

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2012-G-3056
SUZANE LISAC,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Chardon Municipal Court, Case No. 2011 TRC 04322.

Judgment: Reversed and remanded.

James M. Gillette, Chardon Village Law Director, National City Bank Building, 117 South Street, Suite 208, Chardon, OH 44024 (For Plaintiff-Appellee).

R. Robert Umholtz, Geauga County Public Defender, and *Dawn M. Gargiulo*, Assistant Public Defender, 211 Main Street, Chardon, OH 44024 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Suzane Lisac, appeals from the judgment of the Chardon Municipal Court denying her motion to suppress. The issue before us is whether Deputy Bilicic had probable cause or a reasonable suspicion to stop appellant's vehicle. Based on the following, we reverse and remand the trial court's judgment for further proceedings.

{¶2} As an initial matter, we note there has been no official "transcript" of proceedings as contemplated and required under App.R. 9(B)(6). Included in the record

transmitted to this court from the trial court is a disc labeled “Exhibit 1”; however, there is no indication what this disc contains. Attempts to view the contents of the disc by the court have been unsuccessful, apparently due to the fact that this disc requires installation of software which this court does not have. It is appellant’s responsibility to provide a transcript of proceedings that complies with App.R. 9—this disc fails that test. Therefore, this disc will be disregarded. Attached to appellant’s brief as an appendix is a “transcript of trial court’s video recording cited in brief.” This is a nine-page document that purports to include testimony from a hearing on November 15, 2012. There is no indication who prepared this document, and there is no certification of any kind contained on the document.

{¶3} However, in spite of the total lack of compliance with App.R. 9, appellee, the state of Ohio, in its reply brief, asserts: “The partial transcript of proceedings attached to Appellant’s brief includes all of the testimony necessary to decide the Assignment of Error and Issue Presented for Review.” Therefore, we will consider that any defect in the preparation and transmittal of the record has been waived by appellee, and we will consider this appeal solely on the record as set forth in the “transcript” attached to appellant’s brief, the pleadings in the record, and the judgment of the trial court.

{¶4} On July 11, 2011, during daylight hours, Deputy Heather Bilicic of the Geauga County Sheriff’s Office effectuated a traffic stop of appellant’s vehicle. Deputy Bilicic testified that she stopped appellant’s vehicle because she observed the tires of the vehicle drive upon, but not beyond, the center line several times. Further, Deputy Bilicic testified the vehicle’s county and registration stickers on the rear license plate

were partially obscured by the license plate frame. Appellant was not cited for these purported violations. As a result of the stop, appellant was charged with operating a vehicle impaired in violation of R.C. 4511.19(A)(1)(a) and (d).

{¶5} At the hearing on appellant's motion to suppress, Deputy Bilicic testified that, as she was following appellant's vehicle, apparently on State Route 6, west of State Route 528, she observed the vehicle's tires touch, but not cross, the center line. Although equipped with an operating video camera, Deputy Bilicic did not activate the dash-cam when traveling on Route 6 west of 528. Deputy Bilicic, however, did activate her dash-cam when she began to follow appellant's vehicle as it was traveling on Route 6 east of 528. While Deputy Bilicic testified that she observed marked lane violations when appellant's vehicle was traveling on Route 6 west of 528, she "was not positive of how many there were exactly." Additionally, after the dash-cam video was played at the hearing, Deputy Bilicic testified that she was unable to observe any lane violations on the video. Upon further questioning, Deputy Bilicic stated that it would be difficult to observe a violation on the video if appellant's tires "were touching on the center line."

{¶6} Further, when shown a picture of appellant's license plate, Deputy Bilicic testified both the county sticker and expiration sticker were visible.

{¶7} Following the hearing, the trial court issued a judgment denying appellant's motion to suppress. The trial court found that Deputy Bilicic "observed the vehicle operation she described, but did not view partially obscured stickers on the rear plate of the vehicle defendant was operating." The trial court then stated, "the traffic stop must be determined through application of the law to the facts of defendant's operation of the vehicle as observed by [Deputy] Bilicic." After citing to R.C.

4511.33(A)(1), the “Rules for Driving in Marked Lanes,” the trial court then observed, “[t]here is no evidence that defendant driving entirely within a single lane was not practicable at the times and places [Deputy] Bilicic observed defendant drive the vehicle such that the vehicle’s driver’s side tires drove upon, but not beyond, the center line.”

{¶8} The trial court then stated:

{¶9} Because a laned highway is obviously a highway, the lanes are ‘the width between the boundary lines.’ Accordingly, the boundary lines themselves are not within the lane. Given this, the court finds that [Deputy] Bilicic has probable cause or a reasonable suspicion based on articulable facts that defendant failed to drive a vehicle entirely within a single lane when Officer Bilicic initiated the traffic stop.

