[Cite as *State v. Mason-Cowan*, 2012-Ohio-1074.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-261 (M.C. No. 2010 TR C 170021)
Sharmaine N. Mason-Cowan,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 15, 2012

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Melanie R. Tobias*, for appellant.

Matan, Wright & Noble, and *Robert D. Noble*, for appellee.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Plaintiff-appellant, the State of Ohio ("the State"), appeals the judgment of the Franklin County Municipal Court granting the motion to suppress filed by appellee, Sharmaine N. Mason-Cowan ("appellee"), and dismissing the criminal charges of following too closely in violation of R.C. 4511.34(A) and operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a) and (A)(1)(d). For the reasons that follow, we affirm.

{¶ 2} The facts of this matter concern a traffic stop initiated by Ohio State Highway Patrol Trooper Jermaine Thaxton ("Trooper Thaxton"). As a result of the traffic stop, appellee was charged with following too closely in violation of R.C. 4511.34(A) and operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a) and (A)(1)(d). Appellee filed a motion to suppress the evidence obtained

as a result of the traffic stop. On February 15, 2011, the matter came before the trial court for a suppression hearing. Based upon the evidence presented, the court concluded that no reasonable suspicion supported the traffic stop. Accordingly, the trial court dismissed the charges against appellee. The State has timely appealed and presents the following assignment of error for our review:

> THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE CITING OFFICER DID NOT HAVE REASONABLE SUSPICION TO STOP APPELLEE'S VEHICLE FOR FOLLOWING ANOTHER VEHICLE TOO CLOSELY, IN VIOLATION OF R.C. 4511.34(A), AND THUS DISMISSED APPELLEE'S OVI CHARGES.

{¶ 3} When deciding a motion to suppress, the trial court acts as the trier of fact and therefore evaluates the credibility of witnesses and resolves questions of fact. *State v. Dunlap*, 73 Ohio St.3d 308 (4th Dist.1995). Appellate courts therefore must defer to the trial court's factual findings if competent, credible evidence supports those findings. *Id.* However, after accepting those facts as true, an appellate court must nevertheless independently determine whether the trial court met the applicable legal standard. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 (4th Dist.1997). Therefore, appellate review of a motion to suppress presents mixed questions of law and fact. *Id.*

{¶ 4} The Ohio and United States Constitutions protect individuals from unreasonable searches and seizures. *State v. Orr*, 91 Ohio St.3d 389, 391 (2001). To initiate a constitutionally valid traffic stop, an officer must at least have a reasonable suspicion that criminal activity has occurred or is imminent. *State v. Montelauro*, 10th Dist. No. 11AP-413, 2011-Ohio-6568, ¶ 7, citing *State v. Chatton*, 11 Ohio St.3d 59, 61 (1984), cert. denied, 469 U.S. 856, 105 S.Ct. 182, 83 L.Ed.2d 116 (1984). This reasonable suspicion must be supported by specific and articulable facts. *Id.* During a suppression hearing, the State bears the burden of establishing the validity of a traffic stop. *State v. Foster*, 11th Dist. No. 2003-L-039, 2004-Ohio-1438, ¶ 6.

{¶ 5} In the instant matter, appellee was heading eastbound on Broad Street in Columbus, Ohio, when she stopped her vehicle for a red light. Another vehicle was stopped in front of her. At that point, Trooper Thaxton approached in his vehicle and

stopped directly behind appellee. After the light turned green, the vehicles all began accelerating away from the traffic light. Based upon his observations, Trooper Thaxton initiated a traffic stop. A videotape generally depicting these events was recorded from a dashboard camera in Trooper Thaxton's vehicle.

{¶ 6} The traffic stop involved R.C. 4511.34(A), which provides:

> The operator of a motor vehicle * * * shall not follow another vehicle * * * more closely than is reasonable and prudent, having due regard for the speed of such vehicle * * * and the traffic upon and the condition of the highway.

{¶ 7} R.C. 4511.34(A) was fashioned to prevent rear-end collisions and thereby protect the traveling public. *State v. Gonzalez*, 43 Ohio App.3d 59, 62 (6th Dist.1987), citing *State v. Schaeffer*, 96 Ohio St. 215, 236 (1917). Violations of the statute occur when it is determined that a vehicle cannot stop before causing a rear-end collision. *Id.* That is, violations occur when a driver operates a vehicle "more closely than is reasonable and prudent" under the circumstances. *Id.*; *see also* R.C. 4511.34(A). As is clear, the statute is couched in relative terms, and violations depend upon the circumstances of a given case. *Id.* quoting *State v. Hinton*, 4th Dist. No. 385 (Feb. 5, 1982). Enforcement of the statute is governed by "the rule of reason" because "[t]raffic circumstances vary greatly." *Id.*

{¶ 8} At least three circumstances are considered when determining whether a vehicle is following too closely: the driver's reaction time, the distance at which the vehicle followed, and the speed of the vehicle. *Id.* citing *State v. Bush*, 88 Ohio Law Abs. 161, 165 (C.P.1962), affirmed by 92 Ohio Law Abs. 63 (C.P.1962).

