[Cite as *Lakewood v. Crump*, 2010-Ohio-5581.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93618

CITY OF LAKEWOOD

PLAINTIFF-APPELLEE

vs.

BRANDON CRUMP

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Lakewood Municipal Court
Case No. 08 TRC 04872

BEFORE: McMonagle, J., Rocco, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: November 18, 2010

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Brandon Crump, appeals the denial of his motion to suppress. We affirm.

{¶ 2} In September 2008, a criminal complaint was filed against Crump in the Lakewood Municipal Court, charging him with operating a motor vehicle while under the influence of alcohol or a drug of abuse and driving under a suspended license. Crump filed a motion to suppress, and after a

hearing, the motion was denied. Crump pleaded no contest to the charges and the trial court found him guilty.

{¶ 3} Two witnesses testified for the city at the suppression hearing: Scott Gerstenfeld and Officer Donald Mladek. Gerstenfeld was a tow-truck driver who was working on the day of the incident checking the parking lot of a Newman Avenue apartment building for unauthorized cars. Gerstenfeld testified that, at approximately 1:00 a.m., while he and his supervisor were checking the lot, a car drove onto the lot at a "pretty high rate of speed and [the] supervisor was in its path and * * * had to step out of the way of the vehicle to avoid getting hit at that time." Gerstenfeld shone his flashlight into the car to see "what was going on." The driver of the vehicle, Crump, parked the car, and got out "enraged." A verbal altercation between Gerstenfeld and Crump ensued, and the supervisor called for help.[1] Gerstenfeld testified that during the encounter he smelled a "strong scent of alcohol" on Crump and thought he was "drunk." Gerstenfeld also testified that he recognized Crump from a previous encounter when he towed Crump's car.

{¶ 4} The police responded in two or three minutes, but by that time, Crump had left the area and entered the apartment building. Officer

[1] The Lakewood police were called. The record is not clear whether the supervisor called the tow truck company's dispatcher, who called the police, or if the supervisor called the police himself.

Mladek spoke briefly with Gerstenfeld and the supervisor. Mladek testified that Gerstenfeld told him that Crump smelled of alcohol and showed him the car Crump had been driving. The officer felt the hood of the car, which was still warm, and saw "in plain view" in the car a piece of mail addressed to "Kelly Griffin" at unit 112 of the apartment building. After running the license plate, the officer learned that the car was registered to a Kelly Griffin.

{¶ 5} The police randomly "dialed" different apartment units until someone "buzzed" them into the apartment building.[2] The police then went to unit 112 and "knocked and announced." They knocked on the door for several minutes without response. Crump eventually responded, talking to the police through the door, telling them that he did not wish to speak to them. Mladek testified that the police persisted because they were trying to "investigate" the complaint. Eventually, Crump opened the door and stood in the "threshold" of the doorway. The officer testified that while he was speaking with Crump, he could smell a "moderate odor of alcohol, his speech was slurred, [and] his eyes were bloodshot. We asked him for identification — we asked him to speak to the owner of the car, I believe it's his girlfriend or fiancee, he refused to let us speak to her so we could try and see who was —

[2]Mladek testified that one of the other officers was the one who got "buzzed" in; Mladek did not know whether that officer had "dialed" unit 112 and/or if someone from that unit had allowed the police entry.

who had possession of the car. He refused to identify himself to us, he just became loud."

{¶ 6} Mladek further testified that "[b]ased on the description given by [Gerstenfeld], the odor of alcoholic beverage, the — Mr. Crump refusing to identify himself either verbally or by the state ID card or driver's license, we believe[d] that he was involved in the incident and he was placed under arrest for suspected OVI, among other things." The officer testified that after Crump was arrested, he admitted that he had been on the parking lot and had a confrontation with Gerstenfeld because he was mad that Gerstenfeld had previously towed his car and thought he was going to tow it again. Crump also told the officer that he went into the apartment building because he knew the police were coming and he was afraid of the police.

{¶ 7} Crump's motion sought suppression of the following: (1) evidence relating to the custodial interrogation, search, and arrest; (2) the breath test he submitted to; and (3) the statement elicited from Kelly Griffin. At the hearing, however, the only issue addressed was Crump's arrest. In his sole assignment of error, which is the issue we will address, Crump contends that "the trial court erred when it denied [his] motion to suppress as the Lakewood police invaded the sanctity of [his] home without privilege or justification."

{¶ 8} A motion to suppress evidence challenges the arrest, search, or seizure at issue as somehow being in violation of the Fourth Amendment of

the United States Constitution. *State v. Williams*, Cuyahoga App. No. 81364, 2003-Ohio-2647, ¶7. The principle remedy for such a violation is the exclusion of evidence from the criminal trial of the individual whose rights have been violated. Id. Exclusion is mandatory when such evidence is obtained as a result of an illegal arrest, search, or seizure. Id., citing *Mapp v. Ohio* (1961), 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081.

{¶ 9} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8. In deciding a motion to suppress, the trial court assumes the role of trier of fact. Id. A reviewing court is bound to accept those findings of fact if they are supported by competent, credible evidence. Id. But with respect to the trial court's conclusion of law, we apply a de novo standard of review and decide whether the facts satisfy the applicable legal standard. Id., citing *State v. McNamara* (1977), 124 Ohio App.3d 706, 707 N.E.2d 539.

