

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOHN JOSEPH GALE,

Defendant-Appellee.

UNPUBLISHED

September 21, 2010

No. 292073

Wayne Circuit Court

LC No. 08-003887-FH

Before: MURRAY, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing a charge of operating a vehicle while intoxicated (third offense), MCL 257.625(1) and (9)(c), after the court granted defendant's motion to suppress evidence. The circuit court found the police stop of defendant's vehicle illegal because it was not supported by probable cause. We reverse and remand for reinstatement of the charge. We have decided this appeal without oral argument pursuant to MCR 7.214(E).

We review for clear error "[a] trial court's findings of fact on a motion to suppress" *People v Hrlie*, 277 Mich App 260, 262-263; 744 NW2d 221 (2007). "But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress." *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005).

At an evidentiary hearing, Officer Paul Calleja testified that in February 2008 he responded to a call that "an intoxicated customer had just entered a van." The caller, identified as an employee of H & R Block, described the van, gave its license plate number, and advised that the van had just left that place of business driving on Tech Center Drive in Livonia. Calleja headed toward the location given and, within about 20 seconds, saw a van matching the description by type, color, and plate number. Calleja was driving westbound on Plymouth Road toward Middlebelt Road, and he saw the van, which was traveling eastbound on Plymouth toward Middlebelt, approaching from a distance of approximately two blocks. Calleja waited for the van to pass the intersection and then made a U-turn and drove behind it. He paced the van at 32 miles an hour in a 40-mile-an-hour zone. Calleja followed the van for almost one-quarter of a mile at 32 miles an hour until it turned right into a restaurant parking lot. At that point, Calleja activated his lights and siren and effectuated a stop. Calleja observed the van over a total

distance of about 5-1/2 blocks, or almost half a mile. The circuit court ruled that the stop was illegal because it was not supported by probable cause, explaining:

He stopped him before he saw him do anything; and if the man is in the right turn lane and drives three blocks before making a right hand turn, I'm glad he wasn't going 40 when he spun up in that lot. So he had no observations that would raise the phone call above reasonable suspicion to a level of probable cause, so I guess the motion is granted.

The circuit court plainly applied an incorrect legal standard by focusing on whether probable cause supported Calleja's traffic stop of defendant. "In order to effectuate a valid traffic stop, a police officer must have an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009), quoting *People v Williams*, 236 Mich App 610, 612; 601 NW2d 138 (1999); see also *People v Faucett*, 442 Mich 153, 169 n 19; 499 NW2d 764 (1993) (emphasizing that an investigative stop requires reasonable suspicion, whereas a vehicle search conducted without a warrant requires probable cause).

"Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause." *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). A detaining officer "must have a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v Cortez*, 449 US 411, 417-418; 101 S Ct 690; 66 L Ed 2d 621 (1981). "The reasonableness of an officer's suspicion is determined on a case-by-case basis in light of the totality of the facts and circumstances and specific reasonable inferences he is entitled to draw from the facts in light of his experience." *People v Jones*, 260 Mich App 424, 429-430; 678 NW2d 627 (2004).

"An anonymous tip can provide reasonable suspicion if it is considered along with a 'totality of the circumstances' that show the tip to be reliable." *People v Perreault*, 287 Mich App 168, 176 (dissenting opinion by O'CONNELL, J.); 782 NW2d 526, rev'd for reasons stated in Court of Appeals dissenting opinion 486 Mich 914 (2010), quoting *Faucett*, 442 Mich at 169. "Further, the tip must carry with it sufficient indicia of reliability to support a reasonable suspicion of criminal activity. However, a sufficiently detailed tip may provide reasonable suspicion of criminal activity, especially when there is independent corroboration of some of the facts." *Id.* But standing alone, without any "'indicia of reliability'" or "'means to test the informant's knowledge or credibility,'" an anonymous tip is generally insufficient. *People v Horton*, 283 Mich App 105, 111-112; 767 NW2d 672 (2009), quoting *Florida v J L*, 529 US 266, 271-272, 274; 120 S Ct 1375; 146 L Ed 2d 254 (2000).

We concur in the prosecutor's contention that the caller's tip in this case does not fall within the category of entirely anonymous tips. Many courts from other jurisdictions have held that where a tipster does not offer her name, but indicates her place of employment, courts should not view the tip as anonymous because the caller is "identifiable and subject to being located and held accountable for the information she provided to law-enforcement officials." *State v Strickland*, 934 So 2d 1084, 1098 (Ala App, 2005) (store employee called and reported suspicious purchases of Sudafed); see also *State v Bolanos*, 58 Conn App 365, 369; 753 A2d 943 (2000) (nightclub employee called to report an intoxicated person driving from the club); *Playle*

v Comm’r of Pub Safety, 439 NW2d 747, 748-749 (Minn App, 1989) (restaurant employee called and reported a drunk driver at the restaurant); *United States v Fernandez-Castillo*, 324 F3d 1114, 1117-1118 (CA 9, 2003) (state dispatcher reported to law enforcement that one of its employees had seen erratic driving); *People v Polander*, 41 P3d 698, 701-704 (Colo, 2001) (restaurant employee reported observing occupants of vehicles in the parking lot passing a marijuana pipe). As Justice Kennedy explained in his concurring opinion in *J L*, 529 US at 275, “a tip might be anonymous in some sense yet have certain other features, either supporting reliability or *narrowing the likely class of informants*, so that the tip does provide the lawful basis for some police action.” (Emphasis added). As one example, Justice Kennedy observed, “If an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip.” *Id.* at 276.

In this case, the caller who supplied the tip concerning defendant’s van risked a loss of anonymity by identifying his or her place of employment and presence at work on Saturday, February 16, 2008, at the time of the report. The risked loss of anonymity here is arguably higher than in *Horton*, 283 Mich App at 107, 112-113, given that tracking down an informant through an employer and time at work would likely prove easier than tracking down a citizen that the police have contact with on an isolated occasion. The informant also referred to the intoxicated driver as a “customer,” thus revealing the basis for the informant’s opportunity to observe the driver’s intoxicated condition. The informant related detailed information concerning the location of the vehicle, and its identification by color, “type of van,” and license plate number. The officer’s detection of a vehicle matching the caller’s description, in the same vicinity and within approximately 20 seconds, substantiates that the tip contained current information. Finally, the officer’s observation of the unusually slow speed of the vehicle over the course of approximately one-quarter of a mile provides an additional reason to believe that the tipster correctly reported that the driver was intoxicated.¹ Under the totality of the circumstances, Officer Calleja had reasonable suspicion to make the investigative stop of the van driven by defendant, and the circuit court improperly granted the motion to suppress and dismissed the charge against defendant.

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Elizabeth L. Gleicher

¹ The circuit court discounted the slow speed, noting, “I’m glad he wasn’t going 40 when he spun up in that lot.” Although a prudent driver slows before making a turn, driving at a speed eight miles an hour below the speed limit for a quarter mile before turning is atypical. Moreover, the possibility of innocent explanations for conduct does not negate the reasonable suspicion arising from that conduct. See *People v Oliver*, 464 Mich 184, 202-204; 627 NW2d 297 (2001).