[Cite as *State v. Blair*, 2005-Ohio-5210.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO		:	JUDGES:
		:	W. Scott Gwin, P.J.
	Plaintiff-Appellee	:	William B. Hoffman, J.
		:	Julie A. Edwards, J.
-vs-		:	
		:	Case No. 2005CA00009
MELISSA BLAIR		:	
		:	
	Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal From Licking County Court of Common Pleas Case 04-00507
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	9/26/2005

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
DAVID MALLETT Prosecuting Attorney 20 South Second Street, 4th Flr. Newark, OH 43055	ANDREW T. SANDERSON 21 West Church Street Suite 201 Newark, OH 43055

Edwards, J.

{¶1} Defendant-appellant Melissa Blair appeals from her conviction and sentence in the Licking County Court of Common Pleas on one count of illegal manufacturing of drugs, in violation of R.C. 2925.04(A)(C)(2). Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 21, 2004, appellant was indicted on a single count of illegal manufacture of drugs, specifically, methamphetamine (a Schedule II controlled substance). The indictment arose from the following facts.

{¶3} The Licking County Sheriff's Department received a call from Charlie Hash with information regarding the possibility of the manufacturing of illegal drugs. Sergeant Carson, of the Licking County Sheriff's Department, was so informed by his dispatcher. Sergeant Carson then made phone contact with Mr. Hash. Mr. Hash, identified himself and advised that earlier that day he had been hunting with his brother in and around the area near Church Road, Frazeysburg, Ohio. Mr. Hash said he came across a blue Chevy Astro van. Mr. Hash claimed that he observed four individuals, none of whom he had familiarity with, standing and stumbling around the van. According to Mr. Hash, they appeared to be intoxicated. Mr. Hash also stated that he had observed what appeared to be tools used to manufacture drugs, including a can of ether, a hot plate, coffee filters and a coke/water bottle with an attached hose. Mr. Hash stated that he would be willing to meet with an officer and direct the authorities to the location.

{¶4} Shortly thereafter, Sergeants Carson and Loy met with Mr. Hash at a church in Perryton, Ohio. During this face-to-face interview, Mr. Hash stated that the van was no longer at the location where it was originally observed but had moved to his brother's house in Frazeysburg, Ohio. Mr. Hash was able to provide a West Virginia license plate number, "7SC706", that he said was on the van. The officers were informed that Mr. Hash's brother, Benny Hash, had a history of being "into illegal substances." Transcript of Hearing on Motion to Suppress, pg. 24.

{¶5} The officers were led by Mr. Hash to the previous location of the van. However, nothing incriminating was found. At that time, Sergeant Loy obtained a written statement from Mr. Hash in which he reiterated, for the most part, what he had previously told the officer. In this statement, Mr. Hash voluntarily provided his home address, home phone number, employer and employer's phone number.

{¶6} A short time later, while on patrol near the area of the investigation, Sergeant Carson observed a vehicle matching, in most respects, Charles Hash's description of the van in question. This particular Chevy Astro van was a two tone gray rather than blue and bore a West Virginia license plate of "7FC706". That license plate was only one number off from the number given by Mr. Hash.

{¶7} A traffic stop was initiated. Upon approach, the driver, James Sheffler, and the passenger, appellant, were identified. Upon searching the vehicle, the chemicals necessary for the production and preparation of methamphetamine were found in the vehicle.

{¶8} On November 16, 2004, appellant filed a motion to suppress evidence. Essentially, appellant contended that the initial seizure of her through a traffic stop was

unconstitutional. A hearing on the motion was held on December 22, 2004. The trial court denied appellant's motion to suppress at the conclusion of the hearing. A Judgment Entry to that effect was filed by the trial court on January 3, 2005.

{¶9} On February 2, 2005, appellant appeared before the trial court and entered a plea of no contest to the charge. The trial court accepted the plea and entered a finding of guilty. Appellant was sentenced to a period of two years of incarceration.

