[Cite as *State v. Williams*, 2014-Ohio-4897.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA3436
vs.	:	
JOHN R. WILLIAMS, IV,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT:	Michael L. Benson, Benson, McHenry & Sesser, LLC, 36 South Paint Street, Chillicothe, Ohio 45601
COUNSEL FOR APPELLEE:	Sherri K. Rutherford, Chillicothe Law Director, and Carrie L. Rowland, Chillicothe Assistant Law Director, 97 West Main Street, Chillicothe, Ohio 45601

CRIMINAL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED: 10-23-14

ABELE, P.J.

{¶ 1} This is an appeal from a Chillicothe Municipal Court judgment of conviction and sentence. John R. Williams, IV, defendant below and appellant herein, pled no contest to a charge of operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(d). Appellant assigns the following error for review:

> "THE TRIAL COURT ERRED IN HOLDING THAT THE OFFICER WHO INITIATED THE TRAFFIC STOP HAD A REASONABLE AND ARTICULABLE SUSPICION THAT THE DEFENDANT-APPELLANT, JOHN R. WILLIAMS IV, WAS SUBJECT TO SEIZURE."

{¶ 2} In the early morning hours of October 12, 2013, Ohio State Highway Patrol Trooper Aaron Morgan and a Deputy McKnight[1] were both on "stationary patrol" in their cruisers near the intersection of State Route 772 and Liberty Hill Road. While there, they both observed a vehicle turn without using a turn signal.[2] Also, no light illuminated the vehicle's license plate. Both officers activated their pursuit lights and followed the vehicle, with McKnight's cruiser in front of Morgan's cruiser.

{¶ 3} Because Deputy McKnight drove the lead vehicle, he initiated the first conversation with appellant while Trooper Morgan found somewhere else to park. After field sobriety tests, appellant was taken into custody and his BAC test revealed 0.097 grams of alcohol per two hundred liters of his breath. Appellant was then charged, inter alia, with operating a motor vehicle while under the influence of alcohol.

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[1] The record does not indicate the first name of "Deputy McKnight," nor the law enforcement agency with which he is affiliated.

[2] By "stationary patrol," Trooper Morgan explained that he and Deputy McKnight were parked in a lot near the intersection of the two roadways.

{¶ 4} Subsequently, appellant filed a motion to suppress evidence and raised a variety of challenges with the traffic stop and the breath-alcohol test. At the motion hearing, however, appellant withdrew all challenges except the stop's constitutionality. Trooper Morgan testified that the officers stopped appellant's vehicle on grounds that he did not use a turn signal and that he had no rear license plate light. The trial court took the case under advisement.

{¶ 5} At the February 29, 2014 pre-trial hearing, the trial court orally overruled the motion to suppress. Appellant then changed his plea to no contest and was found guilty. The other offenses were dismissed. The court sentenced appellant to, among other things, serve one year of community control sanctions and pay a $375 fine. This appeal followed.

{¶ 6} In his sole assignment of error, appellant asserts that the trial court erred by "holding that the officer who initiated the traffic stop had a reasonable and articulable" suspicion of criminal activity to justify such a stop. The premise underlying this argument is that, although Deputy McKnight initiated the stop, he did not testify at the suppression hearing. Thus, appellant argues, the court could not have found the stop to be valid solely on the basis of Trooper Morgan's testimony.

{¶ 7} Our analysis begins with the principle that appellate review of a judgment on a motion to suppress evidence involves mixed questions of law and fact. *State v. Grubb*, 186 Ohio App.3d 744, 2010-Ohio-1265, 930 N.E.2d 380, at ¶12 (3rd Dist.); *State v. Book*, 165 Ohio App.3d 511, 2006-Ohio-1102, 847 N.E.2d 52, at ¶9 (4th Dist.). In hearing such motions, trial courts assume the role of the trier of fact and are best situated to resolve factual disputes and to evaluate witness credibility. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, at ¶100; *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8. Appellate

