1998 WL 303903
Only the Westlaw citation is currently available.

Court of Appeals of Ohio, Tenth District, Franklin County.

CITY of Columbus, Plaintiff-Appellee,
v.
Teri L. SAYRE, Defendant-Appellant.

No. 97APC10-1435. | June 9, 1998.

APPEAL from the Franklin County Municipal Court.

Attorneys and Law Firms

Janet E. Jackson, City Attorney, Stephen L. McIntosh, City Prosecutor, and Denice Weinberg, for appellee.

Koffel & Jump, and Bradley P. Koffel, for appellant.

Opinion

OPINION

MASON, J.

***1** Teri L. Sayre, defendant-appellant, appeals from the judgment of the Franklin County Municipal Court, overruling her motion to dismiss/suppress.

On March 27, 1997, Officer Rubenkoenig of the Grandview Heights Police Department stopped appellant after observing her driving. He noted that appellant pulled out of a drive and immediately stopped short, squealed her tires as she accelerated, changed lanes several times, over-corrected her steering when she turned a corner, and ran over a curb as she stopped her vehicle when the officer activated his lights. He also noted that, although he had not clocked or used radar to determine the speed of her car, he believed that she was speeding. When he approached appellant's stopped vehicle, he discovered that she had an open container of alcohol sitting next to her. He then performed field sobriety tests, which appellant failed.

Officer Rubenkoenig placed appellant under arrest and transported her to the Grandview Heights Police Department where she gave a breath sample that indicated a result in excess of the legal limit. Appellant was charged with four counts: (1) possessing an open container while operating a motor vehicle; (2) unnecessarily squealing tires; (3) operating a motor vehicle while under the influence of alcohol; and (4) operating a motor vehicle with a breath-alcohol concentration of .10 of one gram or more by weight of alcohol per 210 liters of breath, which is a *per se* provision. On April 14, 1997, appellant entered a not guilty plea to all charges.

On May 20, 1997, appellant moved to suppress evidence obtained from her warrantless arrest and to dismiss based on Officer Rubenkoenig's lack of reasonable suspicion to stop her. The trial court overruled appellant's motion on September 8, 1997, stating that Officer Rubenkoenig had a reasonable suspicion to stop appellant and had probable cause to arrest appellant. Appellant then changed her plea to no contest on the charge of operating a motor vehicle with a prohibited breath-alcohol content pursuant to a *per se* code section, and appellee dismissed the remaining charges.

Appellant has timely appealed and sets forth one assignment of error:
"APPELLANT'S CONVICTION MUST BE REVERSED BECAUSE THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN IT OVERRULED HER MOTION TO DISMISS/SUPPRESS WHEN IT CONCLUDED THAT THE ARRESTING OFFICER HAD A REASONABLE AND ARTICULABLE SUSPICION TO JUSTIFY A TRAFFIC STOP OF APPELLANT'S VEHICLE.**"**

This court has previously stated:
"In reviewing a trial court's ruling on a motion to suppress, an appellate court must accept the trial court's factual findings if they are supported by competent, credible evidence and must independently determine as a matter of law whether the facts meet the applicable legal standard. * * * " *City of Columbus v. Tuttle* (Dec. 19, 1996), Franklin App. No. 95APC08-962, unreported (1996 Opinions 4948), citing *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594, 621 N.E.2d 726.

***2** An officer, without probable cause to stop and briefly detain a person, must have a reasonable suspicion that a traffic law is being violated or that criminal activity is being conducted in order for the officer to make a valid and constitutional stop of a vehicle. *United States v. Cortez* (1981), 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621; *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; *State v. Andrews* (1991), 57 Ohio St.3d 86, 87, 565 N.E.2d 1271. An officer's reasonable suspicion must be based on specific and articulable facts that would justify an investigative stop. *Terry, supra.* The validity of the stop is determined by looking at the totality of the facts and circumstances presented to the officer. *State v. Freeman* (1980), 64 Ohio St.2d 291, 414 N.E.2d 1044, paragraph one of the syllabus; see, also, *State v. Loza* (1994), 71 Ohio St.3d 61, 641 N.E.2d 1082.

The totality of the facts and circumstances in this case are sufficient to establish a reasonable suspicion. Officer Rubenkoenig testified in this case about the facts and circumstances that led him to stop appellant in her vehicle and to arrest her for driving while under the influence:

> "I think it was the combination of everything: just the stopping short, the squealing tires, in and out of traffic, the speed, the over-correcting her turn, running over the curb, and walking up, with the open container."

The trial court accepted Officer Rubenkoenig's testimony regarding the facts and circumstances that he observed, and Officer Rubenkoenig's testimony provides competent, credible evidence to support the trial court's finding that he had a reasonable, articulable suspicion that appellant had violated a law.

Appellant focusses on a large portion of her brief arguing that the "chirp" sound that her tires made when she accelerated did not constitute a violation of Grandview Heights Codified Ordinances 331.36 and, therefore, Officer Rubenkoenig did not have a reasonable suspicion to justify his stop of appellant. We note that, in *State v. Aleshire* (Aug. 5, 1986), Franklin App. No. 85AP-869, unreported (1986 Opinions 2020), this court held that an officer may stop a motorist to investigate the cause of erratic driving even if the driving did not rise to the level of a traffic violation. See, also, *State v. Yates* (Dec. 30, 1994), Franklin App. No. 94APC05-715, unreported (1994 Opinions 6394); *City of Columbus v. Kogovsek* (Feb. 25, 1993), Franklin App. No. 92AP-1260, unreported (1993 Opinions 530). Based on Officer Rubenkoenig's testimony, we find that, even assuming the "chirp" of appellant's tires did not rise to the level of a traffic violation, the totality of the circumstances gave rise to a reasonable suspicion to stop appellant. Therefore, Officer Rubenkoenig stopped appellant without violating the constitutional prohibition against warrantless searches and seizures, and we conclude that the trial court did not err in overruling appellant's motion to suppress/dismiss.

***3** Appellant's assignment of error is overruled and affirm the judgment of the trial court.

Judgment affirmed.

PETREE and TYACK, JJ., concur.