[Cite as *State v. McCandlish*, 2012-Ohio-3765.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-913
v.	:	(M.C. No. 2010 TRC 194039)
Kyle McCandlish,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 21, 2012

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellee.

W. Jeffrey Moore, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶ 1} Defendant-appellant, Kyle McCandlish, appeals from a judgment of conviction and sentence entered by the Franklin County Municipal Court. Because the trial court did not err by denying his motion to suppress, we affirm that judgment.

{¶ 2} In the early morning hours of November 11, 2010, Sergeant Doug Ruben-Koenig of the Grandview Heights Police Department was driving his police car eastbound on West Fifth Avenue. He observed a car, driven by appellant, driving towards him slightly left of the center lane on Fifth Avenue,[1] as if the car had just passed another car or was going to turn left onto a side street. After Sergeant Ruben-Koenig passed appellant's car, he watched it turn south onto Cambridge Street. Sergeant Ruben-Koenig turned onto

[1] Sergeant Ruben-Koenig testified that the car was maybe "six, seven inches" over the lane and that the driver's side tire "maybe just came over a couple inches over the lines." (Tr. 8.)

a parallel street and caught up to appellant as he was stopped at a traffic light at the intersection of Cambridge Street and Third Avenue. Appellant paused for a moment when the light for the car turned green before driving through the intersection. When he did, appellant continued south on Cambridge. Sergeant Ruben-Koenig followed appellant. According to Sergeant Ruben-Koenig, appellant continued to drive around the immediate neighborhood as if he were lost. In light of these events, Ruben-Koenig initiated a traffic stop of the car.

{¶ 3} As a result of that traffic stop, appellant was charged with one count of driving a vehicle while under the influence ("OVI") in violation of Marble Cliff City Code 333.01(a)(1). Appellant entered a not guilty plea to the charge in Marble Cliff's Mayor's Court and had the case transferred to the Franklin County Municipal Court. Subsequently, appellant sought to suppress the evidence obtained from his traffic stop, arguing that the police illegally stopped his car. After a hearing at which Sergeant Ruben-Koenig testified to the above-version of events, the trial court denied appellant's request, concluding that the officer properly stopped appellant after observing him commit a traffic offense. In light of that ruling, appellant entered a no contest plea to one count of OVI. The trial court found him guilty and sentenced him accordingly.

{¶ 4} Appellant appeals and assigns the following error:

> The trial court erred in failing to find that the police lacked reasonable suspicion to stop the defendant's vehicle.

{¶ 5} In his sole assignment of error, appellant contends that the trial court erred by denying his motion to suppress because the police stopped him without reasonable suspicion. We disagree.

{¶ 6} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. Thus, an appellate court's standard of review of a trial court's decision denying the motion to suppress is two-fold. *State v. Reedy*, 10th Dist. No. 05AP-501, 2006-Ohio-1212, ¶ 5, citing *State v. Lloyd*, 126 Ohio App.3d 95, 100-01 (7th Dist.1998). Because the trial court assumes the role of fact finder and, accordingly, is in the best position to weigh the credibility of the witnesses, "we must uphold the trial court's findings of fact if they are supported by competent, credible evidence." *Id.*, citing *State v. Klein*, 73 Ohio App.3d 486, 488 (4th

Dist.1991); *Burnside.* We then must independently determine, as a matter of law, whether the facts meet the applicable legal standard. *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 (4th Dist.1997). Appellant does not challenge any of the trial court's factual findings. He contends that the trial court's legal conclusion was wrong. Thus, we must independently determine whether Sergeant Ruben-Koenig had reasonable and articulable suspicion to stop appellant.

{¶ 7} The Fourth Amendment to the U.S. Constitution and Ohio Constitution, Article I, Section 14, of the guarantee the right to be free from unreasonable searches and seizures. *State v. Orr*, 91 Ohio St.3d 389, 391 (2001). It is well-established that stopping an automobile, thus temporarily detaining its occupants, constitutes a seizure under the Fourth Amendment to the U.S. Constitution. *State v. Dorsey*, 10th Dist. No. 04AP-737, 2005-Ohio-2334, ¶ 17, citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). A traffic stop is constitutionally valid, however, if an officer has a reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, ¶ 7, citing *Delaware* at 663. In evaluating reasonable suspicion to support the propriety of a stop, a reviewing court must consider the totality of the circumstances surrounding the stop as "viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews*, 57 Ohio St.3d 86, 87-88 (1991). *See also State v. Freeman*, 64 Ohio St.2d 291 (1980). The standard is an objective, not subjective, one: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), citing *Carroll v. United States*, 267 U.S. 132 (1925); *State v. Williams*, 51 Ohio St.3d 58, 60-61 (1990).

{¶ 8} Appellant argues that Sergeant Ruben-Koenig did not have reasonable suspicion to stop him because the officer testified that he did not feel that appellant committed a left-of-center violation or any other traffic offense. We disagree.

{¶ 9} Although the officer testified that he thought he may have lacked sufficient grounds to stop appellant,[2] he testified repeatedly that appellant drove his car left of the

[2] The officer's testimony is actually ambiguous on this point. He testified that he thought he did not legally have grounds to pull appellant over but also testified that he simply did not want to stop appellant for such a minor violation. (Compare Tr. 8 with Tr. 13-14.)

center lane. (Tr. 8, 9, 12, 13, 16, 17.) Driving left of center is a violation of R.C. 4511.25(A) that can, by itself, constitute reasonable suspicion to support a valid traffic stop. *See State v. Stevens*, 4th Dist. No. 00 CA 05 (Aug. 30, 2000) (citing numerous cases). The fact that the officer did not believe he had sufficient grounds to stop appellant makes no difference, because in reviewing the totality of the circumstances to determine whether reasonable suspicion exists, we must view the circumstances through the eyes of a reasonable and prudent police officer on the scene. Again, the standard is objective, the officer's own subjective belief or conclusion regarding the existence of reasonable suspicion is not relevant. *State v. Jones*, 4th Dist. No. 11CA13, 2012-Ohio-1523, ¶ 15. *See also State v. Hansard*, 4th Dist. No. 07CA3177, 2008-Ohio-3349, ¶ 35 (court not bound by officer's subjective belief that probable cause did not exist).

{¶ 10} In the present matter, even though the officer may have believed he did not have sufficient grounds to stop appellant, the officer testified repeatedly that he observed appellant's car drive left of center. The trial court factually found that appellant committed the traffic offense and appellant does not dispute that finding. Accordingly, having witnessed a traffic violation, the officer had reasonable suspicion to stop appellant's car and the trial court did not err in denying appellant's motion to suppress. We overrule appellant's assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

FRENCH and CONNOR, JJ., concur.