

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

STATE OF OHIO,	:	<b>O P I N I O N</b>
Plaintiff-Appellant,	:	
- VS -	:	<b>CASE NO. 2015-P-0023</b>
JILL R. WOOD,	:	
Defendant-Appellee.	:	

Criminal Appeal from the Portage County Municipal Court, Ravenna Division.  
Case No. R2014 TRC 10506.

Judgment: Affirmed.

*Victor V. Vigluicci*, Portage County Prosecutor, and *Kristina Drnjevic*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellant).

*Dennis Day Lager*, Portage County Public Defender, and *Mark A. Carolo*, Assistant Public Defender, 209 South Chestnut Street, Suite 400, Ravenna, OH 44266 (For Defendant-Appellee).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, the state of Ohio, appeals the judgment of the Portage County Municipal Court, Ravenna Division, pursuant to Crim.R. 12(K), granting appellee, Jill R. Wood's, motion to suppress evidence. Based on the following, we affirm.

{¶2} At the suppression hearing, Trooper John Lamm of the Ohio State Highway Patrol testified that on July 26, 2014, at approximately 2:13 a.m., he was following a vehicle operated by Ms. Wood on Riddle Road in Ravenna, Portage County.

A few moments after beginning to follow the vehicle, Trooper Lamm testified, he observed the vehicle's rear license plate was not illuminated. After driving closer to confirm the light was out, Trooper Lamm activated his lights and initiated a stop. He approached the vehicle, which was occupied by Ms. Wood and two passengers. Smelling a strong odor of alcohol coming from Ms. Wood's vehicle, Trooper Lamm asked Ms. Wood if she had consumed any alcohol, which she denied.

{¶3} Trooper Lamm testified he was unable to determine whether the odor of alcohol was coming from Ms. Wood due to the presence of the other occupants in the vehicle. He, therefore, instructed Ms. Wood to step out of the vehicle and into the front of his patrol car. Still detecting a strong odor of alcohol coming from Ms. Wood, Trooper Lamm once again inquired as to whether she had consumed any alcoholic beverages. Ms. Wood then admitted to having consumed three drinks.

{¶4} Ms. Wood was charged with Counts One and Two, operating a motor vehicle while under the influence of alcohol, a misdemeanor of the first degree, in violation of R.C. 4511.19(A)(1)(a) and R.C. 4511.19(A)(1)(d); Count Three, failure to wear a seatbelt, a minor misdemeanor, in violation of R.C. 4513.263; and Count Four, not having an illuminated license plate light, a minor misdemeanor, in violation of R.C. 4513.05.

{¶5} On July 31, 2014, Ms. Wood plead not guilty to all charges and filed a motion to suppress. In its judgment granting the motion to suppress, the trial court stated: "the parties agreed that the motion was limited to the reasonable basis for the stop of Defendant's vehicle." The trial court then found

after weighing the testimony of the witnesses and the totality of the circumstances that there was no reasonable basis to initiate a

traffic stop of Defendant's vehicle. Further, assuming that there was a reasonable basis for the initial stop there was insufficient reasonable articulable facts to justify extending the stop and requesting Defendant exit the vehicle to perform Standard Field Sobriety Tests.

{¶6} The state filed a timely notice of appeal and asserts the following assignment of error for our review:

{¶7} "The Portage County Municipal Court erred in granting appellee's motion to suppress."

{¶8} "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.* Accordingly, we review the trial court's application of the law to the facts de novo. *State v. Cevera*, 11th Dist. Ashtabula No. 2012-A-0053, 2013-Ohio-5483, ¶8.

{¶9} The state first asserts the trial court erred in concluding Trooper Lamm did not have a reasonable suspicion to stop Ms. Wood's vehicle.

{¶10} An officer may constitutionally stop a motorist if the seizure is premised upon either a reasonable suspicion or probable cause that a violation has occurred. See, e.g., *Ravenna v. Nethken*, 11th Dist. Portage 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 observation of a traffic violation furnishes probable cause to stop a vehicle.

See, e.g., *State v. Korman*, 11th Dist. Lake No. 2004-L-064, 2006-Ohio-1795; *Wickliffe v. Petway*, 11th Dist. Lake Nos. 2011-L-101 & 2011-L-102, 2012-Ohio-2439, ¶12.

{¶11} R.C. 4513.05(A) provides, in relevant part:

Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate, when such registration plate is required, and render it legible from a distance of fifty feet to the rear. Any tail light, together with any separate light for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlights or auxiliary driving lights are lighted, except where separate lighting systems are provided for trailers for the purpose of illuminating such registration plate.

{¶12} At the suppression hearing, Officer Lamm testified that when traveling behind Ms. Wood's vehicle from a distance of 50 feet, he observed the rear license plate was not illuminated. Officer Lamm noted that when he traveled closer to the vehicle, he indeed confirmed the plate was not illuminated; Officer Lamm stated he was 100 percent certain that Ms. Wood's rear license plate was not illuminated. After stopping the vehicle for the violation, Trooper Lamm claimed he was still unable to discern Ms. Wood's license plate number and county sticker without the assistance of his spotlight. Officer Lamm further stated that he did not witness any other infraction.

{¶13} On cross-examination, Trooper Lamm was asked, when he got closer to the vehicle, whether he ever checked "if the light was on or had already made your determination it wasn't working, you were focusing on other aspects of your investigation." His reply was "Right. I was already certain it was out. I was focusing on the others." The following questioning then occurred:

Q. Did you ever during the entirety of your investigation ever go back to look at the plate light itself?

A. No sir.

Q. Did you – you never went back to see whether it was working or not at that time?

A. No, not after we were stopped.

{¶14} Testifying on her own behalf, Ms. Wood stated that Trooper Lamm indicated she was stopped due to her license plate not being illuminated. She testified that she informed Trooper Lamm that she had been pulled over for the same reason the prior month, and she subsequently replaced the license plate bulbs. Ms. Wood testified the bulbs were working between the time she replaced them in June and through the day of the suppression hearing.

{¶15} Given the testimony of Trooper Lamm and Ms. Wood, the trial court was obviously faced with a credibility issue. At a suppression hearing, “the trial court is best able to decide facts and evaluate the credibility of witnesses.” *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, ¶41.

{¶16} In its judgment, the trial court found “that although [Trooper Lamm] was certain that the license plate light was not working, he did not verify that fact after stopping [Ms. Wood’s] vehicle.” We recognize Trooper Lamm’s post-stop failure to verify whether the license plate light was not illuminated is not dispositive of the case. This, however, could have impacted the trial court’s view of Trooper Lamm’s credibility. That is, the trooper walked past Ms. Wood’s vehicle and, at that point, could have easily verified whether the light was on or off. He testified he did not do so. In light of Ms. Wood’s testimony, as well as the surrounding circumstances, the trial court found the trooper’s rendition of the events not credible. The trial court apparently believed the testimony of Ms. Wood that she had informed Trooper Lamm that she had recently replaced the bulbs.

{¶17} Because we affirm the trial court's finding that there was no probable cause for the initial stop, there is no need to address the state's contention that the trial court erred in finding "there was insufficient reasonable articulable facts to justify extending the stop and requesting [Ms. Wood] to perform Standard Field Sobriety Tests."

{¶18} We do not find merit in the state's assignment of error.

{¶19} The judgment of the Portage County Municipal Court, Ravenna Division, is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.