

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHASTA L. JAMES

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. W. Scott Gwin, J.

Hon. John W. Wise, J.

Case No. 2014CA0016

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Coshocton Municipal
Court, Case No. TRC1301469C

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

February 12, 2015

APPEARANCES:

For Defendant-Appellant

For Plaintiff-Appellee

ROBERT E. CALESARIC
35 South Park Place, Suite 150
Newark, Ohio 43055

ROBERT A. SKELTON
JAMES R. SKELTON
309 Main Street
Coshocton, Ohio 43812

Hoffman, P.J.

{¶1} Defendant-appellant Chasta L. James appeals the February 19, 2014 Judgment Entry entered by the Coshocton Municipal Court denying her motion to suppress evidence and subsequent conviction for OVI, in violation of R.C. 4511.19. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On September 27, 2013, Deputy Seth Andrews of the Coshocton County Sheriff's Office was advised by dispatch a citizen informant telephoned 911 reporting a possible impaired driver traveling westbound on U.S. 36. Dispatch advised Deputy Andrews the driver was operating silver SUV.

{¶3} Deputy Andrews arrived at the scene, and the citizen informant directed the officer to the vehicle operated by the alleged impaired driver, who at the time was at a drive thru window of a Burger King restaurant.

{¶4} Deputy Andrews then observed the vehicle pull out of the Burger King parking lot without using headlights. The vehicle pulled straight out of the drive thru, across the Walmart parking lot, without using the driving lanes and without headlights. Deputy Andrews then initiated a traffic stop.

{¶5} Upon approaching the vehicle, Deputy Andrews observed a strong odor of alcohol emanating from the vehicle. Appellant, the driver of the vehicle, then struggled with her purse and handbook, when asked for identification. She initially handed the officer her bank card, instead of her driver's license. Subsequent to the stop, Appellant was placed under arrest for driving under the influence.

{¶6} On December 9, 2013, Appellant filed a motion to suppress. On January 24, 2014, Appellant filed a motion to amend the motion to suppress, withdrawing portions and clarifying portions of the motion. The trial court conducted a hearing on the motion to suppress on February 19, 2014. Following the hearing, the trial court denied Appellant's motion to suppress via Judgment Entry of February 19, 2014.

{¶7} On May 21, 2014, Appellant entered a plea of no contest to the charge of OVI, in violation of R.C. 4511.19. The trial court found Appellant guilty of the charge, and entered a conviction consistent therewith.

{¶8} Appellant appeals, assigning as error:

{¶9} "I. THE TRIAL VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH AMENDMENT BY REFUSING TO SUPPRESS EVIDENCE OBTAINED DURING A TRAFFIC STOP AFTER THE STATE FAILED TO PRESENT SPECIFIC ARTICULABLE FACTS TO SUPPORT A REASONABLE SUSPICION OF CRIMINAL ACTIVITY."

I.

{¶10} 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*, 1 Ohio St.3d 19 (1982); *State v. Klein*, 73 Ohio App.3d 486 (4th Dist.1991); *State v. Guysinger*, 86 Ohio App.3d 592 (4th Dist.1993). 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, 86 Ohio App.3d 37 (4th Dist.1993). 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*, 95 Ohio App.3d 93 (8th Dist.1994); *State v. Claytor*, 85 Ohio App.3d 623 (4th Dist.1993); *Guysinger*. As the United States Supreme Court held in *Ornelas v. U.S.*, 517 U.S. 690, 116 S.Ct. 1657, 1663 (1996), "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal."

{¶11} "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." *Maumee v. Weisner*, 87 Ohio St.3d 295, 299, 1999-Ohio-68, 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.* Thus, courts have routinely credited the identified citizen informant with greater reliability. *Id.*

{¶12} Layle Miller, the identified citizen informant who called 911 herein, testified at the February 19, 2014 suppression hearing, as follows:

Q. And how much of that were you able to tell 911?

A. I don't recall what I told them. From what my best recollection would be that I used my own powers of observation in telling them that I believed the driver was under the influence.

* * *

Tr. at 21.

{¶13} On cross-examination, he testified,

Q. Okay. And when you called 911 you basically advised them that you believed it was an impaired driver or drunk driver or something was wrong with the driver?