{¶10} On appeal, appellant assigns the following error for our review:

{¶11} “The trial court erred in denying appellant’s motion to suppress when the evidence resulted from an illegal traffic stop.”

{¶12} Under her assignment of error, appellant argues that she neither committed a traffic violation nor engaged in any activity that could be characterized as criminal or suspicious.

{¶13} “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. The appellate court must accept the trial court’s factual findings, provided they are supported by competent, credible evidence. *Id.* Thereafter, the appellate court must determine, without deference to the trial court, whether the applicable legal standard has been met.

Id. Thus, we review the trial court’s application of the law to the facts de novo. *State v. Holnapy*, 194 Ohio App.3d 444, 2011-Ohio-2995, ¶28 (11th Dist.).

{¶14} An officer may constitutionally stop a motorist if the seizure is premised upon either a reasonable suspicion or probable cause. See e.g. *Ravenna v. Nethken*, 11th Dist. No. 2001-P-0040, 2002-Ohio-3129, ¶28. Probable cause is defined in terms of those facts and circumstances sufficient to warrant a prudent law enforcement officer in believing that a suspect committed or was committing an offense. See *Beck v. Ohio*, 379 U.S. 89, 91 (1964). It is well-settled that an officer’s observance of a traffic violation furnishes probable cause to stop a vehicle. See e.g. *State v. Korman*, 11th Dist. No. 2004-L-064, 2006-Ohio-1795. *Wickliffe v. Petway*, 11th Dist. Nos. 2011-L-101 & 2011-L-102, 2012-Ohio-2439, ¶12.

{¶15} As the trial court found, and the evidence demonstrates, Deputy Bilicic “did not view partially obscured stickers on the rear plate of the vehicle defendant was operating.” Therefore, that could not provide the basis for the stop. As a result, we address whether Deputy Bilicic possessed probable cause to stop appellant for a marked lanes violation, based solely on the “transcript” provided and the findings of the trial court.

{¶16} R.C. 4511.33 provides, in relevant part:

{¶17} (A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal

corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

{¶18} (1) A vehicle or trackless trolley 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.

{¶19} In its brief, appellee concedes that Deputy Bilicic did not observe appellant commit a marked lanes violation, as the vehicle's tires touched, but did not cross "over the painted line dividing lanes of travel" or did "not [enter] into the neighboring lane." A review of the dash-cam video reveals the absence of any marked lanes violation; the vehicle did not leave appellant's lane of travel. Further, although Deputy Bilicic testified that she observed appellant touch the lane markings prior to activating her dash-cam video, she was unable to recall the number of times this occurred. Additionally, the record before us does not reveal any testimony regarding the duration of these instances. Deputy Bilicic's testimony does, however, clarify that the tires of appellant's vehicle touched, but did not cross, the center line. This court has held that an officer does not have probable cause to stop a vehicle when the vehicle's tires briefly touch the line dividing the lanes, since that does not constitute a marked lanes violation. *Wickliffe v. Petway, supra*, at ¶19 (holding that when a minivan's left tires briefly went onto the line dividing the lanes without passing into the neighboring lane, appellant did not commit a marked lanes violation). We find the evidence insufficient to demonstrate a violation of R.C. 4511.33.

{¶20} Next, we determine whether Deputy Bilicic possessed a reasonable suspicion to believe appellant was impaired such that she was justified in initiating an investigative stop. There is no testimony that characterized appellant's driving as erratic; that appellant engaged in substantial weaving; or that appellant moved from her lane or line of traffic in an unsafe manner. See, e.g., *Wickliffe v. Petway* (insufficient evidence when the minivan weaved slightly to the left of the lane and then back to the center twice within the span of 10 to 15 seconds); and *Willoughby v. Mazura*, 11th Dist. No. 98-L-012, 1999 Ohio App. LEXIS 4642 (insufficient evidence when the officer following defendant's vehicle for one-quarter of a mile observed it weave in its lane of travel while traveling approximately 20 feet behind another vehicle). Here, the only testimony before this court is that Deputy Bilicic observed appellant's vehicle touch the center line, and the dash-cam video demonstrated that appellant's vehicle drove entirely within its lane of travel. We therefore hold that Deputy Bilicic lacked reasonable suspicion to initiate an investigative stop to determine if appellant was impaired.

{¶21} Appellant's assignment of error is with merit.

{¶22} Based on the opinion of this court, the judgment of the Chardon Municipal Court is reversed and remanded for proceedings consistent with this opinion.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.