[Cite as *Chagrin Falls v. Bloom*, 2015-Ohio-2264.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101686

VILLAGE OF CHAGRIN FALLS

PLAINTIFF-APPELLANT

vs.

RUSSELL H. BLOOM

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Criminal Appeal from the
Bedford Municipal Court
Case No. 13 TRC 05769

BEFORE: Stewart, J., McCormack, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 11, 2015

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MELODY J. STEWART, J.:

{¶1} A police officer for the village of Chagrin Falls witnessed an intoxicated defendant-appellee, Russell Bloom, on a bicycle. About ten minutes later, the same officer saw Bloom driving a car. The officer drove after Bloom and stopped him. A subsequent test showed that Bloom had a blood alcohol concentration of .114. Bloom filed a motion to suppress the results of the blood alcohol test on grounds that the officer lacked a reasonable and articulable suspicion to stop the car. The court granted the motion to suppress, finding that the officer's smelling alcohol on Bloom when he was on the bicycle did not equate to criminal activity sufficient to provide a reasonable suspicion to stop the vehicle, particularly when the officer admitted that Bloom committed no traffic offenses or otherwise drove erratically enough to justify a traffic stop. The village appeals.

{¶2} Both the Fourth Amendment of the United States Constitution and Section 14, Article I of the Ohio Constitution guarantee the right to be free from unreasonable searches and seizures. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 7, citing *State v. Orr*, 91 Ohio St.3d 389, 745 N.E.2d 1036 (2001). In this context, "reasonable" means that searches and seizures must be based on probable cause and supported by a warrant. *See Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

{¶3} Some searches and seizures are valid as exceptions to the probable cause/warrant requirement of the Fourth Amendment, among those being investigatory

stops. Investigatory stops, as described in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), permit a police officer to "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). The officer's reasonable suspicion that a person has committed or is committing a crime should be based on "the totality of the circumstances — the whole picture." *United States v. Sokolow*, 490 U.S. 1, 8, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). This is an objective standard that is less demanding than the probable cause requirement. *Id*. at 7.

{¶4} The arresting officer was the sole witness at the suppression hearing. He testified that he had been at a gas station at 2:20 a.m., speaking with an officer from the village of Moreland Hills. A woman, later identified as Bloom's girlfriend, arrived and the three began a "casual" conversation. During that conversation, the officer saw Bloom drive by the gas station twice to "check on" the girlfriend. The officer stated that Bloom's actions were "no cause for concern at the time." Bloom then showed up a third time, but on a bicycle and in his bare feet. With Bloom "out in the open air," the officer was able to determine that Bloom was staggering while trying to hold himself up on the stopped bicycle. The officer also stated that Bloom "appeared to be intoxicated and I was able to actually smell an odor of an alcoholic beverage coming from his general area, from his person." Bloom rode away on his bicycle, an act that did not bother the officer because there was no traffic in the area, the woman said that Bloom was "just going

home," and that the officer "didn't feel [Bloom] was going to be nuisance to anybody or endanger himself * * * or others while riding the bicycle."

{¶5} Some 10-15 minutes later, the officer saw Bloom drive up to the gas station. Bloom "didn't stop and say anything nor did he pull into [the gas station], he just passed our location and looked." Believing that Bloom was driving while intoxicated, the officer entered his cruiser and traveled about a mile before he located Bloom's car and stopped it. The officer admitted that he did not see Bloom commit any traffic infraction before stopping the car and did not cite him for any moving violation.

{¶6} The village charged Bloom with violating both R.C. 4511.19(A)(1)(a) and 4511.19(A)(1)(d). R.C. 4511.19(A)(1)(a) prohibits any person from operating a vehicle if the person is under the "influence of alcohol." The courts have construed the "influence" component of R.C. 4511.19(A)(1)(a) to mean an impairment caused by alcohol that deprives the driver of "clearness of intellect and control of himself which he would otherwise possess." *State v. Hardy*, 28 Ohio St.2d 89, 90, 276 N.E.2d 247 (1971). *See also State v. Adera*, 8th Dist. Cuyahoga No. 92306, 2010-Ohio-3304, ¶ 19.

