No. 04-93054-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF DERBY, PLAINTIFF-APPELLEE,

v.

THOMAS L. JONES, DEFENDANT-APPELLANT

BRIEF OF APPELLEE CITY OF DERBY

APPEAL FROM THE DISTRICT COURT OF SEDGWICK COUNTY
HONORABLE TERRY L. PULLMAN, JUDGE
DISTRICT COURT CASE NO. 04-CR-1020

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STATEMENT OF THE CASE

Following the denial of his motion to suppress and his conviction in the Municipal Court of the City of Derby, Kansas, of Driving Under the Influence, in violation of Standard Traffic Ordinance § 30(a), similar to K.S.A. 8-1567, Defendant Thomas L. Jones ("Defendant") exercised his right to appeal by trial *de novo* to the District Court of Sedgwick County, Kansas. Defendant again filed a Motion to Suppress alleging that law enforcement lacked probable cause to stop his vehicle, which was denied. Defendant entered a conditional plea reserving the right to appeal the district court's denial of his Motion. (R. I, 14.) Following his conviction in District Court, Defendant now appeals to this Court.

STATEMENT OF ISSUES

Whether the arresting officer had sufficient reasonable suspicion to stop Defendant.

STATEMENT OF FACTS

On October 12, 2002, at approximately 12:54 a.m., Officer Chad Riebel of the Derby Police Department was on routine patrol on Highway K-15 in the north part of Derby. (R. II, 5-6.) Officer Riebel heard Derby Police Officer T.J. Ohlemeier, on special assignment security at the bowling alley at 444 South Baltimore, radio dispatch that a possibly intoxicated driver was leaving northbound on K-15 in a two-door white car with Kansas tag "THD 277." (R. II, 6.) Dispatch then broadcasted consistent information, and Officer Riebel responded. (R. II, 6-7.)

Shortly thereafter, Officer Riebel spotted a single white male driving a white two-door vehicle traveling northbound on K-15. (R. II, 7.) After making a U-turn to get behind the car, Officer Riebel verified with dispatch that its tag was the same one that had been broadcast. (R. II, 8.) Meanwhile, the white two-door car pulled into the parking lot of a nearby used car dealership at 501 North Baltimore. (R. II, 8.) Officer Riebel passed the vehicle, made another U-turn as dispatch verified the tag, then pulled in behind, activating his emergency equipment; the driver was already getting out. (R. II, 8-9, 13.) Officer Riebel asked to talk with the driver, immediately noticing the strong odor of intoxicants and that his eyes were bloodshot, glassed and droopy. (R. II, 9, 15.) Responding to a question posed by Officer Riebel, Defendant admitted to having a few alcoholic beverages prior to driving, and after he declined the standardized field sobriety tests, he was placed under arrest. (R. II, 11-12.)

At the motion hearing, Defendant stipulated to Officer Riebel's identification of him as the driver, and conceded that after the initial contact, Officer Riebel had sufficient reasonable suspicion to detain Defendant and probable cause to arrest him. (R. II, 10.)

STANDARD OF REVIEW

Where, as here, the facts material to a decision on a motion to suppress evidence are not in dispute, the question whether to suppress is a question of law subject to unlimited review. *State v. Boyd*, 275 Kan. 271, 273, 64 P.3d 419 (2003).

ARGUMENT

A stop is legal when based upon dispatched information stating a vehicle's style, color, the state of origin and tag number of its license plate, highway location, and direction of travel – all corroborated by the law enforcement officer before the stop – and also stating the conclusory allegation that the vehicle was being driven by a possible drunk driver, which the officer was unable to corroborate before the stop; the trial court correctly ruled that the tip provided an adequate basis to justify the stop and detention, and its denial of Defendant's Motion to Suppress must be affirmed.

The Fourth Amendment protects people from unreasonable searches and seizures of their persons, houses, papers and effects, protecting property as well as privacy. U.S. CONST. amend. IV; *Soldal v. Cook County, Ill.*, 506 U.S. 56, 62, 113 S.Ct. 538, 544, 121 L.Ed.2d 450 (1992). It applies to the states through the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. XIV; *Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949); *State v. Smith*, 243 Kan. 715, 717, 763 P.2d 632, 634 (1988). Moreover, Section 15 of the Bill of Rights to the Kansas Constitution is identical in scope and prohibits the same governmental conduct. *State v. Kimberlin*, 267 Kan. 659, 664, 984 P.2d 141, 144-45 (1999). The traffic stop of a vehicle by a law enforcement officer always constitutes a seizure under the Fourth Amendment. *State v. McClain*, 258 Kan. 176, 179-80, 899 P.2d 993, 996 (1995). A law enforcement officer may stop any person in a public place based upon a specific and articulable facts raising a reasonable suspicion that such person has committed or is about to commit a crime. K.S.A. 22-2402(1); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Both the content of information possessed by the officer and its degree of reliability are considered in the "totality of the circumstances" that must be taken into account when evaluating whether the officer had the requisite reasonable

suspicion to conduct the stop. *Alabama v. White,* 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

As a threshold matter, this was not a stop of a moving vehicle requiring reasonable suspicion: Defendant had already pulled into a parking lot and, presumably, placed his car in "park" by the time Officer Riebel received confirmation of the license plate from dispatch and activated his emergency equipment, because he had already started to exit his vehicle by the time Officer Riebel pulled in behind and asked to talk with him. An officer does not need reasonable suspicion to approach an individual on the street or in a parked car for investigative purposes, ask his name and request identification, but the individual cannot be forced to answer and is free to leave. *State v. Epperson*, 237 Kan. 707, 713, 703 P.2d 761 (1985); *State v. Marks*, 226 Kan. 704, 708-09, 602 P.2d 1344 (1979). Thus, Officer Riebel did not need reasonable suspicion to ask to talk with Defendant, although once Defendant agreed to talk with him, it seemed apparent that Defendant had just driven under the influence of alcohol.

