

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR 08-428

DONALD SCUCCHI

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** NOVEMBER 12, 2008

APPEAL FROM THE ASHLEY  
COUNTY CIRCUIT COURT,  
[NO. CR2007-137-1]

HONORABLE SAM POPE, JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant Donald Scucchi entered a conditional guilty plea to driving while intoxicated, reserving in writing the right to appeal and challenge the trial court's denial of his motion to suppress evidence pursuant to Rule 24.3(b) of the Arkansas Rules of Criminal Procedure. In this appeal, Mr. Scucchi argues that his motion to suppress the incriminating evidence should have been granted because the police officer lacked reasonable cause to stop his vehicle. We affirm.

Officer Kevin Barnett was the only witness to testify at the suppression hearing. He testified that he was on patrol in Ashley County on February 3, 2007, when he received a broadcast from a dispatcher. The dispatcher related that an unidentified civilian had called and reported a reckless driver. Based on the information given by the civilian, Officer Barnett was able to locate the suspected vehicle, which was being driven by Mr. Scucchi. The vehicle matched the description and license plate provided by the tipster.

Officer Barnett testified that he followed Mr. Scucchi's vehicle for about a mile. During that time, Officer Barnett observed very noticeable and continuous weaving between the center line and fog line. Officer Barnett acknowledged that Mr. Scucchi never crossed any lines, but stated that the weaving from line to line "created red flags." Officer Barnett also indicated that Mr. Scucchi was driving at a normal speed. Based on the continuous weaving, Officer Barnett made a traffic stop. Several sobriety tests were administered, and according to the officer Mr. Scucchi failed them all and was placed under arrest. After the hearing, the trial court denied appellant's motion to suppress.

Mr. Scucchi now argues that the trial court erred in denying his motion because the stop of his vehicle was illegal. The applicable rule is Rule 3.1 of the Arkansas Rules of Criminal Procedure, which provides in relevant part:

A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.

Appellant relies on our decision in *Frazer v. State*, 80 Ark. App. 231, 94 S.W.3d 357 (2002), where we held that when reasonable suspicion is based solely on a citizen-informant's report, the three factors in determining reliability are: (1) whether the informant was exposed to possible criminal or civil prosecution if the report is false; (2) whether the report is based on personal observations of the informant; and (3) whether the officer's personal observations corroborated the informant's observations. Mr. Scucchi asserts that the testimony in this case established that the informant did not identify himself, nor did he personally observe

appellant's driving. Because these elements of the test announced in *Frazer* were missing, appellant contends that the officer lacked reasonable suspicion as required by Rule 3.1 and that his motion to suppress should have been granted.

In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004). On our de novo review, we hold that there was no error in the trial court's denial of Mr. Scucchi's motion to suppress because the officer had reasonable suspicion that justified the stop.

The justification for a stop depends on whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating the person or vehicle may be involved in criminal activity. *Frette v. City of Springdale*, 331 Ark. 103, 959 S.W.2d 734 (1998). In *Frette, supra*, our supreme court emphasized the significant policy considerations where a tipster reports a driver who is drinking, and further wrote:

This court has previously recognized the magnitude of the State's interest in eliminating drunk driving in comparison to relatively minimal intrusions on motorists. *See Mullinax v. State*, 327 Ark. 41, 938 S.W.2d 801 (1997). In balancing the rights of a motorist to be free from unreasonable intrusions and the State's interest in protecting the public from unreasonable danger, one court has stated that "[a] motor vehicle in the hands of a drunken driver is an instrument of death. It is deadly, it threatens the safety of the public, and that threat must be eliminated as quickly as possible. . . . The 'totality' of circumstances tips the balance in favor of public safety and lessens the . . . requirements of reliability and corroboration." [*Kaysville City v. Mulcahy*, 943 P.2d 231 (Utah Ct. App. 1997)] (quoting *State v. Tucker*, 878 P.2d 855 (Kan. Ct. App. 1994)).

*Id.* at 120-21, 959 S.W.2d at 743.

Turning to the present case, Officer Barnett had sufficient reasons to believe that Mr. Scucchi may have been driving while intoxicated. Contrary to appellant's argument, the information relayed to the dispatcher was based on the citizen's personal observations, as is evident from the officer's testimony that the dispatcher "was called by a civilian that had been following Mr. Scucchi." And Officer Barnett corroborated the citizen's report when he located the described vehicle in the given location and himself observed erratic driving. In this regard, Officer Barnett testified that appellant's vehicle was continuously weaving from one line to the other for a period of about a mile. Although the informant in this case was unidentified and thus did not expose himself to criminal or civil prosecution if his report was false, his account was sufficiently corroborated. In *Piercefield v. State*, 316 Ark. 133, 871 S.W.2d 348 (1994), there was no tip given to the police, and our supreme court held that the officer's observation that a motorcycle was weaving from the centerline to the shoulder alone gave the officer reasonable suspicion that the driver was driving while intoxicated. In the present case, we hold that the tip based on the informant's personal observations coupled with the officer's observations provided reasonable suspicion to make the stop.

Affirmed.

GLOVER and HEFFLEY, JJ., agree.