

[Cite as *State v. Greer*, 2009-Ohio-5351.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92011

**STATE OF OHIO
CITY OF EUCLID**

PLAINTIFF-APPELLEE

vs.

ROBERT L. GREER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Euclid Municipal Court
08 TRC 01166

BEFORE: Sweeney, J., Rocco, P.J., and Jones, J.

RELEASED: October 8, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this courts announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant Robert Greer (“defendant”) appeals following his conviction for operating a vehicle while impaired. In this appeal, Greer challenges the denial of his motion to suppress. For the reasons that follow, we affirm.

{¶ 2} The following facts were derived from the evidentiary hearing on defendant’s motion to suppress: According to Officer Krocak, on March 2, 2008 she was employed by the Euclid Police Department. At approximately 12:44 a.m. dispatch alerted her that someone had called in “a van at S&S hit some other vehicles, driving erratically.” Dispatch relayed that the van was “blue with silver or gray, a conversion van.” Dispatch instructed that the van turned left onto 228 out of the lot from the S&S Lounge.

{¶ 3} The parties stipulated to the authenticity of the 911 tape that was played for the court and is contained in the record. Officer Krocak confirmed it was the dispatch call she had received. At that time, Officer Krocak was located in the area of 222nd and responded to the call. The parties also stipulated to State’s Exhibit 2; which was a recording of the dispatch and police response to the call. Exhibit 2, in part, recorded the following:

{¶ 4} “Do you know who the name of the complainant for this or anything? Because no one [at S&S] knows anything about anything.

{¶ 5} “DISPATCHER VOICE: * * *, it came from a cell phone. I have

that cell phone number, it appears to be a Verizon cell phone.

{¶ 6} “* * * Okay. Well, we don’t have a complainant here [at S&S], and everybody outside says that they don’t know anything about a van hitting anybody’s car.”

{¶ 7} The recordings also reflect that the complainant observed the police following the van that was the subject of the 911 call. Officer Krocak followed the van to observe its operation. Defendant turned left into a parking lot, drove through and attempted to exit out. Officer Krocak believed defendant was attempting to evade her and made a traffic stop. The van was approximately a mile from the S&S Lounge. At the time of the stop, defendant’s “eyes were very bloodshot, red, his speech and his motions were slow * * * The odor of the alcohol was strong.” His speech was slurred and his eyes were “glossy looking.”

{¶ 8} Defendant told Officer Krocak that he had not been at the S&S Lounge. However, defendant was charged for operating a vehicle impaired and a seat belt violation.

{¶ 9} Officer Krocak identified defendant as the driver of the van.

{¶ 10} The trial court denied defendant’s motion to suppress, which forms the basis of defendant’s sole assignment of error:

{¶ 11} “The trial court erred in denying Mr. Greer’s motion to suppress.”

{¶ 12} In his only assignment of error, defendant argues that the trial

court improperly denied his motion to suppress because he claims the officers lacked probable cause or reasonable suspicion to justify an investigative stop.

{¶ 13} A reviewing court is bound to accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. *State v. Klein* (1991), 73 Ohio App.3d 486, 597 N.E.2d 1141. However, the reviewing court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the appropriate legal standard. *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906.

{¶ 14} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them per se unreasonable unless an exception applies. *Katz v. United States* (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576. An investigative stop, or *Terry* stop, is a common exception to the Fourth Amendment warrant requirement. *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. Under the *Terry* stop exception, an officer properly stops an automobile if the officer possesses the requisite reasonable suspicion based on specific and articulable facts. *Delaware v. Prouse* (1979), 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660; *State v. Gedeon* (1992), 81 Ohio App.3d 617, 618, 611 N.E.2d 972; *State v. Heinrichs* (1988), 46 Ohio App.3d 63, 545 N.E.2d 1304.

{¶ 15} The propriety of a stop must be assessed based upon the totality of the circumstances. *Beachwood v. Sims* (1994), 98 Ohio App.3d 9, 13-14.

