[Cite as *State v. Johnson*, 2010-Ohio-139.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
STATE OF OHIO	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-00086
MICHAEL LEROY JOHNSON	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Criminal appeal from the Stark County Court of Common Pleas, Case No. 2008CR2187
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	January 19, 2010

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
JOHN D. FERRERO PROSECUTING ATTORNEY BY: RONALD MARK CALDWELL 110 Central Plaza South, Ste. 510 Canton, OH 44702	BARRY T. WAKSER STARK COUNTY PUBLIC DEFENDER'S OFFICE 200 West Tuscarawas St., Ste 200 Canton, OH 44702

Gwin, P.J.

{¶1} Plaintiff-appellant Michael Leroy Johnson appeals the February 19, 2009 Judgment Entry of the Stark County Court of Common Pleas overruling his motion to suppress evidence. The appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant was indicted on January 20, 2009 on one count of Tampering with Evidence[1] and one count of Possession of Cocaine[2]. Appellant filed a motion to suppress, arguing that the traffic stop that resulted in the search and arrest of appellant was unconstitutional. The trial court held a suppression hearing on February 18, 2009. The following evidence was presented during the hearing on appellant's motion to suppress.

{¶3} On December 11, 2008, Appellant was stopped while driving his motor vehicle in Alliance, Ohio. Appellant had been under investigation by the Alliance Police Department, as well as the Canton and Sebring Police Departments, for transporting crack cocaine from Canton through Alliance on his way to Sebring. On that date, Appellant came from Canton to Sebring, where he met with a confidential informant who was working with the Sebring Police Department. Appellant sold crack cocaine to the informant, who paid with photocopied money; furthermore, the transaction was recorded both via video and audio means.

{¶4} The supervising police officers of this controlled buy notified Detective Lt. James Hilles of the Alliance Police Department of the drug transaction between

[1] R.C. § 2921.12 (A) (1).

[2] R.C. § 2925.11 (A) (C) (4) (b).

Appellant and the confidential informant. Detective Hilles was told that Appellant was traveling back to Canton with a passenger through Alliance. A Sebring detective followed Appellant on his way back to Stark County, and alerted Detective Hilles to the description of Appellant's car and its license plate number. The detective also asked Detective Hilles to stop the vehicle in Alliance. Detective Hilles waited for Appellant's car to drive past. He then followed Appellant as he drove through Alliance. Having been advised by the Sebring detective that Appellant could be armed, Detective Hilles radioed for marked cruisers to assist in the stop. As Appellant reached West State Street, the marked cruisers turned their lights on and pulled over Appellant's vehicle.

{¶5} At the suppression hearing, Detective Hilles testified that the basis for the traffic stop was the fact that police officers had observed Appellant commit a felony drug offense, using his car to go to the rendezvous and to transport the drugs.

{¶6} "Ah, based on the fact that they just committed a felony, ah, ah, in the drug trafficking, we believe that there would be evidence, also, of the crime in the vehicle, mainly the buy money and additional crack cocaine. And the possibility of those weapons. And to, ah, take them into custody for that evidence." (T. at 10).

{¶7} The only witness to testify for the State, Detective Hilles, stated he had no working relationship with the informant and knew nothing of his reliability or credibility. (T. at 15 -16). Detective Hilles did not know whether the informant had ever provided credible information in the past. (T. at 16). He also was unaware of whether the informant was a paid informant or was simply "working off a case."

{¶8} On cross-examination, Detective Hilles stated that Appellant was stopped in Alliance as opposed to in Sebring because of logistics – there were not enough

marked cruisers to make the stop in Sebring, and adequate numbers were necessary for safety reasons. He further specified the reason for the traffic stop was based upon the controlled drug transaction that Appellant drove from Canton to consummate.

{¶9} After his suppression motion was overruled, Appellant changed his plea and pleaded no contest to the charges contained in the indictment. Based upon the evidence presented at the suppression hearing, as well as the prosecutor's recitation of facts that would have been presented at trial, the trial court found appellant guilty of both counts and proceeded with sentencing.

{¶10} Appellant made a statement before sentencing. Further, the trial court allowed his mother to address the court. In response to her pleas for leniency, the trial court sentenced appellant to an aggregate prison term of four years – a term of four years for the tampering charge, and a concurrent six-month term for the possession charge.

{¶11} Appellant timely appealed and raises the following sole assignment of error for our consideration:

{¶12} "THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS."

I.

{¶13} In his sole Assignment of Error, appellant claims the trial court erred in denying his motion to suppress. We disagree.

{¶14} 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 485; *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.* As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶15} Appellant argues that the police did not have probable cause to believe that appellant had committed, or was about to commit a felony.

{¶16} An investigative stop does not violate the Fourth Amendment to the United States Constitution if the police have reasonable suspicion that "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.

{¶17} Contact between police officers and the public can be characterized in three different ways. *State v. Richardson*, Fifth Dist. No. 2004CA00205, 2005-Ohio-554 at ¶23-27. The first is contact initiated by a police officer for purposes of investigation. "[M]erely approaching an individual on the street or in another public place [,]" seeking to ask questions for voluntary, uncoerced responses, does not violate the Fourth Amendment. *United States v. Flowers* (6th Cir.1990), 909 F.2d 145, 147. The person approached, however, need not answer any question put to him, and may continue on his way. *Florida v. Royer* (1983), 460 U.S. 491,497-98 Moreover, he may not be detained even momentarily for his refusal to listen or answer. Id.

