[Cite as *Mentor v. Krejsa*, 2002-Ohio-7145.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

CITY OF MENTOR,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2001-L-188**
- vs -	:	
MATTHEW J. KREJSA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Mentor Municipal Court, Case No. 01 TRC 3963.

Judgment: Affirmed.

Ron M. Graham, Mentor City Prosecutor, 8500 Civic Center Boulevard, Mentor, OH 44060 (For Plaintiff-Appellee).

Richard J. Perez, Interstate Square Building I, 4230 State Route 306, Suite 240, Willoughby, OH 44094-9204, (For Defendant-Appellant).

JUDITH A. CHRISTLEY, J.

{¶1} This is an accelerated calendar appeal taken from the final judgment of the Mentor Municipal Court, wherein appellant, Matthew J. Krejsa, pled no contest to operating a vehicle with a prohibited concentration of alcohol after his motion to suppress was denied.

{¶2} The following facts were adduced at the suppression hearing. On the evening of July 4, 2001, Eugene L. Scott ("Mr. Scott") was at a halt in traffic resulting

from a fireworks display. During this time, Mr. Scott witnessed appellant and another occupant in a landscaping-type vehicle, "swearing *** at the police officer directing traffic, *** [and] [t]hey were slurring their words like they were intoxicated." In response to the situation, Mr. Scott reported his observation to a nearby police officer:

{¶3} "Q. [by prosecuting attorney] Okay. What did you do?

{¶4} "A. Finally, the officer let us go.

{¶5} "When I got near the officer, he was probably four car lengths ahead of where, you know, from where I was parked.

{¶6} "When I came up to the patrolman, I stopped and I told him, you know, what happened, and I thought that the two individuals were intoxicated.

{¶7} "Q. What made you come to that conclusion?

{¶8} "A. Just the way they were acting and they were slurring their words."

{¶9} While directing traffic after a fireworks display, Patrolman Greco of the Mentor Police Department received a dispatch giving a description of a landscaping-type vehicle and advising him of a "traffic complaint stating that another motorist was identifying another vehicle as having an intoxicated driver, yelling obscenities towards -- out of the vehicle, as well as drinking while he was in the vehicle."

{¶10} When Patrolman Greco observed a vehicle matching the description, he approached this vehicle on foot and "asked the driver what his problem was." According to the police officer, as soon as appellant began to speak, he could smell an odor of alcohol emanating from the vehicle. As a result, Patrolman Greco "[had appellant] pull over to the side by the bike path and stopped him there." Appellant was subsequently arrested for operating a vehicle while under the influence of alcohol, in

violation of R.C. 4511.19(A)(1); and operating a vehicle with a prohibited concentration of alcohol of .177, in violation of R.C. 4511.19(A)(3).

{¶11} After entering a plea of not guilty to the charges, appellant filed a motion to suppress on September 4, 2001. According to appellant, since Patrolman Greco did not personally see appellant violate any traffic law and did not obtain a warrant to detain appellant, the investigatory stop was unconstitutional. Upon consideration, the trial court denied appellant's motion to suppress on September 24, 2001.

{¶12} Thereafter, appellant entered a plea of no contest to operating a vehicle with a prohibited concentration of alcohol, in violation of R.C. 4511.19(A)(3), while the remaining charge was dismissed. Appellant's sentence was stayed pending the outcome of this appeal.

{¶13} It is the denial of his motion to suppress from which appellant appeals, submitting a lone assignment of error for our consideration. Under this assignment of error, appellant contends that the tip provided by Mr. Scott was insufficient to create reasonable suspicion to justify the stop of appellant's vehicle. According to appellant, Mr. Scott merely observed appellant and his passenger yelling, using foul language, and slurring their words. While this conduct may have been offensive, appellant suggests that there was no evidence that he was breaking the law. Appellant further points out that since the dispatch received by Patrolman Greco was factually erroneous, the officer lacked the reasonable suspicion necessary to justify the stop of appellant's vehicle.[1]

{¶14} In analyzing the appropriateness of effectuating an investigative stop based on an informant's tip, the Supreme Court of Ohio stated the following:

{¶15} "[W]here 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.

{¶16} "***

{¶17} "Where *** the information possessed by the police before the stop stems solely from an informant's tip, the determination of reasonable suspicion will be limited to an examination of the weight and reliability due that tip. *** The appropriate analysis, then, is whether the tip itself has sufficient indicia of reliability to justify the investigative stop. Factors considered 'highly relevant in determining the value of [the informant's] report' are the informant's veracity, reliability, and basis of knowledge." (Emphasis and citations omitted.) *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 298-299.

{¶18} In the instant matter, it is undisputed that Mr. Scott was an identified citizen informant, and as such, was highly reliable. *Weisner* at 300. Furthermore, Mr. Scott's tip was quite reliable and credible because it was based on his own personal observation of appellant's behavior. *Weisner* at 302. Immediately upon observing appellant's rowdy behavior, Mr. Scott described them to a nearby officer who relayed the tip to dispatch. It is reasonable to infer that Mr. Scott reported his observations to a police officer because he may have considered appellant's behavior to be a safety concern. Under the totality of these circumstances, Mr. Scott's tip was trustworthy, reliable, and due significant weight.