{¶10} It is from this conviction and sentence that appellant appeals, raising the following assignment of error:

{¶11} "THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS EVIDENCE AS THERE WAS NO LEGITIMATE BASIS ARTICULATED BY THE WITNESSES FOR THE PROSECUTION LEGALLY SUFFICIENT TO JUSTIFY THE WARRANTLESS SEIZURE OF THE DEFENDANT-APPELLANT."

{¶12} In appellant's sole assignment of error, appellant contends that the trial court should have granted appellant's motion to suppress because the warrantless seizure of appellant violated appellant's constitutional right to be free of unreasonable searches and seizures. We disagree.

{¶13} 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. *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein* (1991), 73 Ohio App.3d 486, 597

N.E.2d 1141; *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. 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 to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App.3d 93, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 620 N.E.2d 906; *Guysinger,* supra. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶14} Appellant concedes that the facts of the case are basically undisputed and there is no claim that the trial court failed to apply the proper legal test. Appellant's contention is that the trial court failed to correctly apply the law to the facts of the case. Therefore, this court's review is de novo.

{¶15} In this case, the issue is whether the stop of Mr. Sheffler's automobile in which appellant was a passenger was constitutional. An investigative stop of a vehicle constitutes a seizure within the meaning of the fourth amendment to the United States Constitution. See *Whren v. United States* (1996), 517 U.S. 806, 809-810, 116 S.Ct.

1769, 135 L.Ed.2d 89. However, an investigative stop of a motorist does not violate the fourth amendment if the officer has a reasonable suspicion that the individual is engaged in criminal activity. *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 299, 720 N.E.2d 507 (citing *Terry v. Ohio* (1968), 392 U.S. 1, 22, 88 S. Ct. 1868, 20 L.Ed.2d 889). "To justify a particular intrusion, the officer must demonstrate 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." ' *Weisner,* 87 Ohio St.3d at 299 (quoting *Terry,* 392 U.S. at 21). Evaluating the facts and inferences requires the court to consider the totality of the surrounding circumstances. *State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044, paragraph one of the syllabus, certiorari denied (1981), 454 U.S. 822, 102 S.Ct. 107, 70 L.Ed.2d 94.

{¶16} This stop was based upon a tip. The Ohio Supreme Court recently addressed the issue of tipsters and reasonable suspicion in *Maumee v. Weisner,* (1999), 87 Ohio St.3d 295, 720 N.E.2d 507.[1] According to the *Weisner* court, "the appropriate analysis is whether the tip itself has sufficient indicia of reliability to justify the investigative stop." *Weisner*, 87 Ohio St.3d at 299, 720 N.E.2d 507. The informant's veracity, reliability, and basis of knowledge are highly relevant factors in determining the value of the informant's tip. Id.

[1] In *Weisner,* the Ohio Supreme Court held that a telephone tip can, by itself, create reasonable suspicion justifying an investigative stop where the tip has sufficient indicia of reliability. Id at 296, 720 N.E.2d 507. In *Weisner,* a citizen informant's telephone tip led the Maumee Police Department to stop Weisner for suspected DUI. Upon receiving the dispatch, which included the make, color, and license plate of the car, a Maumee officer pulled Weisner over and subsequently arrested him.

{¶17} It is particularly relevant that the investigative stop in this case was based on a tip from an identified citizen. In *Weisner,* the Ohio Supreme Court discussed the credibility to be given to an identified citizen tipster:

{¶18} "The [United States Supreme Court] has further suggested that an identified citizen informant may be highly reliable and, therefore, a strong showing as to the other indicia of reliability may be unnecessary: '[I]f an unquestionably honest citizen comes forward with a report of criminal activity--which if fabricated would subject him to criminal liability--we have found rigorous scrutiny of the basis of his knowledge unnecessary.' *Illinois v. Gates,* 462 U.S. at 233-234, 103 S.Ct. at 2329- 2330, 76 L.Ed.2d at 545.