{¶18} The second type of contact is generally referred to as "a *Terry* stop" and is predicated upon reasonable suspicion. *Richardson,* supra*; Flowers,* 909 F.2d at 147; *See Terry v. Ohio* (1968), 392 U.S. 1. This temporary detention, although a seizure, does not violate the Fourth Amendment. Under the *Terry* doctrine, "certain seizures are justifiable ... if there is articulable suspicion that a person has committed or is about to commit a crime" *Florida,* 460 U.S. at 498.

{¶19} The third type of contact arises when an officer has "probable cause to believe a crime has been committed and the person stopped committed it." *Richardson,* supra; *Flowers,* 909 F.2d at 147.

{¶20} In the case at bar, the initial contact with appellant is best placed into the third category. Upon review, under the totality of the circumstances, we conclude the events in the case sub judice constituted an arrest such that the officers were required to have probable cause to believe a crime had been committed and that appellant committed it. On the facts of this case, clearly a “seizure" of the appellant occurred. Consequently, if appellant's arrest was lawful, the cocaine seized from his person was admissible.

{¶21} A warrantless arrest is constitutionally valid if: "[a]t the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the * * * [individual] had committed or was committing an offense." *State v. Heston* (1972), 29 Ohio St.2d 152, 155-156, 280 N.E.2d 376, quoting *Beck v. Ohio* (1964), 379 U.S. 89, 91, 85 S.Ct. 223, 13 L.Ed.2d 142.

{¶22} In the case sub judice, appellant argues the information provided to Detective Hilles did not provide the indicia of reliability necessary to justify an arrest because the state did not provide evidence concerning the veracity or reliability of the confidential informant.

{¶23} A police officer need not always have knowledge of the specific facts justifying a stop and may rely upon a dispatch. *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 297, 720 N.E.2d 507. This principle is rooted in the notion that effective law enforcement cannot be conducted unless officers can act on information transmitted by one officer to another, and that officers, who must often act quickly, cannot be expected

to cross-examine their fellow officers about the foundation of the transmitted information. Id. The admissibility of evidence uncovered during a stop does not rest upon whether the officers relying upon a dispatch were themselves aware of the specific facts that led the colleagues to seek their assistance, but turns instead upon whether the officer who issued the dispatch possessed a reasonable suspicion to make a stop. Id., citing *United States v. Hensley* (1985), 469 U.S. 221, 231, 105 S.Ct. 675, 83 L.Ed.2d 604. Thus, if the dispatch has been issued in the absence of a reasonable suspicion, then a stop in objective reliance upon it violates the Fourth Amendment. Id. The state must therefore demonstrate at a suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity. Id. 87 Ohio St. 3d at 298, 720 N.E. 2d 507. See, also *Village of Newcomerstown v. Ungrean*, 146 Ohio App.3d 409, 2001-Ohio-1754, 766 N.E. 2d 233.

{¶24} 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. A tip from an anonymous informant, standing alone, is generally insufficient to support reasonable suspicion of criminal activity, because it lacks the necessary indicia of reliability. *State v. Jordan,* 104 Ohio St.3d 21, 2004-Ohio-6085, 817 N.E.2d 864 at ¶ 36. “Accordingly, anonymous tips

normally require suitable corroboration demonstrating 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop'". Id. (Citing *Florida v. J.L.,* 529 U.S. at 270, 120 S.Ct. 1375, quoting *White,* supra, 496 U.S. at 329, 110 S.Ct. 2412). See, also, *Weisner,* supra, 87 Ohio St.3d at 300, 720 N.E.2d 507.

{¶25} In the instant case, an anonymous informant did not supply the evidentiary basis for the traffic stop; rather it was supplied by the activities of a police informant. This activity was a controlled buy that was monitored by the police. In addition, the controlled buy was recorded both visually and by sound. Once the buy was completed, the police forwarded this information to Detective Hilles. The officers then followed appellant as he proceeded westward back to Stark County. The facts precipitating the dispatch justified a reasonable suspicion of criminal activity.

{¶26} This evidence was sufficient to establish reasonable and articulable suspicion that appellant had been involved in criminal activity, i.e., that he had just engaged in an illegal and controlled drug sale with a police confidential informant. Therefore, we find no error in the denial of the motion to suppress, as the facts and circumstances within the officers knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the appellant had committed or was committing an offense. We find this was not a violation of the Fourth Amendment's prohibition against unlawful search and seizure.

{¶27} Based upon the above, we find the trial court properly overruled the motion to suppress. Appellant's sole assignment of error is overruled.

{¶28} The judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Wise, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE

WSG:clw 0107

[Cite as *State v. Johnson*, 2010-Ohio-139.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
MICHAEL LEROY JOHNSON	:	
Defendant-Appellant	:	CASE NO. 2009-CA-00086

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed. Costs to appellant.

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. JOHN W. WISE