{¶19} For these reasons, Mr. Scott's tip afforded Patrolman Greco reasonable suspicion justifying the initial encounter with appellant without the need for independent police corroboration. See, e.g., *Weisner* at 302-303. Here, Mr. Scott advised a nearby

1. Because appellant contests only the alleged stop, we will limit our analysis accordingly.

officer that appellant and another occupant in the vehicle were swearing and yelling, and "thought they were intoxicated because they were slurring their words." As recognized by the Sixth Appellate District, "[s]lurred speech and inappropriate behavior is sufficient to give rise to reasonable suspicion that someone is intoxicated." *State v. Adkins* (Nov. 17, 2000), 6th Dist. No. E-00-028, 2000 Ohio App. LEXIS 5308, at 5-6.

{¶20} The only fact that makes this case unique is that a portion of the information contained in the dispatch was embellished, as Patrolman Greco was advised that the driver was "drinking while he was in the vehicle." This, however, is of no consequence. If that portion of the dispatch had been omitted, Patrolman Greco would still have had reasonable suspicion to effectuate the stop. Viewing the dispatch in its totality, the immediate purpose of the communication was to advise Patrolman Greco that pursuant to an identified citizen informant's personal observation, a motorist appeared to be intoxicated while operating a motor vehicle.

{¶21} Based on the foregoing analysis, appellant's lone assignment of error is without merit, and the judgment of the trial court is affirmed.

Judgment affirmed.

ROBERT A. NADER, J., concurs in judgment only with concurring opinion.

WILLIAM M. O'NEILL, P.J., dissents with dissenting opinion.

ROBERT A. NADER, J., concurring in judgment only.

{¶22} Appellant's sole assignment of error contends that evidence of his driving while under the influence of alcohol should have been suppressed. He suggests that

his "stop" by Patrolman Greco violated the Fourth Amendment because he relied upon a dispatch from another officer who reported "drinking and driving" by appellant when conveying information from an identified informant of "yelling, using foul language, and slurring their words," but not drinking and driving.

{¶23} Appellant and the informant were both driving in a line of traffic exiting a parking lot, after watching a fireworks display. The informant observed appellant's behavior and reported it to a police officer directing traffic. That officer then described appellant's vehicle and behavior over his radio. Patrolman Greco received this message on his radio, together with the embellishment.

{¶24} Both officers were directing traffic out of the parking lot. It was their responsibility to see that it was done in a safe and orderly manner. Patrolman Greco was fully within his authority and performing his assigned duty when he approached the identified vehicle, stopped near him in the line of traffic, to inquire about the reason for the use of loud and foul language.

{¶25} This court has expressly held on numerous occasions that "the mere approach and questioning of persons seated within parked vehicles does *not* constitute a seizure." (Emphasis added.) *State v. Barth* (June 2, 2000), 11th Dist. No. 99-L-058, Ohio App. LEXIS 2351. See, also, *State v. Welz* (Dec. 9, 1994), 11th Dist. No. 93-L-137, 2000 Ohio App. LEXIS 2351, at *5; *State v. Lott* (Dec. 26, 1997), 11th Dist. No. 96-A-0011, 1997 Ohio App. LEXIS 5860, at 13.

{¶26} Not every police-citizen encounter implicates the Fourth Amendment. *Terry v. Ohio* (1968), 392 U.S. 1, 19. Rather, it is when the encounter rises to the level of a seizure that the Fourth Amendment is triggered. Id.

{¶27} Maintaining peace and order is essential to crowd control. Whether appellant had been drinking and driving was not essential to Patrolman Greco's inquiry; however, as a result of his inquiry, reasonable suspicion arose and developed into probable cause.

{¶28} I concur in judgment only and write separately to emphasize that, under the totality of circumstances in this scenario, it is evident police officers, in the performance of their duties, do not always need reasonable suspicion to approach an individual.

WILLIAM M. O'NEILL, P.J., dissenting.

{¶29} For the reasons that follow, I respectfully dissent from the majority opinion, which concludes that the trial court did not err in denying appellant's motion to suppress.

{¶30} The burden is on the state to demonstrate that the officer "*issuing the dispatch* possessed sufficient knowledge of facts or information to justify the stop, where the *stopping officer* himself did not."[2] Thus, an officer's statement that he or she relied on the dispatch is not, by itself, sufficient to justify the stop. The officer issuing the dispatch must possess reasonable suspicion of criminal activity.[3]

{¶31} The majority correctly notes that Scott was an identified citizen informant and, therefore, a highly reliable source. However, Scott's tip did not reveal any criminal behavior. Scott only notified the officer that appellant was being loud and slurring his speech.

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2. (Emphasis in original.) *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 297-298.
3. Id.

{¶32} When looking at the totality of the circumstances, it is clear that the dispatcher, based on Scott's tip, lacked reasonable suspicion to justify the stop. Appellant's behavior may have been offensive, but Scott's tip to the police did not, in itself, provide reasonable suspicion to justify stopping appellant's vehicle. The subsequent dispatch relayed to Officer Greco differed greatly in that it stated that appellant was drinking and driving, and was possibly intoxicated. This wide disparity between the actual tip provided by the informant and the dispatch relayed to the stopping officer offends the core concepts of Fourth Amendment jurisprudence. Had the reliability of the informant's tip been corroborated or had Officer Greco witnessed for himself unlawful behavior, there then would have been justification to make the stop. The state cannot rely on a factually erroneous dispatch to justify a stop that otherwise lacked the requisite reasonable suspicion.

{¶33} Therefore, I would reverse the trial court's denial of appellant's motion to suppress because, based on the tip provided by the identified citizen informant, the dispatching officer lacked any reasonable suspicion to justify the stop. For these reasons, I respectfully dissent.