[Cite as *State v. Grimmett,* 2005-Ohio-126.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2004 CA 24
v.	:	T.C. CASE NO. 03 TRC 4167
CHARLES GRIMMETT	:	(Criminal Appeal from Fairborn Municipal Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 14th day of January, 2005.

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FREDERICK N. YOUNG, J.

{¶ 1} Charles Grimmett is appealing the decision of the Fairborn Municipal Court which affirmed a magistrate's decision denying his motion to suppress evidence resulting from his traffic stop, detention and subsequent arrest for driving while under

the influence of alcohol.

{¶ 2} On May 3, 2003, at approximately 8:20 p.m., Sergeant Mark Stannard of the Fairborn Police Department received a dispatch concerning a call from a concerned citizen about an erratic driver. When Sgt. Stannard responded to the area in which the driver was spotted, he encountered the citizen who had made the call to dispatch. The caller identified himself to Sgt. Stannard and reiterated the story that a full-size gold Honda pick-up truck with a truck cap had swerved left of center several times on State Route 235, subsequently turning into the American Legion parking lot. When Sgt. Stannard was unable to locate the vehicle in the area, he proceeded to the address of the registered owner after running the license plate number provided by the caller. The vehicle was not present at the address, so Sgt. Stannard proceeded southbound on Central Avenue.

{¶ 3} As Sgt. Stannard approached Xenia Drive he spotted the vehicle. He quickly made a U-turn and fell in behind the vehicle. As the vehicles approached Whittier Street, Sgt. Stannard observed the vehicle swerve into the left lane across the divider by two feet, and then swing right onto Whittier. Sgt. Stannard activated his overhead lights and stopped Grimmett.

{¶ 4} Upon approaching Grimmett's vehicle, Sgt. Stannard immediately noticed Grimmett's "watery, bloodshot eyes" and "a moderate odor of an alcoholic beverage upon his breath." When Sgt. Stannard asked if he had been drinking, Grimmett stated that he had had "two beers." Sgt. Stannard requested that Grimmett exit the vehicle to perform field sobriety tests. Grimmett failed the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test. Based upon his performance of these

tests, Sgt. Stannard arrested Grimmett.

{¶ 5} Grimmett was cited for driving under the influence and failure to negotiate a proper right turn. Grimmett filed a motion to suppress evidence, and a hearing was held on October 14, 2003. A magistrate denied his motion to suppress and the trial court eventually overruled the motion. On March 8, 2004, Grimmett entered a no contest plea to the driving while under the influence of alcohol charge; the remaining charges were dismissed. The trial court found Grimmett guilty of the charge and sentenced him to a fine of $450 and 180 days in jail, with 160 days suspended.

{¶ 6} Grimmett now appeals his conviction and sentence, asserting the following assignment of error:

{¶ 7} "The trial court erred and violated Appellant's Fourth Amendment rights when it refused to order the evidence suppressed, because the evidence showed that the officer lacked a reasonable basis for making the traffic stop[.]"

{¶ 8} In the first portion of this assignment of error, Grimmett asserts that because the dispatch itself was not issued on proper reasonable suspicion, his stop was unconstitutional. In the latter portion of his assignment of error, Grimmett argues that the alleged traffic violation did not provide reasonable suspicion for a stop, as the State failed to meet its burden to provide evidence that Grimmett violated the traffic offense for which he was charged.

{¶ 9} At a hearing on a motion to suppress, the trial court acts as the trier of fact. *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. As the trier of fact, the trial court evaluates the evidence and judges the credibility of the witnesses. Id. at 366, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. "The

court of appeals is bound to accept factual determinations of the trial court made during the suppression hearing so long as they are supported by competent and credible evidence." *State v. Searls* (1997), 118 Ohio App.3d 739, 741, 693 N.E.2d 1184. The court of appeals must conduct a de novo review of the trial court's application of the law to those facts. Id.

{¶ 10} The Fourth Amendment to the United States Constitution provides for "[t]he right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures." For the purposes of the Fourth Amendment, "stopping an automobile and detaining its occupants constitutes a 'seizure'." *Delaware v. Prouse* (1979), 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660. Under *Terry v. Ohio* (1968), 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889, the investigatory stop exception to the Fourth Amendment allows a police officer to "approach a person for purposes of investigating possibly criminal behavior." "An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." *State v. Williams* (1990), 51 Ohio St.3d 58, 61, 554 N.E.2d 108, quoting *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621. "[T]he police officer involved 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" Id. at 60, quoting *Terry*, supra, at 21.