{¶ 16} Defendant maintains that the court erred because the police officer did not independently observe any erratic driving by defendant before making the stop. Alternatively, defendant argues that the informant was anonymous and not reliable.

{¶ 17} The Ohio Supreme Court clarified the State's burden of proof in circumstances where an officer makes an investigative stop based in sole reliance upon information received from a dispatch. *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 298, 720 N.E.2d 507. 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. *Id.*, paragraph one of the syllabus. Accordingly, a telephone tip can, by itself, create reasonable suspicion justifying an investigatory stop where the tip has sufficient indicia of reliability. *Id.*

{¶ 18} In *Weisner*, the Ohio Supreme Court found that an individual who merely leaves his name and phone number with the police qualifies as an identified citizen informant with greater credibility and reliability. *Weisner*, 87 Ohio St.3d at 300-302, 720 N.E.2d 507. On that basis, the Ohio Supreme Court found a suppression motion is properly denied on information provided

by such an informant as relayed during the suppression hearing by the arresting officer. *Id.* In this case, the dispatcher obtained the caller's cellular telephone number from which the female caller could have been identified.

{¶ 19} In *Weisner*, the Ohio Supreme Court also found that a motivation for public safety lends further support to the reliability of a tip. *Weisner*, 87 Ohio St.3d at 302, 720 N.E.2d 507.

{¶ 20} Under factually analogous circumstances, this court noted, “when an investigative stop is made in sole reliance upon a police dispatch, * * * The police officer making the stop need not have personal knowledge of the information motivating the stop. Rather, ‘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.’” *City of Rocky River v. Surovey*, Cuyahoga App. No. 79380, 2002-Ohio-572, citing, *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 298.

{¶ 21} In *Surovey*, as here, the officer stopped the defendant based solely upon a radio dispatch. As in this case, the officer in *Surovey* did not observe any traffic violations before making the stop. However, the “defendant was stopped by the police within moments of a call from an informant who personally observed and described the criminal behavior and who accurately described the offender and his vehicle, as well as his route of travel.” In

addition, the officer in *Surovey* was able to verify that the vehicle he stopped was the vehicle that was the subject of the informant's call. This court held that the veracity of the informant's information was "enhanced by the fact that she identified her employer, and her veracity was enhanced by the accurate description of the van, its location, and its direction." *Id.*

{¶ 22} In this case, the dispatch tapes were admitted and established that the informant was a female who was observing defendant's erratic driving firsthand during the course of the 911 call. The recordings also reflect that the informant observed the police following the subject vehicle. The informant was able to identify the type and color of defendant's vehicle and his course of travel. Officer Krocak confirmed the stop occurred moments after the informant's call. It also appeared to Officer Krocak that defendant was attempting to evade her by driving through a parking lot for no apparent purpose. In addition, upon approaching the vehicle, Officer Krocak noticed defendant's "eyes were very bloodshot, red, his speech and his motions were slow * * * The odor of the alcohol was strong." His speech was slurred and his eyes were "glossy looking." Immediacy and personal observation led to further credibility and greater reliability. *Maumee*, 87 Ohio St.3d at 302.

{¶ 23} The record as presented by the State, including the recordings of the citizen informant that were transpiring contemporaneously with the stop

and Officer Krocak's testimony, justified a reasonable suspicion of criminal activity sufficient to warrant an investigative stop.

{¶ 24} The record evidence also establishes that dispatch had obtained the informant's cell phone number. Accordingly, the informant was identifiable.

{¶ 25} "A police officer necessarily relies on information he receives over the police radio, and it is his duty to act when he receives that information. * * * Information 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." *Surovey*, quoting, *Brecksville v. Bayless* (Apr. 3, 1997), Cuyahoga App. No. 70973.

{¶ 26} Given the immediacy of the stop and the firsthand observations of the informant, the officers had reasonable suspicion and probable cause to stop defendant's vehicle.

{¶ 27} The sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Euclid Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

**KENNETH A. ROCCO, P.J., and
LARRY A. JONES, J., CONCUR**