{¶19} "In light of these principles, federal courts have routinely credited the identified citizen informant with greater reliability. In *United States v. Pasquarille* (C.A.6, 1994), 20 F.3d 682, 689, for instance, the Sixth Circuit presumed the report of a citizen informant to be reliable because it was based on firsthand observations as opposed to " 'idle rumor or irresponsible conjecture,' " quoting *United States v. Phillips* (C.A.5, 1984), 727 F.2d 392, 397. Likewise, the Tenth Circuit has held that the statement of an ordinary citizen witness is entitled to more credence than that of a known informant. " 'Courts are much more concerned with veracity when the source of the information is an informant from the criminal milieu rather than an average citizen * * * in the position of a crime * * * witness.' " *Easton v. Boulder* (C.A.10, 1985), 776 F.2d 1441, 1449, quoting LaFave, Search and Seizure (1978) 586-587. See, also, *Edwards v. Cabrera* (C.A.7, 1995), 58 F.3d 290, 294.

{¶20} "Many Ohio appellate courts have also accorded the identified citizen witness higher credibility… In *State v. Loop* (Mar. 14, 1994), Scioto App. No. 93CA2153, 1994 WL 88041,…the court held that a telephone call from a citizen stating that a motorist might be having a seizure was sufficient to justify an investigative stop that produced evidence of drunken driving. The court reasoned that " '[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.* at 5, quoting *State v. Carstensen* (Dec. 18, 1991), Miami App. No. 91-CA-13, *301 at *4, 1991 WL 270665…. See, also, *Fairborn v. Adamson* (Nov. 17, 1987), Greene App. No. 87-CA-13, at 4-5, 1987 WL 20264; *State v. Jackson* (Mar. 4, 1999), Montgomery App. No. 17226, at *5, 1999 WL 115010, observing generally that " 'a tip from an identified citizen informant who is a victim or witnesses a crime is presumed reliable, particularly if the citizen relates his or her basis of knowledge,' " quoting *Centerville v. Gress* (June 19, 1998), Montgomery App. No. 16899, at *4-5, 1998 WL 321014." W*eisner* , supra. at 300-301.

{¶21} Turning to the case sub judice, we find that the tip satisfies the relevant factors cited in *Weisner.* First, the dispatch officer knew the identity of the tipster, Mr. Charlie Hash. Further, Mr. Hash provided the officers with his address, his employer and relevant phone numbers and agreed to meet with the officers in person. Second, the information provided by Mr. Hash, the tipster, had indicia of reliability. See *Weisner,* 87 Ohio St.3d at 302. Mr. Hash provided an eyewitness account of the crime and provided specific details, including a description of the van and an out of state license plate number. Mr. Hash provided the officers a written account of what he had seen.

Further, Mr. Hash had directed them to the site of the alleged crime. Thus, there is no question that Mr. Hash was an identified citizen informant and he had first hand knowledge of the events.

{¶22} Further, Mr. Hash's tips were subsequently corroborated by Sgt. Carson. Shortly after receiving the tip, Sgt. Carson observed a vehicle which essentially matched Mr. Hash's description. It was a Chevy Astro van (same make and model) with a West Virginia license plate just one letter off from that described by Mr. Hash.

{¶23} Based on the foregoing, we find that the tips from Mr. Hash had sufficient indicia of reliability. Further, these tips were corroborated by Sgt. Carson. When the totality of the circumstances is considered, we find that there was sufficient reasonable suspicion to justify the investigative stop.

{¶24} Appellant's sole assignment of error is overruled.

{¶25} The judgment of the Licking County Court of Common Pleas is affirmed.

By: Edwards, J.

Gwin, P.J. and

Hoffman, J. concur

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JUDGES

JAE/0721

[Cite as *State v. Blair*, 2005-Ohio-5210.]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
MELISSA BLAIR	:	
Defendant-Appellant	:	CASE NO. 2005CA00009

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Court of Common Plea is affirmed. Costs assessed to appellant.

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JUDGES