{¶ 10} The gravamen of Crump's complaint in this appeal is that the police entered his home without a warrant and arrested him. In regard to Crump's contention that the police entered his home, the trial court found that "[t]here is no evidence in the record that the officer entered [Crump's] apartment. Rather, the record shows that the defendant eventually opened the door and stepped out of the apartment. The arrest occurred in the

common area of the apartment complex, not the defendant's apartment." Some competent, credible evidence supports this finding. Officer Mladek testified that when Crump opened the door to his apartment, he "stepped into the threshold," or "door jamb." The officer testified that he never went into Crump's apartment, nor did he reach into the apartment to arrest him: "I didn't have to reach in, I was standing right next to him talking to him."

{¶ 11} As to the warrantless arrest, generally, a police officer may not make a warrantless arrest for a misdemeanor unless the offense is committed in the officer's presence. See R.C. 2935.03. The Ohio Supreme Court, however, has recognized an exception to this rule that allows a police officer to make a warrantless arrest for a misdemeanor not committed in his presence under certain circumstances. *Oregon v. Szakovits* (1972), 32 Ohio St.2d 271, 274, 291 N.E.2d 742. In *Oregon*, the Court (reviewing two cases) held that the police legally arrested motorists without a warrant when they responded to accident scenes shortly after the accidents occurred, and while on the scene, the motorists admitted to driving vehicles, and appeared to be under the influence of alcohol.[3]

[3]" * * * [T]he presence of an intoxicated individual in, or in the vicinity of, an automobile which obviously had been driven by him clearly indicates that he was intoxicated while driving. Under such circumstances, * * * the offense is not 'an accomplished fact' which could no longer be prevented since such individuals could have easily resumed driving, in such intoxicated condition, unless prevented from doing so by the officer." Id. at 275-276, (Leach, J., concurring) quoting *State v. Lewis* (1893), 50 Ohio St. 179, 33 N.E. 405.

{¶ 12} In *Beachwood v. Sims* (1994), 98 Ohio App.3d 9, 647 N.E.2d 821, this court held that a citizen-informant's tip was corroborated by sufficient details to provide the police officer with reasonable suspicion to make an investigatory stop. There, a motorist called the police from his car phone and related that he was following a vehicle that was being driven erratically. The motorist followed the vehicle to a residence, and the police responded to that residence. The police spoke with the informant and learned that the operator of the vehicle had driven from downtown Cleveland to Beachwood, during the course of which the vehicle had two or three near-miss accidents.

{¶ 13} The police approached the defendant, who was in his garage, and observed that he was very unsteady, very red-faced, had slurred speech, glassy eyes, and a very strong odor of alcoholic beverage on his breath. The defendant "volunteered" that he had consumed three beers at a downtown bar and driven from downtown to his house. After field sobriety tests were performed, the defendant was arrested for driving under the influence of alcohol.

{¶ 14} This court held that the "citizen-informant's tip was corroborated by sufficient details to serve as a basis for the police officer's investigatory tip." Id. at 14. This court further held that the police officer's own

observations, coupled with the informant's information, provided the officer probable cause to arrest the defendant. Id. at 15.[4]

{¶ 15} Here, the trial court found the following regarding the warrantless arrest: "the court finds that the police had probable cause to arrest the defendant based upon the facts available to him at the time. Moreover, the record shows that despite repeated requests, defendant refused to identify himself to the police. The defendant's refusal to do so, in addition to the probable cause established, was an independent basis for his arrest. [R.C.] 2935.26."[5] Some competent, credible evidence supports this finding.

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[4]See, also, *Westlake v. Vilfroy* (1983), 11 Ohio App.3d 26, 462 N.E.2d 1241 ("The police officer's observations that defendant was lying on the grass, in the early morning hours, with the odor of alcohol on her breath, near a car that struck a utility pole, do not demonstrate the defendant's guilt beyond a reasonable doubt, but do provide probable cause for her arrest for operating a vehicle while under the influence of alcohol"); *State v. Eves* (Nov. 6, 1995), Warren App. No. CA95-02-010 ("* * * we find that appellant's arrest for driving under the influence of alcohol was a proper warrantless arrest, the officer had probable cause to arrest appellant for DUI, and the officer's probable cause was not based upon impermissible inferences. Even though [the officer] did not observe appellant driving the vehicle, we find that the totality of the other facts known to [the officer] were sufficient to support the conclusion that appellant had operated the vehicle under the influence of alcohol at the time of the accident.")

[5]R.C. 2935.26 provides in relevant part as follows: "(A) Notwithstanding any other provision of the Revised Code, when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer shall not arrest the person, but shall issue a citation, unless one of the following applies:

"* * *

"(2) The offender cannot or will not offer satisfactory evidence of his identity."

{¶ 16} Gerstenfeld testified that Crump drove onto the parking lot at a high rate of speed, and his supervisor had to move to avoid being hit. While engaged in a verbal encounter with Crump, Gerstenfeld smelled a "strong scent of alcohol" on Crump and believed he was "drunk." Gerstenfeld informed Officer Mladek of his suspicion when he arrived. The officer testified that while he was speaking with Crump, he could smell a "moderate odor of alcohol, his speech was slurred, [and] his eyes were bloodshot. We asked him for identification — we asked him to speak to the owner of the car, I believe it's his girlfriend or fiancee, he refused to let us speak to her so we could try and see who was — who had possession of the car. He refused to identify himself to us, he just became loud." This evidence supports the trial court's finding that the police had probable cause to arrest Crump.

{¶ 17} Accordingly, the trial court did not err in denying Crump's motion to suppress and his 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 Lakewood Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

KENNETH A. ROCCO, P.J., CONCURS;
ANN DYKE, J., CONCURS IN JUDGMENT ONLY