

"Ohio Court of Appeals Reverses DUI Conviction for Lack of Probable Cause"

A three judge panel of the Ohio Court of Appeals recently reversed the DUI conviction of a motorist because the police officer lacked sufficient and legal "reasonable suspicion" to initially stop the motorist and begin his DUI investigation. The decision is State v Browning, and the written opinion was issued on September 5, 2012. The three judge panel hearing the case sits in the ninth judicial district of Ohio. The defendant Browning's initial DUI conviction took place in Barberton Municipal Court. The municipal court judge denied Browning's motion to suppress for lack of probable cause/reasonable suspicion to make the initial stop. As noted above, the Ohio Court of Appeals reversed Browning's conviction.

The facts of the case are as follows: In March of 2011, at approximately 12:30 a.m., Copley Township Officer Ryan Price observed a vehicle parked on Copley Road in a private driveway with a man standing near the vehicle. Price testified at the municipal court trial that this "kind of caught my attention." Thereafter, he put his patrol car in reverse and "backed up to get a better look at the situation." Officer Price also noticed that the car had an out of state license plate and then observed the defendant, Browning, get into the vehicle and proceed down the private driveway. Officer Price testified as follows, "I didn't know if the person was taking a leak. If they were checking the mail. Getting trash cans. Stopped because they were lost. Being that it was an out of state plate, pulled in there to check direction or what, but what he got in the car and drove to the back - I know it's a dead end, so I figured, well, if they are legit maybe they'll turn around and come back. So I went down the road a little bit, sat in my cruiser, and sure enough the car came back out, got on Ohio State Highway 21 southbound. As the car got onto State Route 21 southbound I turned my lights on and "pulled it over." Officer Price went on to testify, "Right away I noticed that his appearance just wasn't right. ...his eyes were glassy and part of his eyes were red. His pupils were dilated. His speech was kind of mumbled and slurrish. He denied drinking. I also noticed a moderate to strong odor of alcohol coming from Mr. Browning. The driver declined to perform any field sobriety tests. A few minutes later the driver was arrested and charged with DUI."

Browning filed a motion to suppress and argued for suppression challenging the constitutionality of the officer's actions in the traffic stop. Browning argued that (1) The officer did not have reasonable suspicion to perform the traffic stop and (2) Officer Price did not have probable cause to arrest Browning for DUI.

The trial court held a hearing on Browning's motion to suppress, and denied same. In denying the defendant's motion the trial court basically reasoned that "when looking at the totality of the circumstances present for Officer Price to observe" that probable cause and reasonable suspicion was present to initiate the DUI investigation.

In ruling for the defendant and reversing the lower court, the Ohio Court of Appeals emphasized the following points in their written opinion. "It is well settled law that a traffic stop constitutes a seizure within the meaning of the Fourth Amendment. An investigative stop of a motorist requires that the officer have reasonable suspicion that an individual is engaged in criminal activity. To justify a particular intrusion, the officer must demonstrate with specific and articulable facts when taken together that these facts reasonable warrant the intrusion. In evaluating the facts and inferences supporting the stop, a court must consider the totality of the circumstances present as viewed through the eyes of a reasonable and cautious police officer. Thus, if the specific and articulable facts available to an officer indicate that a driver may be committing a criminal act, which includes a violation of a traffic law, the

office is justified in making an investigative stop. However, an officer's reliance on a mere hunch or suspicion is insufficient to justify a traffic stop."

In the case at bar, Officer Price did not state any reasonable, articulable suspicion for stopping the motorist Browning. Officer Price admitted that he only stopped Browning because he was driving "a suspicious vehicle in the area." Further, Officer Price admitted that (1) there had not been any recent burglaries in that particular area, (2) he did not recall seeing anything denoting that Mr. Browning initially stopped his car on private property, (3) it did not appear that Mr. Browning was casing a house, and (4) he did not observe Mr. Browning commit any traffic infraction or criminal activity. Furthermore, Officer Price contradicted himself in his testimony before the trial court as to his basis for getting behind Browning and making the initial traffic stop on Ohio State Route 21. As noted above, it is well settled in the state of Ohio that "an officer's reliance upon a mere hunch or suspicion is not sufficient to justify a motor vehicle stop." In light of Officer Price's testimony that his decision to initiate a stop to see what Mr. Browning might be up to, we cannot find that Officer Price had a reasonable, articulable suspicion of criminal activity which needs to be present to justify a traffic stop. Therefore, the trial court erred in denying Mr. Browning's motion to suppress. Accordingly, the judgment of the Barberton Municipal Court is reversed and this case is remanded for further proceedings consistent with this decision.