

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

STATE OF OHIO :
 :
 Plaintiff-Appellee : C.A. CASE NO. 09CA17
 :
 vs. : T.C. CASE NO. 08TRC2689
 :
 MICHAEL J. LEIFHEIT : (Criminal Appeal from
 : Municipal Court)
 Defendant-Appellant :

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O P I N I O N

Rendered on the 25th day of November, 2009.

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GRADY, J.:

{¶ 1} Defendant, Michael J. Leifheit, appeals from his conviction and sentence for an OMVI violation, which were entered on his plea of no contest following the trial court's denial of Defendant's motion to suppress evidence.

{¶ 2} Leifheit's arrest and conviction arose from a

warrantless stop of his vehicle by Ohio State Highway Patrol Trooper Timothy Ehrenborg on December 4, 2008, at about 1:30 a.m. Defendant's motion to suppress challenged the legality of the stop for lack of a warrant. It was the State's burden then to prove, by a preponderance of the evidence, that an exception to the warrant requirement applied. *City of Athens v. Wolf* (1974), 38 Ohio St.2d 237.

{¶3} The State relied on the holdings in *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89, and *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, arguing that Trooper Ehrenborg's stop of Defendant's vehicle was justified by probable cause of a traffic code violation Defendant had committed. The trial court found that the State proved that exception to the warrant requirement, and on that basis denied Defendant's motion to suppress.

{¶4} Defendant argues that the findings of fact concerning the stop the court made and on which it relied are not supported by competent, credible evidence. In a motion to suppress the trial court assumes the role of the trier of facts. In reviewing the trial court's decision on a motion to suppress, the court of appeals is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence in the record. Accepting the facts as found by the trial court as true, the court

of appeals must then independently determine as a matter of law, without deference to the trial court's conclusion, whether those facts meet the applicable legal standard. *State v. Satterwhite* (1997), 123 Ohio App.3d 322.

{¶5} The evidence concerning the traffic code violation for which Defendant was stopped was conflicting, and the court adopted the Trooper's version of the facts, rejecting the testimony of Defendant and his girlfriend, Catherine Shaffer. Credibility of the witnesses and the weight to be given their testimony are primarily matters for the trial court to resolve. *State v. DeHass* 91967), 10 Ohio St.2d 230. This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at a verdict or finding. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97CA03.

{¶6} The alleged traffic code violation took place at the intersection of U.S. Route 68 and State Route 55, also known as Lewis D. Moore Drive, at the south end of Urbana. Defendant was traveling north when he turned left onto Lewis Moore Drive, traveling west. Trooper Ehrenborg testified that when Defendant executed the turn he first drove into and through the marked eastbound lane of Lewis Moore Drive before proceeding into the westbound lane. Defendant said he executed his turn properly and

did not cross into the marked eastbound lane.

{¶ 7} The evidentiary conflict concerned the Trooper's location when he observed that alleged traffic violation. Trooper Ehrenborg testified that he had driven some distance south, out of Urbana, on Route 68, when he turned around to follow Defendant's vehicle, which was northbound on Route 68. As they approached the intersection, the Trooper was behind Defendant's vehicle, and the Trooper observed the traffic violation for which Defendant was stopped from that vantage point.

{¶ 8} Both Defendant and Catherine Shaffer, who testified that she was behind Defendant in her own vehicle, said that Trooper Ehrenborg was not behind Defendant at any time. Rather, as Defendant approached the intersection from the south, the Trooper was approaching it from the north. When Defendant executed a left turn onto Route 55, the Trooper executed a right turn onto Route 55, and then turned on his cruiser's overhead lights to effect a stop. Defendant points to two matters of record that support his version and bring the court's findings into question.

{¶ 9} First, in a written statement he prepared following Defendant's arrest (Exhibit 2), Trooper Ehrenborg wrote: "On December 4, 2008, at approximately 0135 hours I was traveling southbound on U.S. 68 near S.R. 55. I observed a black Chevrolet Dually turned west on S.R.55. The driver of the pick up turned

short and crossed the entire turn for eastbound traffic on S.R.55.

I activated the pursuit lights and signaled the driver to stop.

I made contact with the driver and detected a strong odor of alcoholic beverage." That sequence of events contradicts the Trooper's testimony and is consistent with Defendant's version of the events.

{¶ 10} Confronted with the apparent contradiction between his written statement and his testimony, Trooper Ehrenborg stated that he failed to mention in his statement that he proceeded south and then turned around to follow Defendant north on Route 68, because "obviously my thought process when I'm typing this skipped the next, line of thought." (T. 22). The omission is inconsistent with the degree of detail in the remainder of the Trooper's statement. However, we cannot find that the trial court abused its discretion when it credited the Trooper's explanation of the omission, as it apparently did.

{¶ 11} Second, a video camera on the Trooper's cruiser engaged when he activated its overhead lights to stop Defendant's vehicle.

It is undisputed that this occurred only after the Trooper had turned onto Route 55. Nevertheless, the trial court wrote: "Upon review of the tape and the video, the Court denies the Defendant's Motion to Suppress. Of particular importance is the fact that the video shows the Trooper making a left-hand turn right behind

the Defendant with no vehicle in between the Defendant and the Trooper." (Dkt. 20.)

{¶ 12} Catherine Shaffer testified that she followed Defendant's vehicle northbound on Route 68, and saw the Trooper's cruiser turn onto Route 55 behind Defendant's vehicle. The court may have intended to refer to Shaffer's vehicle when it found that the video showed "no vehicle in between the Defendant and the Trooper," but that's merely consistent with the testimony of all three witnesses. Of greater significance is the court's finding that the video depicts both Defendant and the Trooper executing a left turn from Route 68 onto Route 55, when it is undisputed that the video camera did not begin recording until after the Trooper had turned onto Route 55.

{¶ 13} The trial court's finding regarding the video is inconsistent with the record. However, it neither fatally damages the Trooper's credibility nor bolsters that of Defendant and Shaffer. The court was free to weigh and determine the credibility of each witness. The court could discount the credibility of Catherine Shaffer, who testified that she and Defendant were living together.

{¶ 14} Defendant also introduced photographs of the intersection to support his contention that Trooper Ehrenborg, from the vantage point at which Defendant placed him, would have

difficulty seeing Defendant cross the yellow line dividing the east and westbound lanes of Route 55 when he turned. While those photos are persuasive of that proposition, they are immaterial to show where the Trooper was in relation to that location when Defendant executed his turn. The court could instead find that Trooper Ehrenborg was behind Defendant's vehicle, and from that vantage point saw Defendant commit the marked-lanes violation for which he was stopped. The Trooper's testimony is competent, credible evidence from which that finding may be made.

{¶ 15} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J. And FROELICH, J. concur.

Copies mailed to:

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