{¶ 9} After listening to the testimony presented during the suppression hearing, the trial court concluded that Trooper Thaxton did not articulate a reasonable suspicion for the traffic stop. While the trial court found Trooper Thaxton to be honest, it also noted that he was unable to offer testimony about the speed of appellee's vehicle. The trial court found this to be fatal based upon the circumstances of this case.

{¶ 10} In this appeal, the State contends that Trooper Thaxton's testimony should have been sufficient to establish reasonable suspicion despite his inability to testify about appellee's speed. According to the State, Trooper Thaxton paced the speed of appellee's vehicle and applied the results to a recognized formula, under which vehicles should

follow at a distance of at least one car length for every ten miles per hour of their speed. The State therefore contends that specific and articulable facts existed at the time of the traffic stop, but Trooper Thaxton could not recall them during the suppression hearing. The State argues this was sufficient to demonstrate reasonable suspicion.

{¶ 11} The issue before us is whether Trooper Thaxton articulated a reasonable suspicion for stopping appellee. Again, violations of R.C. 4511.34(A) depend on a driver's reaction time, the distance between the vehicles, and the speed of the vehicles. *Gonzalez* citing *Bush*. Two of the three circumstances are undisputed in this matter. That is, with respect to reaction time, the average driver reacts in approximately three-quarters of a second. (Internal citations omitted.) *Id*. Courts have consistently recognized as much.

{¶ 12} With respect to distance, Trooper Thaxton testified that appellee's vehicle was no more than two car lengths between the vehicle she followed. Further, according to Trooper Thaxton, a car length is somewhere between eight and ten feet. While the video depicting the events was taken at a different angle than Trooper Thaxton's point of view, it generally supports his testimony in this regard. More importantly, however, the trial court did not reach a factual finding to the contrary.

{¶ 13} The dispute in this matter regards Trooper Thaxton's testimony regarding appellee's speed. In this regard, the evidence demonstrates that Trooper Thaxton first noticed appellee's vehicle as they drove past each other in opposite directions on Broad Street. During this portion of his testimony, Trooper Thaxton recalled that appellee's speed was somewhere between 50 and 60 miles per hour. Eventually, he then turned around and came to a stop behind appellee at a traffic light. After the light turned green, the vehicles began accelerating. According to Trooper Thaxton, there was nothing abnormal about the way appellee accelerated from the traffic light.

{¶ 14} Trooper Thaxton testified that he paced the speed of appellee's vehicle by maintaining a constant distance between appellee's vehicle and his own, in order to determine her speed by looking at his own speedometer. He then applied appellee's speed to the one car length per ten miles per hour formula. When asked whether the formula differentiates between vehicles traveling at constant speeds versus those accelerating from a complete stop, Trooper Thaxton testified that it does not. More importantly, however, when asked how fast she was traveling, Trooper Thaxton testified that he had not written

it down, the recording that would have included his own speed had been destroyed, and he could not recall appellee's speed. When asked whether appellee's vehicle could have been traveling 20 miles per hour, Trooper Thaxton answered: "I don't believe it was going 20 miles an hour. Like I said, at the end it was two car lengths away from the other vehicle and I would have not stopped them. Who drives 20 miles an hour in a 50 mile an hour zone?" (Tr. 37.) Later in his testimony, however, Trooper Thaxton was asked whether he "believe[d] that she was going more than the 20 miles that in your mind you thought was safe;" he replied, "Yes." (Tr. 66-67.)

{¶ 15} As the trier of fact, the trial court was free to note the inconsistencies in the evidence and weigh the facts accordingly. It is true that an officer need not always testify about the precise speed of a defendant's vehicle to support a traffic stop under R.C. 4511.34(A). However, based upon the record before us, the trial court was not obligated to find specific and articulable facts supporting Trooper Thaxton's reasonable suspicion merely because he recalled pacing appellee's speed and applying it to a recognized formula. This is especially true given that the vehicles were accelerating away from a stoplight. The trial court was not obligated to find specific and articulable facts where they were left unarticulated. To accept the State's position would turn search and seizure law on its head. Based upon the circumstances presented herein, the State did not meet its burden of establishing the validity of the traffic stop. And despite the State's insistence, we refuse to reweigh the facts before the trial court to reach a different conclusion.

{¶ 16} Based upon the foregoing, we overrule the State's sole assignment of error and affirm the judgment rendered by the Franklin County Municipal Court.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
