

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-081029
Plaintiff-Appellee,	:	TRIAL NO. 07TRC-67885
vs.	:	<i>JUDGMENT ENTRY.</i>
JOHN RODGERS,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant John Rodgers was arrested for operating a motor vehicle while under the influence of drugs or alcohol (“OVI”). The police officer who arrested Rodgers had stopped Rodgers’s vehicle in sole reliance on a police radio dispatch, which itself was solely based on information from an eyewitness/victim cellular-phone caller who had described a “crazy, drunk as hell” white male in a “white work truck” circling the Mohawk Street and McMicken Street areas in Cincinnati and soliciting “transys.” Rodgers moved to suppress all evidence of intoxication on the basis that the stop had not been based upon reasonable suspicion. The trial court denied Rodgers’s motion, and Rodgers entered a no-contest plea to the OVI offense. He now appeals his conviction, arguing that the trial court erred by denying his motion to suppress.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

We apply a mixed standard of review in examining the trial court's denial of a motion to suppress: first, we accept the trial court's findings of fact if they are supported by competent, credible evidence, and then we independently determine whether those facts satisfy the applicable legal standard.²

In this case, Cincinnati Police Officer James Davis, while patrolling in District One, stopped a white pickup truck driven by a white male on McMicken Street because the truck, its driver, and their location matched the description of a suspect broadcast to District One units. Where an officer making an investigatory stop relies solely on a police dispatch, the state must demonstrate at the suppression hearing that the facts precipitating the dispatch justified a reasonable suspicion of criminal activity.³ To this end, the state in this case offered into evidence at the suppression hearing a recording of the 911 call that had precipitated the dispatch. This CD recording was admitted into evidence as exhibit one. The exhibit, however, has not been provided to this court, but the trial court transcribed the recording in its decision denying the motion.

To determine reasonable suspicion, we examine whether the tip itself had sufficient indicia of reliability, as demonstrated by the informant's veracity, reliability, and basis of knowledge.⁴ To evaluate these factors, we apply a totality-of-circumstances test, and we are guided in part by case law establishing the characteristics of three categories of informants: (1) the identified citizen informant; (2) the known informant; and (3) the anonymous informant.⁵ An identified citizen witness is accorded higher credibility than other informants; an anonymous informant is accorded the least, and "his tip will generally require independent police corroboration" to support an investigative stop.⁶ The

² *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8.

³ *Maumee v. Weisner*, 87 Ohio St.3d 295, 299, 1999-Ohio-68, 720 N.E.2d 507.

⁴ *Id.*

⁵ *Id.* at 300.

⁶ *Id.*, citing *Alabama v. White* (1990), 496 U.S. 325, 329, 110 S.Ct. 2412.

distinctions between these categories, however, are “somewhat blurred,” as evidenced in this case.⁷

In this case, the caller did not mention his name and the dispatcher did not ask it. But the trial court found that the caller’s identity was known to the dispatcher and that the caller could have been readily located. We defer to these findings because they are supported by the “tenor and contents” of the 911 call and Officer Davis’s testimony that a department policy forbade dispatches on anonymous tips. Based upon these findings, we conclude that the informant was not anonymous and that the dispatcher could accord the informant greater reliability than an anonymous informant.⁸

The credibility of the informant must be considered within the totality of all the circumstances surrounding the tip, including the basis of the informant’s knowledge and the informant’s motivation.⁹ In this case, these other circumstances also lent significant weight to the reliability of the tip. For instance, the informant was not just an eyewitness but also a victim, and he relayed the facts as they were occurring.

Taken together, all these factors persuade us that the informant’s tip was trustworthy and due significant weight.¹⁰ As a result, the tip merited a high degree of value and credibility, rendering it sufficient justification for an investigatory stop. Thus, the dispatch based upon this tip was issued on sufficient facts to justify Officer Davis’s investigative stop. Accordingly, we overrule the assignment of error, and we affirm the trial court’s judgment.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

⁷ Id.

⁸ Id. at 301-302.

⁹ Id. at 302.

¹⁰ Id. at 301-302.

OHIO FIRST DISTRICT COURT OF APPEALS

HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.

RALPH WINKLER, retired, of the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on November 4, 2009

per order of the Court _____.
Presiding Judge