

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN MELSHEIMER

Defendant-Appellant

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 16-CA-18

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Municipal
Court, Case No. 15 TRC 13607

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 19, 2016

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

TAMAS D. TABOR
Assistant City Prosecutor
City of Lancaster Law Director's Office
136 W. Main Street
Lancaster, Ohio 43130

JESSICA G. D'VARGA
JON J. SAIA
713 South Front Street
Columbus, Ohio 43206

Hoffman, J.

{¶1} Defendant-appellant John Melsheimer appeals the March 21, 2016 Entry entered by the Fairfield County Municipal Court denying his motion to suppress evidence. Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On November 25, 2015, at approximately 12:38 a.m., a citizen motorist contacted the Fairfield County Sheriff's Office via a wireless 911 call. The caller reported a white, Ford F-150 truck headed toward Lancaster, southwest bound, on State Route 188, was "all over the road" and "almost hit several vehicles." The caller gave his name as "Doug" and provided his wireless telephone number. The Sheriff's Office then relayed the information to the Ohio State Highway Patrol.

{¶3} Ohio State Highway Patrol Trooper White was in the vicinity and responded to the dispatch. He observed the Ford F-150 truck on State Route 188, with an Ohio license registration tag PHV5067, headed in the direction described by the citizen motorist.

{¶4} Trooper White got behind the truck and observed the driver weaving within its lane of travel. He then observed the truck commit a marked lanes violation when it went approximately one-tire width over the solid, white line on the right side of the roadway.

{¶15} Trooper White initiated a traffic stop. The driver of the vehicle was identified as Appellant.¹

{¶16} As a result of the stop, Appellant was charged with operating a vehicle while intoxicated, in violation of R.C. 4511.19(A)(1)(a); a marked lanes violation, in violation of R.C. 4511.33; and a seatbelt violation, in violation of R.C. 4513.263(B)(1).

{¶17} On January 22, 2016, Appellant filed a motion to suppress evidence arguing Trooper White lacked reasonable suspicion and probable cause to initiate the traffic stop. The State filed a memorandum in opposition. The trial court conducted a suppression hearing on March 9, 2016.

{¶18} Via Entry of March 21, 2016, the trial court denied Appellant's motion to suppress. The trial court found no evidence the citizen motorist "had any motivation making his statements, upon which Trooper White acted, unreliable." Further, Trooper White personally observed the Ford F-150 driven by Appellant weave within its own lane, and then observed the truck commit a marked lanes violation. After reviewing the dash-cam video evidence from Trooper White's cruiser, the trial court found Trooper White's testimony he clearly observed the truck cross over the white line on the right side of its lane of travel on State Route 188 credible, and the dash-cam video mounted on his cruiser was mounted on the right side, higher than eye level which would explain why the violation was not clearly visible on the video. The trial court in reviewing State's Exhibit 1, the dash-cam video, noted the Ford F-150 "had just cleared a rise on State Route 188 when Trooper White testified that he had an unobstructed view of the tires going over the white

¹ For purposes of the appeal, Appellant argues the state lacked reasonable suspicion and probable cause to initiate the stop. Therefore, a rendition of the facts pertaining to matters occurring after the traffic stop is unnecessary for resolution of Appellant's appeal.

line.” The trial court concluded the video would not be able to capture the location of the right tires of the Ford F-150 at the time Trooper White observed the marked lanes violation.

{¶9} On May 25, 2016, Appellant entered a plea of no contest to the charges. The trial court entered a finding of guilty as to the OVI and marked lanes violation charges, and dismissed the seatbelt violation. The trial court imposed a sentence of 120 days in jail, ordering Appellant complete a Driver Intervention Program, assessing fines and suspending Appellant’s driver’s license.

{¶10} Appellant appeals, assigning as error:

{¶11} I. THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS ON MARCH 21, 2016.

{¶12} Appellant asserts Trooper White lacked reasonable suspicion or probable cause to initiate the traffic stop herein.