{¶7} The officer's testimony at the suppression hearing established that Bloom appeared intoxicated just minutes prior to being seen driving the car. The officer testified that Bloom smelled of alcohol and staggered while trying to hold himself up on the bicycle. The officer also testified that Bloom acted strangely, appeared agitated while on the bicycle, and that his speech was slurred, although the officer was unsure whether this was due to intoxication or a "somewhat slower or thick speech." In any

event, the officer testified that in light of his experience and training as a police officer, he believed that these facts showed that Bloom was under the influence of alcohol at the time he was on the bicycle. Having concluded that Bloom was intoxicated, the officer had no reason to think that Bloom was no longer under the influence of alcohol just 10-15 minutes later when he was seen behind the wheel of a moving car. The officer thus had a reasonable, articulable suspicion that Bloom was under the influence of alcohol while driving, so the stop was a valid investigatory stop. *See Wickliffe v. Gutauckas*, 79 Ohio App.3d 224, 226, 607 N.E.2d 54 (11th Dist.1992).[1]

{¶8} The court, citing *Geneva v. Fende*, 11th Dist. Ashtabula No. 2009-A-0023, 2009-Ohio-6380, found that the officer saw no evidence of erratic driving or evidence of criminal activity sufficient to justify the stop. In *Fende*, an officer responded to a dispatch concerning a car in a ditch. The officer found the car empty, locked, and its ignition off. It appeared to the officer that the car had traveled across the center line before leaving the road and stopping in a bank of weeds. The officer decided to locate the driver and provide assistance in case the driver was in distress. As the officer entered his car, he saw another car with a driver and passenger. The officer drove a short distance to see if he could locate the driver, but to no avail. As he returned to the abandoned car, he noticed a car in a nearby school parking lot. The car had not been there just minutes earlier, so he thought he would make contact with the occupants to see

[1] At the start of the suppression hearing, Bloom's attorney told the court that "[t]he only issue is whether or not the officer had a reasonable articulable suspicion to pull the car over in the first place."

what they doing there. As he approached the car, it pulled out of the parking lot. It turned out to be the same car that passed him when he left the abandoned car to locate its driver. The officer stopped the car, discovered the driver, Fende, was intoxicated, and arrested her for operating a vehicle while intoxicated. There was no indication that the stopped car driven by Fende violated any traffic laws prior to the stop.

{¶9} *Fende* concluded that the officer improperly stopped the car because he had no reasonable suspicion that the driver was engaged in criminal activity. *Id*. at ¶ 34. In this case, the officer had a reasonable suspicion that Bloom was engaged in criminal activity before he made the stop. Once the officer had reason to believe that Bloom was under the influence, Bloom's mere act of operating a vehicle in that state gave the officer a reasonable, articulable suspicion that Bloom was operating the vehicle while intoxicated. The court appeared to equate driving under the influence with an inability to operate a car in conformity with traffic laws. That conclusion would wrongfully make the commission of a moving violation the sine qua non of an OVI offense. And if taken to its logical end, it would lead to the untenable conclusion that an officer who saw an obviously intoxicated person would be powerless to stop a vehicle driven by that person if by chance the driver did not break any traffic laws.

{¶10} Reasonably suspecting that Bloom was intoxicated, Bloom's act of driving the car in that state gave the officer a reasonable, articulable suspicion that Bloom was operating the vehicle while intoxicated. In this case, the fact that Bloom failed to

commit any moving violation in the car before he was pulled over made no difference. The assignment of error is sustained.

{¶11} Judgment reversed and remanded.

It is ordered that appellant recover of said 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 Bedford 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.

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MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
SEAN C. GALLAGHER, J., CONCUR