

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KEVIN A. BLACK

Defendant-Appellant

: JUDGES:

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Hon. W. Scott Gwin, P.J.

Hon. Patricia A. Delaney, J.

Hon. Earle E. Wise, Jr., J.

Case No. 17CA74

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court
of Common Pleas, Case No. 2017-CR-
129

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

May 14, 2018

APPEARANCES:

For Plaintiff-Appellee:

GARY BISHOP
RICHLAND COUNTY PROSECUTOR

JOSEPH C. SNYDER
38 South Park Street
Mansfield, OH 44902

For Defendant-Appellant:

JAMES L. BLUNT, II
3954 Industrial Parkway Drive
Shelby, OH 44875

Delaney, J.

{¶1} Defendant-Appellant Kevin A. Black appeals the July 14, 2017 judgment entry of the Richland County Court of Common Pleas denying his motion to suppress.

FACTS AND PROCEDURAL HISTORY

{¶2} Defendant-Appellant Kevin A. Black was arrested on February 20, 2017 based on a traffic stop of his vehicle. Black was then indicted on five counts: 1) Improperly Handling Firearms in a Motor Vehicle, a fourth-degree felony in violation of R.C. 2923.16(B); 2) Improperly Handling Firearms in a Motor Vehicle, a fourth-degree felony in violation of R.C. 2923.16(D)(1); 3) Illegal Conveyance of Drugs of Abuse onto the Grounds of a Specified Governmental Facility, a third-degree felony in violation of R.C. 2921.36(A)(2); 4) Carrying a Concealed Weapon, a fourth-degree felony in violation of R.C. 2923.12(A)(2); and 5) Carrying a Concealed Weapon, a fourth-degree felony in violation of R.C. 2923.12(A)(1).

{¶3} Black filed a motion to suppress on June 26, 2017. In his motion, he argued there was no probable cause or reasonable grounds to stop, detain, and search him or his vehicle on February 20, 2017. On July 7, 2017, the trial court held a hearing on Black's motion. At the hearing, Black only argued there was no probable cause or reasonable grounds to stop his vehicle pursuant to a violation of R.C. 4511.33.

{¶4} The State presented the testimony of Trooper Robert Warner. On February 20, 2017, Trooper Warner of the Ohio State Highway Patrol was on patrol in Richland County, Ohio. (T. 4). He was traveling south on Trimble Road in a marked patrol car at approximately 12:00 a.m. (T. 6). At the time, the roadway was dark and there was intermittent rain. (T. 7). Trooper Warner was stopped at a red light at the intersection of

Trimble and McPherson. His vehicle was the first at the intersection. (T. 7). While stopped at the intersection, Trooper Warner observed Black's pick-up truck turn right from a gas station onto Trimble Road. (T. 7). When the light turned green, Trooper Warner proceeded on Trimble Road and travelled directly behind Black's vehicle. As Black's vehicle traveled up a hill on Trimble Road, Trooper Warner observed Black commit a left-of-center violation. (T. 8). Trooper Warner saw a portion of the vehicle's driver's side tire cross the right side of the center double yellow line, but not fully cross the double yellow line. (T. 11, 18). The vehicle's driver's side mirror was over the double yellow line. (T. 13). Trooper Warner activated his overhead lights and initiated a traffic stop based on the left-of-center violation. (T. 8). Exhibit 1, the video recording from Trooper Warner's patrol car of the alleged violation and traffic stop, was played at trial. (T. 9). No other evidence was presented.

{¶5} At the conclusion of the hearing, the trial court stated on the record that it observed on the dash cam video that Black's tire crossed the double yellow centerline and the driver's side mirror extended further than the tire. (T. 24). It found that Trooper Warner had reasonable cause to stop Black for a left-of-center violation.

{¶6} On July 14, 2017, the trial court journalized its decision to deny Black's motion to suppress.

{¶7} Black entered a plea of no contest to Count 2, Count 3, and Count 5 and the trial court found him guilty. The trial court sentenced Black to three years community control and ordered him to pay a fine of \$300.00.

{¶8} Black now appeals the trial court's July 14, 2017 judgment entry to deny his motion to suppress.

