[Cite as *State v. Greathouse*, 2010-Ohio-1209.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93187

STATE OF OHIO

PLAINTIFF-APPELLANT

vs.

HAMILTON GREATHOUSE

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-506874

BEFORE: Gallagher, A.J., Dyke, J., and Boyle, J.

RELEASED: March 25, 2010

JOURNALIZED:

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SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, the state of Ohio, appeals the decision of the Cuyahoga County Court of Common Pleas that granted the motion to suppress evidence of appellee, Hamilton Greathouse. For the reasons stated herein, we reverse the decision of the trial court and remand the matter for further proceedings.

{¶ 2} On February 13, 2009, Greathouse was indicted for trafficking in drugs and possession of criminal tools. Greathouse filed a motion to suppress evidence.

{¶ 3} The trial court held a hearing on the motion on March 12, 2009. Officer Scott E. Seiger of the Cleveland Police Department testified. During the early morning hours of January 15, 2009, Officer Seiger and his partner, Officer Michael Shea, were patrolling the area around East 93rd Street, Prince Avenue, and Elizabeth Avenue. Officer Shea ran the plate on a vehicle that came back showing a temporary permit, requiring a licensed driver in the vehicle. Because there was a temporary restriction and the driver was the only person observed in the vehicle, the officers pulled the vehicle over.

{¶ 4} Officer Seiger approached the driver to verify that he was the owner of the vehicle. The driver rolled down his window, and the officer detected a strong odor of marijuana. When Officer Seiger asked the driver for his license, the driver stated he did not have one. The officer asked the driver to step out of the vehicle, patted him down, and confiscated two bags of marijuana from his left

front coat pocket. The driver was then placed into the zone car while the officers verified his identity. The officers learned that the driver had a felony warrant and placed him under arrest. At the hearing, Officer Seiger identified Greathouse as the driver of the vehicle.

{¶ 5} On cross-examination, Officer Seiger testified that he did not know who was driving the vehicle or see the person driving the car. He conceded that somebody other than the owner could have been driving the car. It also was later discovered that Greathouse was not the registered owner of the vehicle.

{¶ 6} The trial court granted the motion to suppress. The state has appealed and has raised one assignment of error challenging this ruling.

{¶ 7} The standard of review for a motion to suppress is as follows: "Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." (Internal citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 154, 2003-Ohio-5372, 797 N.E.2d 71.

{¶ 8} The state argues that the trial court erred in granting the motion to suppress because the officers had a reasonable suspicion that the car was being driven illegally by its owner, who only had a temporary permit to drive. The holder of a temporary permit is required to be accompanied by a licensed driver. The state claims that the officers had justification for the stop because a vehicle is likely to be driven by its owner, and in this matter, the owner had a temporary permit to drive and the officers observed only one person in the vehicle.

{¶ 9} An investigative stop of a vehicle is permissible if a police officer has a reasonable and articulable suspicion that the individual stopped may be involved in criminal activity. See *Terry v. Ohio* (1968), 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889. When determining whether an investigative traffic stop is supported by a reasonable and articulable suspicion of criminal activity, the stop must be viewed in light of the totality of the circumstances surrounding the stop. *State v. Bobo* (1988), 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph one of the syllabus, certiorari denied (1988), 488 U.S. 910, 109 S.Ct. 264, 102 L.Ed.2d 252. An officer's inchoate hunch or suspicion will not justify an investigatory stop. See *Terry*, supra. Rather, justification for a particular seizure must be based upon specific and articulable facts that, taken together with the rational inferences from those facts, reasonably warrant that intrusion. Id.

{¶ 10} Greathouse argues that the officers lacked a reasonable and articulable suspicion to stop the vehicle based solely on the assumption that the owner of the vehicle was the driver. He claims that in order for there to be a

lawful investigative stop of a vehicle based upon the results of a license plate check, some additional factor must be present.

{¶ 11} "It is well established that a police officer does not need to possess specific facts warranting suspicion of criminal behavior to run a license plate check on a vehicle traveling the public roadway." (Citations omitted.) *Rocky River v. Saleh* (2000),139 Ohio App.3d 313, 327, 743 N.E.2d 944. Furthermore, Ohio courts have recognized that a police officer who learns that the registered owner of a vehicle lacks driving privileges may reasonably infer that the automobile is being driven by its registered owner. E.g., *State v. Mack*, Summit App. No. 24328, 2009-Ohio-1056, ¶9; *State v. Metcalf*, Summit App. No. 23600, 2007-Ohio-4001, ¶8; *State v. Jones*, Belmont App. No. 03 BE 28, 2004-Ohio-1535, ¶11; *State v. Maston*, Mahoning App. No. 02 CA 101, 2003-Ohio-3075, ¶16; *Saleh*, supra at 327; *State v. Yeager* (Sept. 24, 1999), Ross App. No. 99CA2492.

{¶ 12} While the presence of other factors corroborating the driver's identity as the unlicensed owner may enhance an officer's reasonable suspicion, such factors are not necessary to justify this type of investigative stop. See *Metcalf*, supra; *Yeager*, supra; *State v. Simmons* (Mar. 29, 1996), Montgomery App. No. 14845. In *Bay Village v. Pshock* (June 18, 1998), Cuyahoga App. No. 72931, a case relied upon by Greathouse, the officer had a physical description of the owner that matched the physical description of the driver. Although a corroborating factor was present, this court did not find that it was necessary to

justify the stop. Indeed the court recognized that "the officer could reasonably presume that the driver of the motorcycle was the owner." Id.

{¶ 13} One court stated the following: "The reasonable and articulable suspicion exception to the Fourth Amendment warrant requirement requires specific facts on which to base a suspicion of unlawful conduct, but it also permits reasonable inferences to be drawn from those facts in arriving at that suspicion. Because it is reasonable to infer that the driver of a vehicle may be its registered owner, even absent a physical description or other corroboration, an officer who learns that the registered owner of a vehicle lacks driving privileges is permitted to stop a person seen operating it to investigate whether the operator is licensed." *Greenville v. Fortkamp* (May 15, 1998), Darke App. No. 97-CA91449. "Thus, absent some indication that the registered owner is not driving the automobile, police may conduct an investigatory stop if they learn that the registered owner has a suspended license." *State v. Elliott*, Washington App. No. 08CA50, 2009-Ohio-6006, ¶17.

{¶ 14} In this case, the officers learned that the owner of the vehicle had a temporary permit, and they did not observe anyone else in the vehicle. The record does not reflect any indication that the registered owner was not driving the vehicle. Because it is reasonable to infer that an automobile's owner is driving it, the officers had a reasonable and articulable suspicion that the driver was committing a traffic offense. Thus, the investigative stop of the vehicle was justified.

{¶ 15} Additionally, the police officers were permitted to minimally intrude upon the driver to request his identification. When Greathouse rolled his window down, Officer Seiger detected a strong odor of marijuana. He also learned that the driver did not have his license. The officer conducted a pat-down search of Greathouse and found two bags of marijuana. Because the officer's actions were lawful, we find the trial court erred by granting the motion to suppress. The state's sole assignment of error is sustained.

Judgment reversed, cause remanded.

It is ordered that appellant recover from appellee 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 common pleas 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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

ANN DYKE, J., and
MARY J. BOYLE, J., CONCUR