courts will generally accept those factual findings if competent, credible evidence supports those findings. *State v. Little*, 183 Ohio App.3d 680, 2009-Ohio-4403, 918 N.E.2d 230, at ¶15 (2nd Dist.); *State v. Metcalf*, 111 Ohio App.3d 142, 145, 675 N.E.2d 1268 (4th Dist. 1996). However, appellate courts review de novo a trial court's application of law to the facts. *State v. Higgins*, 183 Ohio App.3d 465, 2009-Ohio-3979, 917 N.E.2d 363, at ¶14 (5th Dist.); *State v. Poole*, 185 Ohio App.3d 38, 2009- Ohio-5634, 923 N.E.2d 167, at ¶18 (11th Dist.). In other words, an appellate court affords no deference to a trial court's application of the law to the facts. The Fourth and Fourteenth Amendments to the United States Constitution, as well as Section 14, Article I of the Ohio Constitution, protect individuals against unreasonable governmental searches and seizures. *Delaware v. Prouse* (1979), 440 U.S. 648, 662, 99 S.Ct. 1391, 1400, 59 L.Ed.2d 660; *State v. Gullett* (1992), 78 Ohio App.3d 138, 143, 604 N.E.2d 176, 179. In *Katz v. United States*, the Supreme Court held that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated exceptions." Id., (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576; see, also, *State v. Sneed* (1992), 63 Ohio St.3d 3, 6-7, 584 N.E.2d 1160, 1165; *State v. Braxton* (1995), 102 Ohio App.3d 28, 36, 656 N.E.2d 970, 975. A traffic stop is reasonable when an officer possesses probable cause to believe that an individual has committed a traffic violation. See *Whren v. United States* (1996), 517 U.S. 806, 809, 116 S.Ct. 1769, 135 L.Ed.2d 89 (stating that the Fourth Amendment's reasonableness requirement is fulfilled and a law enforcement officer may constitutionally stop the driver of a vehicle when the officer possesses probable cause to believe that a driver has committed a traffic violation); see, also, *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 11-12, 665

N.E.2d 1091.

{¶ 8} In the absence of probable cause to believe that a driver has committed a traffic violation, a law enforcement officer may stop a vehicle if the officer observes facts that give rise to a reasonable suspicion of criminal activity, including a traffic violation. See, generally, *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; *State v. Andrews* (1991), 57 Ohio St.3d 86, 565 N.E.2d 1271; *State v. Venham* (1994), 96 Ohio App.3d 649, 654 N.E.2d 831. To justify a traffic stop based upon less than probable cause, an officer must be able to articulate specific facts that would warrant a person of reasonable caution in the belief that the person stopped has committed or is committing a crime, including a minor traffic violation. See *Erickson*, 76 Ohio St.3d 3, 11-12, 665 N.E.2d 1091; *Terry*, supra. The investigative stop exception to the Fourth Amendment warrant requirement allows a police officer to conduct a brief investigative stop if the officer possesses a reasonable suspicion, based upon specific and reasonable facts, which, taken together with rational inferences from those facts, warrants the belief that criminal behavior is imminent. *Terry v. Ohio* (1968), 392 U.S. 1; *United States v. Brignoni-Ponce* (1978), 422 U.S. 873; *State v. Andrews* (1991),57 Ohio St.3d 86. "The propriety of an investigative stop by a police officer must be viewed in the light of the totality of the surrounding circumstances." *State v. Bobo* (1988), 37 Ohio St.3d 177, 178.

{¶ 9} In the case sub judice, the uncontroverted evidence adduced at the hearing reveals that appellant violated two traffic statutes. Trooper Morgan testified from personal knowledge that when appellant turned onto Liberty Hill Road, he failed to activate his turn signal. See R.C. 4511.39. Trooper Morgan also related that appellant's vehicle did not have a light to illuminate his rear license plate. See R.C. 4513.05. These infractions provided sufficient justification to

stop appellant's vehicle. See *State v. Payne*, 4th Dist. No. 11CA3272, 2012-Ohio-4696, at ¶18; *State v. Harris*, 4th Dist. Ross No. 11CA3298, 2012-Ohio-at ¶13. Additionally, a police officer may stop the driver of a vehicle after observing a de minimis violation of traffic laws. *State v. Bowie*, Washington App. No. 01CA34, 2002-Ohio-3553, ¶¶ 8, 12, and 16, citing *Whren v. United States* (1996), 517 U.S. 806. See, also, *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, syllabus. When the officer has probable cause to believe that a traffic violation has occurred, the detention of a motorist is reasonable and constitutional. Id.; see, also, *State v. McDonald*, Washington App. No. 04CA7, 2004-Ohio-5395, ¶¶ 17-18.

