002.

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GRADY, J.

{¶1} Defendant, Geoffrey L. Crump, appeals from his conviction and sentence for operating a motor vehicle while under the influence of alcohol, R.C. 4511.19, which were entered on Crump's plea of no contest after the trial court denied his motion to suppress evidence.

FIRST ASSIGNMENT OF ERROR

{¶2} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE BECAUSE THE INITIAL STOP WAS

WITHOUT REASONABLE CAUSE BECAUSE THE KETTERING POLICE OFFICER WHO MADE THE INITIAL STOP OF APPELLANT WAS OUTSIDE OF HIS JURISDICTION AND WAS OUTSIDE HIS AUTHORITY."

SECOND ASSIGNMENT OF ERROR

{¶3} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE BECAUSE APPELLANT'S CONSTITUTIONAL RIGHTS AGAINST UNLAWFUL SEIZURE OF HIS PERSON WERE VIOLATED WHEN HE WAS STOPPED BY A KETTERING POLICE OFFICER OUTSIDE OF SAID OFFICER'S JURISDICTION."

{¶4} Defendant Crump was arrested on November 10, 2000, by Kettering Police Officer David Marcum, in Washington Township. Marcum, who was on his way to work, stopped Crump's vehicle after he observed erratic driving. Defendant argues that because Marcum was outside his territorial jurisdiction when he stopped and detained Defendant for offenses committed and observed outside the officer's jurisdiction, the seizure of Defendant violated R.C. 2935.03 and was unreasonable for Fourth Amendment purposes.

{¶5} The evidence presented at the suppression hearing demonstrates that on November 10, 2000, at around 10:30 p.m., Kettering Police Officer Marcum was driving to work in his private vehicle. Officer Marcum was wearing a police bicycle uniform that had markings clearly identifying him as a police officer. He also wore his service revolver.

{¶6} While northbound on Yankee Street at Interstate 675, in Washington Township, Officer Marcum first noticed Defendant's vehicle stopped at the traffic light. As

Defendant proceeded ahead of Officer Marcum on Yankee Street, Officer Marcum observed Defendant's vehicle weaving, crossing the center line at least twenty times. Defendant's speed was also fluctuating up and down between 35-45 miles per hour. Defendant stopped for the stop sign at Yankee and Mad River Road, and then accelerated rapidly as he turned northbound onto Mad River Road. When Defendant attempted to turn left onto Munger Road, Defendant's vehicle ran off the road and struck a tree. Defendant exited his vehicle and began walking away, westbound on Munger. Defendant's operation of his vehicle, as observed by Officer Marcum, occurred in Washington Township, well beyond the city limits of Kettering.

{¶7} Officer Marcum pulled up alongside of Defendant to check on him, whereupon Defendant attempted to enter Marcum's vehicle. Officer Marcum identified himself as a Kettering police officer and told Defendant to back away from his vehicle. In talking to Defendant about what happened, Officer Marcum observed that his speech was slurred, his eyes were glassy, and he had difficulty with agility while walking. These signs, coupled with Defendant's erratic driving led Officer Marcum to suspect that Defendant was driving under the influence of alcohol.

{¶8} Officer Marcum told Defendant to sit down off the side of the road for his safety. Officer Marcum asked for and was given Defendant's drivers' license, Officer Marcum then used his police radio to request that a Montgomery

County Sheriff's deputy be sent to the scene. Officer Marcum later testified that had Defendant attempted to leave, he would have stopped him. Officer Marcum did not arrest Defendant, however. Once the deputy sheriff arrived, Officer Marcum gave him Defendant's driver's license and related what he had observed and his belief that Defendant was under the influence of alcohol. Officer Marcum then left and went on to work. The deputy sheriff subsequently arrested Defendant for driving under the influence of alcohol.

{¶9} It is a violation of law for a municipal police officer to effect a warrantless arrest outside of the geographic boundaries of the political subdivision where the officer is employed, for traffic offenses committed and observed by the officer outside his jurisdiction. R.C. 2935.03; *State v. Coppock* (1995), 103 Ohio App. 3d 405. Such state law violations, however, do not automatically trigger application of the exclusionary rule to suppress all evidence derived from stops and seizures that violate R.C. 2935.03.

{¶10} In the recent case of *State v. Weideman* (2002), 94 Ohio St.3d 501, 2002-Ohio-1484, on similar facts, the Ohio Supreme Court held that when a police officer, acting outside the officer's jurisdictional limits, stops and detains a motorist for an offense committed and observed outside the officer's jurisdiction, that seizure is not *per se* unreasonable under the Fourth Amendment. If the totality

of the facts and circumstances demonstrate that police had a reasonable, articulable suspicion of criminal conduct sufficient to warrant the investigative stop and detention, and probable cause to arrest, then while that extraterritorial seizure may violate R.C. 2935.03, it does not rise to the level of a constitutional violation requiring suppression of all evidence derived from the stop. *Id.* See also: *State v. Hammons* (August 28, 1998), Montgomery App. No. 16931, unreported, another case with facts similar to this case.

{¶11} In this case we note that at the suppression hearing Defendant withdrew that portion of his motion to suppress challenging whether police had probable cause to arrest him.

{¶12} Without question, Officer Marcum seized Defendant within the meaning of the Fourth Amendment when he stopped and detained Defendant and retained Defendant's driver's license until a deputy sheriff could arrive on the scene. Clearly, however, Defendant's erratic driving behavior and the traffic violations which Officer Marcum observed, and the resulting accident, gave Officer Marcum sufficient probable cause to stop Defendant. *Weideman, supra.*

{¶13} Defendant's manner of operating his vehicle, coupled with Defendant's slurred speech, glassy eyes, and balance problems when walking, presented sufficient reason for suspicion of criminal conduct for Officer Marcum to detain Defendant until a deputy sheriff arrived on the

scene. *Id.* While Officer Marcum's extraterritorial stop and detention of Defendant may have violated R.C. 2935.03, it did not rise to the level of a Fourth Amendment violation requiring the suppression of all evidence obtained as a result of that stop. *Id.*; *Hammons, supra.* The trial court correctly overruled Defendant's motion to suppress.

{¶14} The assignments of error are overruled. The judgment of the trial court will be affirmed.

WOLFF, P.J. and BROGAN, J., concur.

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