A. Yes.

Q. But you didn't describe what you observed other than that was your belief?

A. I believe they asked me for the license plate, which we were close enough that we could observe that.

Q. Did you give the license plate?

A. I believe so, yes.

Mr. Calesaric: Okay. I have no further questions. Thank you.

Tr. at 25.

{¶14} Deputy Seth Andrews of the Coshocton County Sheriff's Office testified dispatch had informed him of a possible impaired vehicle on the roadway. On direct examination Deputy Andrews testified:

Q. Tell the Court what happened.

A. Dispatch advised me of a possible impaired driver traveling westbound on US 36. As I was making my way toward that direction, dispatch advised me that the caller had called back in stating that the vehicle had turned into Burger King parking lot.

As I pulled into the main entrance to Wal-Mart, I was flagged down by the caller. They stepped out of the vehicle and pointed to which vehicle it was. At that time that vehicle was at the drive-thru window at the point of stop.

Then I observed the silver vehicle pull out of the Burger King parking lot and it didn't have any headlights on. It pulled straight out and through and across the Wal-Mart parking lot and not using the driving lanes with no headlights. At that point that's when I initiated a traffic stop on the vehicle.

Q. What did you find when you - - well, what happened when you -
- how did you initiate your traffic stop?

A. When I observed the vehicle, it actually pulled directly out of the parking lot. It didn't use the marked driving lanes in the parking lot. It actually cut completely across through the parking stalls, I believe three driving lanes, with no headlights.

Q. And how did you initiate a traffic stop?

A. I pulled directly behind the vehicle and activated my emergency overhead lights.

Tr. at 28-29.

{¶15} On cross-examination, Deputy Andrews testified dispatch informed him of a possible impaired vehicle on the roadway, "a silver SUV, swerving from lane to lane." Tr. at 33.

{¶16} The citizen informant, Mr. Miller, did not testify he reported Appellant's vehicle was swerving from lane to lane. Rather, he testified he did not recall what he told the 911 dispatch operator, but believe the driver was under the influence based upon "his own powers of observation." Tr. at 22. Deputy Andrews testified he was advised by dispatch of a possible impaired vehicle on the roadway swerving from lane to lane. Tr. at 33. Deputy Andrews' testimony is not contradicted by the citizen informant's testimony as he (the citizen informant) does not recall what he told dispatch. Further, Deputy Andrews observed Appellant exit a drive thru window without her headlights on, even though it was dark, and immediately proceed to drive across the Walmart parking lot, disregarding parking indications and traffic markings. Parking lots and private driveways are routinely exempted from the rules that govern the operation of motor vehicles on roads, streets and highways. See, e.g., *Buell v. Brunner* (1983), 10 Ohio App.3d 41, 460 N.E.2d 649. Deputy Andrews testified at the hearing herein as to the safety concern created by Appellant's impaired driving,

Q. Describe this area.

A. Of the traffic stop?

Q. Yes, sir.

A. Where I was parked after speaking to caller, after I got back in my vehicle, after he pointed the silver vehicle out, it was right in front of me. The

SUV pulled out of Burger King parking lot and drove directly across the parking lot with no headlights on. It pretty much drove past me with no headlights on.

Q. Describe this area.

A. It's a flat parking lot with the parking stalls. You had your other vehicles that were parked in the parking stalls.

Q. Were there a lot of vehicles there at this time?

A. Yeah. It was fairly busy. She was actually driving in between parked cars across the parking lot.

* * *

How far did she get before she turned her headlights on?

A. She never turned her headlights on.

Q. Okay. Was this a safety issue?

A. I felt it was a safety issue because I felt that any cars driving on the parking lanes in between the parking stalls up and down the isles [sic] and having her driving across, they are not gonna see her as they are driving down their driving lanes, like in between the parked cars.

Tr. at 38-39.

{¶17} Accordingly, Deputy Andrews' observations of Appellant driving without headlights and through marked parking lanes coupled with the citizen informants' report of observing the silver SUV driving impaired provided reasonable suspicion to justify the investigatory stop herein.

{¶18} Accordingly, the trial court properly overruled Appellant's motion to suppress, and the assignment of error is overruled.

{¶19} The judgment of the Coshocton Municipal Court is affirmed.

By: Hoffman, P.J.

Gwin, J. and

Wise, J. concur