ASSIGNMENT OF ERROR

{¶9} Black raises one Assignment of Error:

{¶10} “WHETHER THE TRIAL COURT ERRED IN DENYING THE MOTION TO SUPPRESS EVIDENCE DUE TO AN ILLEGAL TRAFFIC STOP.”

ANALYSIS

{¶11} In his sole Assignment of Error, Black argues the trial court erred in denying the motion to deny his motion to suppress. We disagree.

{¶12} Appellate review of a trial court's decision to deny a motion to suppress involves a mixed question of law and fact. *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of trier of fact and, as such, is in the best position to resolve questions of fact and to evaluate witness credibility. *State v. Brooks*, 75 Ohio St.3d 148, 154, 661 N.E.2d 1030 (1996). A reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Medcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist.1996). Accepting these facts as true, the appellate court must independently determine as a matter of law, without deference to the trial court's conclusion, whether the trial court's decision meets the applicable legal standard. *State v. Williams*, 86 Ohio App.3d 37, 42, 619 N.E.2d 1141 (4th Dist.1993), overruled on other grounds.

{¶13} There are three methods of challenging a trial court's ruling on a motion to suppress on appeal. First, an appellant may challenge the trial court's finding of fact. In reviewing a challenge of this nature, an appellate court must determine whether the trial court's findings of fact are against the manifest weight of the evidence. See *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982); *State v. Klein*, 73 Ohio App.3d 486,

597 N.E.2d 1141 (4th Dist.1991). Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *Williams, supra*. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issues raised in a motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry*, 95 Ohio App.3d 93, 96, 620 N.E.2d 906 (8th Dist.1994).

{¶14} 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. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.E.2d 889 (1968). If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulate suspicion considering all the circumstances, then the stop is constitutionally valid. *State v. Adams*, 5th Dist. Licking No. 15 CA 6, 2015–Ohio–3786, quoting *State v. Mays*, 119 Ohio St.3d 406, 2008–Ohio–4539, 894 N.E.2d 1204.

{¶15} R.C. 4511.33(A) provides, in pertinent part: “Whenever any roadway has been divided into two or more clearly marked lanes for traffic * * * a vehicle * * * shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.”

{¶16} Black argues Trooper Warner had no reasonable, articulable suspicion to stop his vehicle because his vehicle did not fully cross the double yellow lines. In support

of his argument, Black cites this Court's decision in *State v. Franklin*, 5th Dist. Licking No. 11-CA-128, 2012-Ohio-3089.

{¶17} In *Franklin*, the trooper conducted a traffic stop of the appellee's vehicle after he observed the vehicle travel over the double solid yellow pavement lines. *Id.* at ¶ 4. The appellee travelled over the line approximately a half a tire width and then swayed back into his lane. *Id.* The trial court denied the appellee's motion to suppress. It found the tires of the vehicle touched the far right line of the double solid center line traffic marking and that the tires crossed the double center line by approximately three inches or one half of a tire width. *Id.* at ¶ 7. While a de minimis violation, the trial court found the evidence demonstrated the appellee was in violation of R.C. 4511.33. *Id.*

{¶18} In a divided decision, this Court reversed the trial court's judgment to deny the motion to suppress. It was significant to the majority that "there was no testimony or evidence that appellant crossed the center line, but rather that appellant drove on the marked center line." *Id.* at ¶ 21. We held the trooper lacked reasonable, articulable suspicion to stop the appellee for a violation of R.C. 4511.33. *Id.* The dissenting judge stated that "crossing onto the double center line by three inches was an indication of impaired or inattentive driving warranting a stop. I would also defer to the trial court's analysis of the videotape in its role as the trier of fact." *Id.* at ¶ 25.