{¶13} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154–155, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate witness credibility. See *State v. Dunlap*, 73 Ohio St.3d 308, 314, 652 N.E.2d 988 (1995); *State v. Fanning*, 1 Ohio St.3d 19, 20, 437 N.E.2d 583 (1982). Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists to support those findings. See *Burnside*, *supra*; *Dunlap*, *supra*; *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998); *State v. Medcalf*, 111 Ohio App.3d 142, 675 N.E.2d 1268 (4th Dist.1996). However, once this Court has accepted those facts as true, it must

independently determine as a matter of law whether the trial court met the applicable legal standard. See *Burnside*, supra, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist 1997); See, generally, *United States v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002); *Ornelas v. United States*, 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996). That is, the application of the law to the trial court's findings of fact is subject to a *de novo* standard of review *Ornelas*, supra. Moreover, due weight should be given “to inferences drawn from those facts by resident judges and local law enforcement officers.” *Ornelas*, supra at 698, 116 S.Ct. at 1663.

{¶14} Trooper White testified at the March 9, 2016 suppression hearing he was dispatched to look for a possible impaired driver traveling on State Route 188 in Fairfield County. A citizen motorist had called the Lancaster Dispatch Center indicating the caller was travelling behind the impaired driver. The caller indicated his name was “Doug” and provided his wireless telephone number.² The Fairfield County Sheriff’s Office received the call and transferred it to the Ohio State Highway Patrol. The caller indicated the license plate number and make of the vehicle.

{¶15} Trooper White testified at the March 9, 2016 hearing,

“Q. Uh, can you, uh, think back there, take me back there? I mean, take me to that time. So you’ve got dispatch, you found the vehicle and what happened next?”

²At the suppression hearing, Trooper White testified as to the Dispatch Event Summary, made part of the record herein.

“A. I dispatched, the caller was still behind the vehicle, uh, talking through the phone with our dispatch center. Uh, I came up, prior to milepost, between milepost 16 and 17 coming into the city of Lancaster. Our caller did advise that they were passing my patrol car. I got in behind the white Ford pickup truck. It was weaving within its lane of travel. We count, as we came around the curve, the vehicle went more, approximately a tire width over the solid white line, continued to weave within its lane of travel and almost struck a couple mailboxes. I initiated a traffic stop and then that’s where I had first contact with the Defendant.”

Tr. at 14.

{¶16} The state then introduced the video of the dash-cam footage from Trooper White’s cruiser. State’s Exhibit 1. Trooper White testified as to his observations at the time the recording was made,

“Q. Can you describe what’s happening as it happens?

“A. The caller is on the phone with the dispatch center saying that he has just passed my patrol car. Um, that is the vehicle that he has observed, um, and has reported as a possible impaired driver. At this time, our dispatch notified the trooper is behind him. I’m behind the white Ford F-150 that the caller has provided the information on. As we’re traveling south on 188, you can see that the caller is getting to the edge line on the right. Now close to the edge line on the left. Now close to the edge line on the right side and is partially touching the white line there. (Pause) So going around

the curve there, it makes approximately one tire width over the white solid line and he's driving on the white line and returns into his lane of travel. That still being closest to the yellow line, weaving within his lane of travel. Again, he drives on the white line."

Tr. at 16-17.

{¶17} Trooper White testified he had a clear and unobstructed view of Appellant's driving. Tr. at 17. He further stated his eye witness observations were superior to the dash-cam video. Tr. at 18.

{¶18} On cross-examination, Trooper White conceded there was not a driver following the Ford F-150 when he first observed the vehicle passing by him. Tr. at 21. He further testified the camera would be higher than his eye level, and noted the camera does not observe Appellant cross the right line, but he could "see clear as day when I drive." Tr. at 23.

{¶19} Appellant asserts the dash-cam video introduced at the suppression hearing clearly demonstrates Appellant's tires never crossed the marked lane line. However, upon independent review of the dash-cam video, we find the video does not affirmatively demonstrate Appellant did not cross the marked lane line.

{¶20} We find the trial court's finding Trooper White's testimony he observed the marked lanes violation to be credible is supported by the evidence. As such we find the trial court did not error in finding Trooper White had reasonable suspicion and probable

cause to stop Appellant's vehicle. The trial court did not error as a matter of law in denying Appellant's motion to suppress.³

{¶21} Appellant's sole assignment of error is overruled.

{¶22} The March 21, 2016 Entry entered by the Fairfield County Municipal Court is affirmed.

By: Hoffman, J.

Farmer, P.J. and

Delaney, J. concur

³ We need not address Appellant's argument questioning the reliability of the citizen informant tip based upon the two issue rule.