

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-13-020

Appellee

Trial Court No. 12TRC08646

v.

Eric K. Pelham

DECISION AND JUDGMENT

Appellant

Decided: October 11, 2013

* * * * *

Matthew Reger, City of Bowling Green Prosecuting Attorney, and
Paul A. Skaff, Assistant Prosecuting Attorney, for appellee.

Max E. Rayle, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Bowling Green Municipal
Court, denying appellant Erik Pelham's motion to suppress. Because we believe that

there existed an articulable and reasonable suspicion for the arresting officer to stop appellant's vehicle, we affirm the trial court's decision.

{¶ 2} On November 11, 2012, appellant was charged with operating a motor vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). Following a plea of not guilty to the charge, appellant filed a motion to suppress which was denied on January 24, 2013. Appellant, thereafter, enter a no contest plea to the charge of operating a motor vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). He was sentenced to serve 33 days in jail with 30 of those days suspended. Appellant now appeals setting forth the following assignment of error:

{¶ 3} The trial court committed error in overruling the motion to suppress evidence based upon an unlawful stop/detention of defendant/appellant and his motor vehicle.

{¶ 4} In reviewing a motion to suppress “an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence.” *State v. Montoya*, 6th Dist. Lucas No. L-97-1226, 1998 WL 114325 (Mar. 6, 1998), citing *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). “[T]he appellate court must then independently determine as a matter of law, without deferring to the trial court's conclusions, whether the facts meet the applicable legal standard.” *Id.*, citing *State v. Klein*, 73 Ohio App.3d 486, 488, 597 N.E.2d 1141 (4th Dist.1991).

{¶ 5} In this case, appellant challenges the officer's initial stop of his vehicle. Specifically, he contends that he unavoidably violated R.C. 4511.25, which was the basis for the trooper's investigative stop. R.C. 4511.25(A)(1) provides that:

(A) Upon all roadways of sufficient width, a vehicle or trackless trolley shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction, or when making a left turn under the rules governing such movements;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) When driving upon a roadway divided into three or more marked lanes for traffic under the rules applicable thereon;

(4) When driving upon a roadway designated and posted with signs for one-way traffic;

(5) When otherwise directed by a police officer or traffic.

{¶ 6} An investigative stop of a motorist does not violate the Fourth Amendment if the officer has a reasonable suspicion that the individual is engaged in criminal activity. *Maumee v. Weisner*, 87 Ohio St.3d 295, 299, 720 N.E.2d 507 (1999), citing *Terry v.*

Ohio, 392 U.S. 1, 22, 88 S.Ct. 1868 20 L.Ed.2d 889 (1968). Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts that an occupant is or has been engaged in criminal activity.

State v. Gedeon, 81 Ohio App.3d 617, 618, 611 N.E.2d 972 (11th Dist.1992).

Reasonable suspicion constitutes something less than probable cause. *State v. Carlson*, 102 Ohio App.3d 585, 590, 657 N.E.2d 591 (9th Dist.1995). The propriety of an investigative stop must be viewed in light of the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph two of the syllabus.

{¶ 7} At the suppression hearing, State Highway Patrol Trooper Devon Black testified that he was on duty in the early morning hours of November 11, 2012, when he observed the tires of the vehicle traveling in front of him cross the yellow line into the other line of travel. Appellant was driving the vehicle. Trooper Black testified that he waited until it was safe to activate his lights and initiate a traffic stop of appellant's vehicle based on the fact that appellant's vehicle had traveled left of the center line in violation of R.C. 4511.25(A)(1). State's Exhibit 1, admitted into evidence, shows the dash cam view from Trooper Black's perspective. It supports his testimony.

{¶ 8} Appellant does not dispute the fact that his vehicle crossed the center line. Appellant, however, contends that his tire movement over the center line was inconsequential given the configuration of the roadway. Specifically, appellant's infraction occurred at a roadway split. Appellant was traveling on West Wooster street. At Haskins road, West Wooster splits into two different routes. Drivers wishing to

continue on West Wooster must veer to the left while drivers wishing to take Haskins must veer to the right. Appellant, wishing to continue on Wooster, veered to the left. In doing so, appellant contends, he unavoidably crossed over the line because of the narrow configuration of the continuing roadway.

{¶ 9} R.C. 4511.25 provides that a vehicle shall be driven on the right side of the road. R.C. 4511.25 specifically provides legal exceptions which, if present, excuse a failure to comply with the requirement to remain right of the centerline. None of the exceptions apply to the instant case. In any event, “[A]n officer is not required to determine whether someone who has been observed committing a crime might have a legal defense to the charge.” *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 13. When an officer observes a vehicle travel left of the centerline, the officer has a reasonable and articulable suspicion that the driver has violated R.C. 4511.25.

{¶ 10} In support of his position, appellant submitted videotape evidence showing daytime drivers traveling on West Wooster street and veering to the right at the split. Many of the drivers can be seen committing the same infraction as appellant in negotiating the turn. However, we agree with the trial court’s summation that: “[T]he fact of other driver’s illegal operation through this intersection does not make the operation of his vehicle at 2:30 a.m. on November 11, 2012 any less of a violation.”

{¶ 11} Here, it is undisputed that Trooper Black witnessed appellant commit a violation of R.C. 4511.25. As such, he had an articulable and reasonable suspicion for

stopping appellant's vehicle. Appellant's sole assignment of error is found not well-taken.

{¶ 12} On consideration whereof, the judgment of the Bowling Green Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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