Ohio Attorney General's
Law Enforcement
Bulletin

April 2016

State v. Woody, 2016 Ohio 752

Question: Does an identified citizen informant who calls police to report a possible intoxicated driver provide reasonable suspicion for an officer to make a traffic stop to investigate?

Quick Answer: Yes, identified citizen informants are ascribed a high degree of reliability, allowing officers to investigate based on their information.

Facts: A local tow truck driver called the police to report a possible intoxicated driver. The caller provided his name, contact information, and present location to the dispatcher. Dispatch contacted a sergeant who was familiar with the caller. After receiving the radio call, the sergeant observed the suspect vehicle and began following it. He observed the driver weaving within the lane of travel and conducted a traffic stop. Woody was identified as the driver and smelled of alcohol. Subsequent field sobriety tests led to Woody's arrest for operating a vehicle under the influence of alcohol (OVI). He filed a motion to suppress, arguing the sergeant did not have reasonable suspicion to stop him, and the tip lacked the necessary reliability for the sergeant to act.

The trial court overruled his motion, and he was later convicted of OVI. Woody appealed the trial court's ruling on the motion to suppress. The appeals court noted there are three types of informants: an anonymous tipster, a known confidential informant, or an identified citizen informant. As a general rule, anonymous tips require some type of independent corroboration. In this case, the court noted this was an identified citizen informant, and as such is ascribed a high degree of reliability. Although the sergeant did in fact corroborate the erratic driving behavior of Woody, it was not necessary to do so based on the tip.

Keep in Mind: When receiving information from dispatch about suspected criminal activity, officers should try to determine whether the identity of the caller is known before using the information as the sole basis to act.

State v. Martin, 2016 Ohio 802

Question: Does a statement by a suspect who admits to have been drinking, render it involuntary and inadmissible in court?

Quick Answer: No. In determining whether a statement is voluntary, courts employ a “totality of the circumstances” test.

Facts: Martin observed a 9-year-old playing hide-and-seek outside with a friend. When she was alone, Martin lured her into his apartment. Once inside the apartment, he engaged in sexual activity with the child. When the minor returned home she informed her mother, who called the police. Officers brought Martin to the police station, read him Miranda, and he agreed to speak with them. During his statement, he told officers he was drinking beer and wine that day. He was asked if he was under the influence, and he said he was not. Prior to trial, Martin filed a motion to suppress his statement alleging it was involuntary. The trial court denied the motion, and Martin was convicted at trial.

On appeal, he argued his motion to suppress was improperly denied because his statement was involuntary due to his intoxication. The appeals court noted that in order to determine whether a defendant's statement is made voluntarily, courts employ a “totality of the circumstances” test. The officer’s testimony at the hearing was that Martin was alert, did not slur his speech, and his answers to questions, although self-serving and evasive, were appropriate. A review of the video recording of the interrogation also supported these observations. The court found there was sufficient evidence that Martin’s statement was not rendered involuntary based on intoxication.

Keep in Mind: It is important for officers to note their observations of a suspect during an interview. In this case, having a video-recorded interview supported the officer’s conclusion that the suspect’s statement was not compromised due to his level of intoxication.

State v. Navarro, 2016 Ohio 749

Question: Does the odor of raw marijuana coming from a residence establish probable cause to obtain a search warrant.

Quick Answer: Yes, so long as the officer is qualified to recognize the odor.

Facts: An officer received an anonymous tip that Navarro’s residence was being used to grow marijuana. Having received other complaints about Navarro, he went to the area to conduct surveillance. Upon getting close to the residence, he smelled a distinct odor of raw marijuana coming from the residence. He also noted that all the windows were covered. Based on the information and his observations, he obtained a search warrant to conduct a thermal scan of the residence. The scan detected a highly abnormal heat signature coming from the residence, consistent with an indoor marijuana grow operation. Based on the scan results, the officer obtained a second search warrant to search the residence. The subsequent search revealed evidence of an indoor grow operation.

Navarro filed a motion to suppress the evidence which was denied by the trial court. He was convicted and appealed the trial court’s ruling, arguing the officer lacked probable cause to obtain either of the search warrants. The appellate court noted the anonymous tip alone would not justify the search. However, once the officer, who was qualified to identify the odor of marijuana, smelled marijuana coming from the residence, probable cause existed to support the warrant and subsequent search.

Keep in Mind: Officers should receive training in detecting the odor of raw and burned marijuana prior to using this as the basis to justify a search.

State v. Tichener, 2016 Ohio 1021

Question: Is a suspect's question to an officer about whether he should get an attorney considered a request for counsel requiring the officer to cease questioning?

Quick Answer: No, a suspect's request for counsel must be made unambiguously.

Facts: Tichener made threats to shoot his ex-girlfriend's new paramour. He later went to the trailer park and fired several shots into a shed they were sitting in and fled the area. He was arrested later that day and taken to the sheriff's office where he was read and shown Miranda warnings by a detective. Tichener signed a waiver-of-rights form and asked if he should get an attorney. The detective told Tichener he couldn't give him legal advice, but if he wanted an attorney, the detective could not continue discussing the incident with Tichener. Thereafter, Tichener began discussing the incident without prompting from the detective. Tichener filed a motion to suppress his statement arguing he invoked his right to counsel during the interview. The trial court overruled the motion, and he was later found guilty after a trial. Tichener appealed the trial court's ruling on the motion to suppress.

The appeals court noted as a general rule that once a person expresses desire to deal with the police only through counsel, police must honor this request and cease questioning until counsel has been made available. However, a request for counsel must be unambiguously made so that a reasonable officer in these circumstances would understand the suspect's statement to be a request for an attorney. If such a statement is not a clear request for an attorney, officers are not required to stop questioning the suspect. In the instant case, the appeals court noted Tichener's question was one requesting legal advice from the officer and not a request for counsel.

Keep in Mind: Once a suspect makes a clear invocation to speak to an attorney, officers are required to scrupulously honor such a request and cease all questioning.