The trial court concluded otherwise, that Officer Riebel's "stop" of Defendant was not casual or consensual, but required reasonable suspicion. (R. II, 29.) Nonetheless, the trial court was correct in concluding that, based on the collective knowledge of law enforcement, reasonable suspicion to stop Defendant's vehicle was present. (R. II, 29-32.) *See also State v. Steen*, 28 Kan.App.2d 214, Syl. ¶ 3, 13 P.3d 922, 923 (2000). Moreover, an officer may rely on dispatched information to explain his subsequent actions; because it is not offered to prove the truth of the matter asserted, it is not inadmissible hearsay. *See State v. Hall*, 220 Kan. 712, 556 P.2d 413, 418 (1976).

In support of his contention that Officer Riebel lacked reasonable suspicion, however, Defendant relies exclusively on *State v. McKeown*, 249 Kan. 506, 819 P.2d 644 (1991), neglecting to discuss – or even to cite – controlling Kansas precedents holding that, when balanced against the threat intoxicated drivers pose to the public, an expeditious investigatory or safety stop of a suspected drunken or reckless driver is a minimal intrusion upon that driver's freedom of movement or privacy; no personal observation by the officer of a traffic infraction or any other incriminating behavior is necessary. *See State v. Crawford*, 275 Kan. 492, 67 P.3d 115 (2003); *State v. Slater*, 267 Kan. 694, 986 P.2d 1038 (1999); *State v. Partridge*, 29 Kan.App.2d 887, 33 P.3d 862 (2001); *State v. Tucker*, 19 Kan.App.2d 920, 878 P.2d 855 (1994).

Factually, the facts presented here are comparable to those in *Crawford* and *Slater*, both reversing a trial court's suppression of evidence obtained from a traffic stop based on an anonymous tip. In *Slater,* after an anonymous caller's tip to dispatch, a Hays police officer was informed that a "possible drunk driver" was leaving Burger King in a black pickup bearing license tag HEK 477, which was registered to Walter Slater at 2212 Downing. The officer did not see the vehicle at Burger King, but a block from the defendant's home address, the officer observed the vehicle as described, followed it approximately one block without seeing any signs of poor driving, and stopped the vehicle to ascertain the information received from the dispatcher. As the driver got out, a beer can fell out of the pickup and the driver stumbled and staggered. *Slater*, 267 Kan. at 696, 986 P.2d at 1040. In *Crawford*, a deputy was informed that an anonymous caller reported that a black Dodge Dakota pickup truck with Oklahoma plates was driving recklessly northbound on U.S. Highway 169 in the

approximate area of 207th and 215th Streets; the deputy parked on the shoulder of the highway at approximately 207th Street and corroborated all details of the tip except the reckless driving allegation, stopping the truck as soon as it passed him. *Crawford*, 275 Kan. at 498, 67 P.3d 115.

Here, Officer Riebel responded to dispatched information that a "possibly intoxicated driver" was leaving the bowling alley in Derby northbound on K-15 in a two-door white car with Kansas tag "THD 277." Shortly thereafter, some nine blocks north of the bowling alley, he saw a white two-door vehicle traveling northbound on K-15, and he verified with dispatch that its tag was the one sought before activating his emergency equipment. Consistent with *Crawford* and *Slater*, Officer Riebel sufficiently corroborated the information in the tip and was not required to do anything more before initiating a traffic stop of Defendant. Further, because the tip was not anonymous, but came from an identified informant – and another law enforcement officer, at that – it can be argued that, in fact, he did more than was necessary. *See Partridge*, *supra*. The trial court correctly ruled that Officer Riebel had an adequate basis to justify the stop and detention of Defendant, and its denial of Defendant's Motion to Suppress must be affirmed.

CONCLUSION

The Kansas Appellate Courts previously have held that corroboration of dispatched information stating a vehicle's style, color, the state of origin and tag number of its license plate, highway location, and direction of travel is all that is necessary for a law enforcement officer to initiate a traffic stop of a possible drunk driver. Officer Riebel made contact with

the driver of a white, two-door car traveling in the same location and direction and having the same tag number as that of a possibly intoxicated driver that had been dispatched, subsequently determining that, in fact, the driver was under the influence. The trial court was correct in denying Defendant's Motion to Suppress contesting whether there was reasonable suspicion for a traffic stop, and Defendant's conviction of Driving Under the Influence must be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that five (5) true and correct copies of the above and foregoing were mailed, by U.S. Mail, postage pre-paid, to:

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Dated this _____ day of January, 2005.

ATTORNEY FOR APPELLEE