{¶ 10} In the case at bar, appellant does not actually contest the basis or reason for the stop, but rather argues that because the trial court found that Deputy McKnight was the first officer to initiate his pursuit lights and to make contact with appellant, only Deputy McKnight could provide testimony sufficient to justify the stop. However, our review of the evidence reveals that Trooper Morgan also observed the traffic violations, also pursued appellant's vehicle and, like McKnight, also was involved in the traffic stop. We see no significance in the fact that McKnight's vehicle was in front of Morgan's vehicle, or that McKnight parked directly behind appellant and first initiated contact while Morgan parked nearby. Here, Trooper Morgan was actively involved in this traffic stop. Indeed, the record reveals that Trooper Morgan also signed an incident report as the "arresting officer.".[3]

{¶ 11} Appellant cites *State v. Wagner*, 11th Dist. Portage No. 2010–P–0014,

[3] Form should not prevail over substance in matters of constitutional law. See generally *Kleptz v. Cantrell*, 2nd Dist. No. 2002CA37, 2003-Ohio-910, at ¶31; *State v. Murphy*, 8th Dist. Cuyahoga No. 37792, 1977 WL 201703 (Dec. 1, 1997).

2011-Ohio-772 to support his argument. We, however, believe that reliance on *Wagner* is misplaced. In *Wagner*: (1) a Kent police officer was working off-duty at a Taco Bell when a restaurant employee informed him of a possible drunk driver at the drive through; (2) the off-duty officer contacted his department which sent another officer to investigate while the off-duty officer remained there; (3) another officer in a marked police cruiser appeared, stopped the vehicle after it exited the drive-through and eventually charged the driver with "OVI." Id. at ¶2-3. At a subsequent hearing on a motion to suppress, the arresting officer did not testify. Instead, the state's only witness was the off-duty police officer who testified that he had seen the appellant make a "wide right turn going into the other lane of travel." Id. at ¶4.

{¶ 12} Although the trial court overruled the motion to suppress, our Seventh District colleagues reversed the judgment. The court noted (1) the only evidence of any reason to stop the appellant's vehicle was for a possible violation of driving left of center, (2) the only witness to that possible violation was the off-duty officer, and (3) no evidence indicated that the off-duty officer conveyed that information to the arresting officer. Thus, because the arresting officer did not testify as to any criminal violations that he might have witnessed, the court held that the state failed to carry its burden. Id. at ¶7 & ¶¶17-20.

{¶ 13} We believe *Wagner* differs from the case sub judice. Here, the arresting officer, who appears from the original papers to be Trooper Morgan, testified at the hearing. Second, Morgan testified that he personally observed appellant violate R.C. 4511.39 and R.C. 4513.05. Third, Morgan did not remain on stationary patrol at the intersection of State Route 772 and Liberty Hill Road (unlike the off-duty police officer in *Wagner* who stayed at the Taco Bell). Rather, Trooper Morgan was actively involved in the appellant's pursuit and eventual stop.

Although Deputy McKnight may have operated the lead cruiser that followed appellant, and may have first activated his pursuit lights and first contacted appellant, Trooper Morgan nevertheless witnessed the traffic violations, was involved in the pursuit, assisted with the stop and, apparently, is the arresting officer. In our view, Trooper Morgan's testimony provided a sufficient basis for a valid stop. One could imagine, for example, that if Trooper Morgan had been seated in the cruiser's passenger seat and viewed the traffic violation while Deputy McKnight drove the cruiser, Trooper Morgan could testify and provide the proper justification for the stop. We see no reason to conclude otherwise under the particular facts and circumstances present in the case sub judice.

{¶ 14} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Chillicothe Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.