

[Cite as *State v. Townsley*, 2010-Ohio-3350.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DONALD E. TOWNSLEY

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 09-COA-039

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland Municipal Court,
Case No. 09TRC05283

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 15, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

W. DAVID MONTAGUE
Acting Assistant Prosecuting Attorney
1213 E. Main Street
Ashland, Ohio 44805

SHANE M. LEUTHOLD
Leuthold Law Office, LLC
1309 East Mansfield Street
P.O. Box 769
Bucyrus, Ohio 44820

Hoffman, J.

{¶1} Defendant-appellant Donald E. Townsley appeals the October 12, 2010 Judgment Entry of the Ashland Municipal Court overruling his motion to suppress evidence. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On August 15, 2009, Timothy Barrick and his wife were having a yard sale. Barrick is a former corrections officer with the Ashland County Sheriff's Department and a former police officer with the Ashland City Police Department with over twenty-five years of experience. During his years as a police officer, Barrick routinely handled DUI and public intoxication arrests.

{¶3} During the yard sale, Barrick's wife noticed Appellant and another person who were possibly under the influence. She detected a strong odor of alcohol, and observed their staggering around the yard. Barrick then went outside, and noticed Appellant "kept falling against the car" and Barrick smelled a strong odor of alcohol on him. Barrick concluded both men were under the influence of alcohol. He then called the police department. Officer Dorsey arrived approximately 15-20 minutes later. Both Barrick and Dorsey observed the vehicle Appellant had gotten into traveling on an adjacent street. Officer Dorsey then pursued the vehicle and initiated a traffic stop.

{¶4} Following the stop, Appellant was arrested for operating a vehicle while intoxicated. Appellant filed a motion to suppress, which the trial court then denied. Appellant entered a plea of no contest, and filed the within appeal.

{¶5} Appellant now assigns as error:

{¶6} “I. THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANT’S MOTION TO SUPPRESS THE TRAFFIC STOP.”

{¶7} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154-155, 797 N.E.2d 71, 74, 2003-Ohio-5372 at ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate the credibility of witnesses. See *State v. Dunlap* (1995), 73 Ohio St.3d 308, 314, 652 N.E.2d 988; *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists to support those findings. See *Burnside*, supra; *Dunlap*, supra. However, once an appellate court has accepted those facts as true, it must independently determine as a matter of law whether the trial court met the applicable legal standard. See *Burnside*, supra. [Citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539]; See, also, *United States v. Arvizu* (2002), 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740; *Ornelas v. United States* (1996), 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911. That is, the application of the law to the trial court's findings of fact is subject to a *de novo* standard of review. *Ornelas*, supra. Moreover, due weight should be given “to inferences drawn from those facts by resident judges and local law enforcement officers.” *Ornelas*, supra at 698, 116 S.Ct. at 1663.

{¶8} If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid. *State v. Mays*, 119 Ohio St.3d 406, 894 N.E.2d 1204, 2008-Ohio-4538 at ¶ 8. When a reviewing court determines

whether a stop was proper, it must consider the totality of the circumstances. *State v. Antill* (1993), 91 Ohio App.3d 589.

{¶9} The October 12, 2010 Judgment Entry overruling Appellant's motion to suppress indicates the trial court relied upon the "fellow officer rule" whereby an officer can stop a vehicle based upon another officer's observations. We find the trial court's reliance on the fellow officer rule to be in error. The evidence presented demonstrates Mr. Barrick is no longer a police officer, but is in fact retired. Therefore, we do not find the fellow officer rule applicable in this case. But Mr. Barrick's past experience as a police officer does add credibility to his opinion regarding Appellant's intoxication. We find Officer Dorsey's reliance on Mr. Barrick's observations as a credible, identified citizen informant justified the stop at issue.

{¶10} In *State v. Weisner*, the Ohio Supreme Court followed *Illinois v. Gates* (1983), 462 U.S. 213, holding:

{¶11} "Where, as here, 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. See *id.* 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. *Id.* at 328, 110 S.Ct. at 2415, 110 L.Ed.2d at 308, quoting *Illinois v. Gates* (1983), 462 U.S. 213, 230, 103 S.Ct. 2317, 2328, 76 L.Ed.2d 527, 543.

{¶12} "To assess the existence of these factors, it is useful to categorize informants based upon their typical characteristics. Although the distinctions between

these categories are somewhat blurred, courts have generally identified three classes of informants: the anonymous informant, the known informant (someone from the criminal world who has provided previous reliable tips), and the identified citizen informant. While the United States Supreme Court discourages conclusory analysis based solely upon these categories, insisting instead upon a totality of the circumstances review, it has acknowledged their relevance to an informant's reliability. The court has observed, for example, that an anonymous informant is comparatively unreliable and his tip, therefore, will generally require independent police corroboration. *Alabama v. White*, 496 U.S. at 329, 110 S.Ct. at 2415, 110 L.Ed.2d at 308. The court has further suggested that an identified citizen informant may be highly reliable and, therefore, a strong showing as to the other indicia of reliability may be unnecessary: '[I]f an unquestionably honest citizen comes forward with a report of criminal activity-which if fabricated would subject him to criminal liability-we have found rigorous scrutiny of the basis of his knowledge unnecessary.' *Illinois v. Gates*, 462 U.S. at 233-234, 103 S.Ct. at 2329-2330, 76 L.Ed.2d at 545.

{¶13} ****

{¶14} "Taken together, these factors persuade us that the informant's tip is trustworthy and due significant weight. The informant was an identified citizen who based his knowledge of the facts he described upon his own observations as the events occurred. As a result, his tip merits a high degree of credibility and value, rendering it sufficient to withstand the Fourth Amendment challenge without independent police corroboration. Accordingly, the dispatch based upon this tip was issued on sufficient facts to justify Patrolman Roberts's investigative stop."

{¶15} In the case sub judice, Mr. Barrick is a retired police and correctional officer with over twenty-five years of experience. In his role as a police officer, Barrick routinely responded to public intoxication and DUI offenses. Accordingly, Barrick's observations as an identified citizen informant were highly reliable and sufficient to justify the stop. The trial court did not err in overruling Appellant's motion to suppress.

{¶16} Appellant's sole assignment of error is overruled, and the October 12, 2010 Judgment Entry of the Ashland Municipal Court is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman _____
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards _____
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney _____
HON. PATRICIA A. DELANEY