{¶19} In *State v. Holland*, this Court considered whether there was a reasonable, articulable suspicion to stop the appellant's vehicle for driving over the right white fog line by approximately one-half a tire width. *State v. Holland*, 5th Dist. Stark No. 2016CA00111, 2017-Ohio-921. During the motion to suppress hearing, the video from the trooper's car was presented. The trooper testified he observed on the video that the appellant

committed a second marked lanes violation when the left tire traveled over the center yellow line. *Id.* at ¶ 5. The trial court overruled the motion to suppress. It found there was reasonable suspicion for the stop of the appellant's vehicle based upon the trooper's observation of the appellant's vehicle crossing the white fog line and riding the yellow center line, including to the left of the center line. *Id.* at ¶ 8.

{¶20} On appeal, this Court affirmed the trial court's decision. In making the decision, we reaffirmed the trial judge is in the best position to determine the credibility of the witnesses; further, the role of trier of fact is applicable to trials and suppression hearings. *Id.* at ¶ 19. The trial court's findings of facts are to be accepted if they are supported by competent, credible evidence. *Id.* We found the trial court considered the testimony of the trooper, reviewed the videotape, and made the factual determination that the appellant's vehicle crossed the white fog line and rode the yellow center line, including to the left of the center line. *Id.* at ¶ 18. Our review of the evidence and the totality of the circumstances showed the trial court's factual findings were supported by competent and credible evidence. *Id.* at ¶ 23.

{¶21} In this case, the trial court considered the trooper's testimony and reviewed the videotape. It found Black committed no violations other than the left-of-center violation. (T. 24). The trial court stated it saw in the videotape that Black's tire was over the double-yellow line and the mirror extended further than the tire. (T. 24). The trial court characterized the violation as technical in nature, but it was an actual violation of R.C. 4511.33, giving the trooper a reasonable cause to stop Black for a left-of-center violation. (T. 24).

{¶22} In *State v. Mays*, the Ohio Supreme Court ruled “a traffic stop is constitutionally valid when a law enforcement officer witnesses a motorist drift over the lane markings in violation of R.C. 4511.33, even without further evidence of erratic or unsafe driving.” 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 25. In making its decision, the *Mays* Court stated:

R.C. 4511.33(A)(1) provides that a driver must remain within the lane markings “as nearly as is practicable” and that a driver shall not move from a lane “until the driver has first ascertained that such movement can be made with safety.” The phrase “as nearly as is practicable” does not give the driver the option to remain within the lane markings; rather, the phrase requires the driver to remain within the lane markings unless the driver cannot reasonably avoid straying.

We agree with the Seventh District Court of Appeals' explanation of R.C. 4511.33 in *State v. Hodge*, 147 Ohio App.3d 550, 2002-Ohio-3053, 771 N.E.2d 331. The *Hodge* court stated: “The legislature did not intend for a motorist to be punished when road debris or a parked vehicle makes it necessary to travel outside the lane. Nor, we are quite certain, did the legislature intend this statute to punish motorists for traveling outside their lane to avoid striking a child or animal. We are equally certain the legislature did not intend the statute to give motorists the *option* of staying within the lane at their choosing. Common sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be

valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable.” (Emphasis sic.) *Id.* at ¶ 43.

The court in *Hodge* also stated that it did not intend for its decision to stand for “the proposition that movement within one lane is a per se violation giving rise to reasonable suspicion, nor does inconsequential movement within a lane give law enforcement carte blanche opportunity to make an investigatory stop.” *Id.*, 147 Ohio App.3d 550, 2002-Ohio-3053, 771 N.E.2d 331, at ¶ 45. However, when an officer could reasonably conclude from a person's driving outside the marked lanes that the person is violating a traffic law, the officer is justified in stopping the vehicle.

Id. at ¶ 18-20.

{¶23} The trial court found Black drove on the double-yellow centerline with his tire to such a degree that the driver's side mirror crossed the double-yellow line. Trooper Warner was the only witness at the hearing and provided unrebutted testimony that he observed Black drive on the double-yellow line. Although the violation was de minimis in nature, the competent and credible evidence and totality of the circumstances supports the trial court's conclusion that Black failed to remain entirely within a single lane of traffic. Trooper Warner had a reasonable, articulable suspicion that Black committed a left-of-center violation.

{¶24} Black's sole Assignment of Error is overruled.

CONCLUSION

{¶25} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.,

Gwin, P.J. and

E. Wise, J., concur.