{¶ 11} "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, 1999-Ohio-68, 720 N.E.2d 507, at paragraph one of the syllabus. Analyzing whether the police had reasonable suspicion in any given situation requires us to review the "totality of the circumstances." Id. at 299, citing *Cortez*, supra, at 417.

{¶ 12} Assuming arguendo that Sgt. Stannard had no basis for stopping Grimmett for a traffic offense, we must first examine if Sgt. Stannard had reasonable suspicion to stop Grimmett based solely upon the call to dispatch from the "informant." Grimmett in this case argues that the "unidentified" citizen informant who called dispatch to report the erratic driving was an "unknown person," implying that the caller should be considered an anonymous informant, and more evidence was needed to justify a reasonable suspicion of criminal activity.

{¶ 13} The Ohio Supreme Court noted in *Weisner*, supra, that informants usually fit into one of three categories: "the anonymous informant, the known informant (someone from the criminal world who has provided previous reliable tips), and the identified citizen informant." Id. at 300. As we stated in *State v. Jordan* , Montgomery App. No. 18600, 2001-Ohio-1630, "[i]n this hierarchy of informants, the identified citizen informant is the most reliable, while the anonymous informant is the least reliable, requiring independent police corroboration." Id. quoting *Weisner*, supra.

{¶ 14} Furthermore, as we stated in *Jordan*, supra, "'[i]nformation 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, quoting *State v. Carstensen* (Dec. 18, 1991), Miami App. No. 91-CA-13. Furthermore, "[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. Thus, the 'informant' in this case should be treated more like an identified citizen informant, requiring the police to show less independent corroboration." Id.

{¶ 15} According to the trial court, there was reasonable suspicion to stop Grimmett based upon the information from the informant. The trial court noted that Sgt. Stannard had "received a dispatch that a gold Honda truck had been seen traveling left of center several times in the area of Route 235 and Broad Street in the City of Fairborn. Furthermore, the sergeant made personal contact with the caller and received the same information along with the license plate number. The sergeant also knew the name of the caller and noted it in his paperwork, although he could not recall the name at the hearing. Therefore, based upon the information provided by the caller to dispatch, as well as to the sergeant directly, the stop was justified on a reasonable suspicion of driving under the influence." (Doc. No. 32, p.4.)

{¶ 16} In viewing the totality of the circumstances, we conclude that the police had reasonable suspicion to stop Grimmett. Sgt. Stannard received a dispatch based upon information from a concerned citizen that a vehicle was driving erratically. Sgt. Stannard made contact with the citizen who identified himself and described the same incident as reported through dispatch. We do not find that the informant was "anonymous," but instead was a known citizen who was willing to cooperate with law enforcement and provide continuing contact. Accordingly, less independent corroboration was necessary and we overrule the first portion of Grimmett's assignment of error.

{¶ 17} In the second portion of this assignment of error, Grimmett contends that

Sgt. Stannard had no reasonable suspicion to stop Grimmett based upon the traffic violation. In particular, he argues that the crossing of an edge line does not necessarily justify an investigatory stop.

{¶ 18} Grimmett offers *Cuyahoga Falls v. Green* (1996), 112 Ohio App.3d 362, 678 N.E.2d 973, in support of his position that he did not violate any traffic offense. In *Green*, the defendant was a professional driver who drove his semi truck left of center when making a right hand turn. The appellate court found that a wide "swing" into the left-hand lane "may still be properly negotiating a right-hand turn 'as close as practicable' for that particular vehicle." Id. at 365.

{¶ 19} In this case, Sgt. Stannard followed Grimmett, who was driving the vehicle matching the description provided by the caller. Sgt. Stannard witnessed Grimmett swerve left of the center line by approximately two feet while making a right hand turn onto Whittier. This case is easily distinguishable from the facts in *Green*, as Grimmett was driving a pick-up truck, not a semi, and Sgt. Stannard testified that based upon his experience, Grimmett should have been able to negotiate the turn onto Whittier without crossing left of center.

{¶ 20} For the foregoing reasons, the dispatch based upon the citizen's information was sufficiently reliable to justify Grimmett's investigatory stop, coupled with sufficient evidence that Grimmett had committed a traffic offense. Accordingly, Grimmett's assignment of error is without merit as the motion to suppress was properly denied.

{¶ 21} The judgment of the trial court is affirmed.

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WOLFF, J. and FAIN, J., concur.

Copies mailed to:

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