

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

State of Ohio

Court of Appeals No. F-11-008

Appellee

Trial Court No. 10 TRC 1706

v.

Christopher J. Collins

DECISION AND JUDGMENT

Appellant

Decided: December 2, 2011

* * * * *

Scott A. Haselman, Fulton County Prosecuting Attorney, and
T. Luke Jones, Assistant Prosecuting Attorney, for appellee.

Gregory L. VanGunten, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from a judgment of the Fulton County Court, Eastern District, denying appellant Christopher Collins's motion to suppress evidence. For the reasons that follow, we affirm.

{¶ 2} Appellant was charged with committing a marked lanes violation, in contravention of R.C. 4511.33, and operating a motor vehicle while intoxicated, a violation of R.C. 4511.19(A)(1)(a), after refusing to perform field sobriety tests and submit to a breath test. Appellant was also cited for a violation of R.C. 4301.62 for having an open container of alcohol in his vehicle. Thereafter, appellant filed a motion to suppress evidence in the trial court, in which he alleged the officer lacked reasonable suspicion to stop his vehicle. At a suppression hearing held on October 21, 2010, the arresting officer testified that on June 26, 2010, at approximately 1:20 a.m., he observed the appellant's vehicle commit two marked lanes violations from a distance of approximately ten car lengths. He stated that appellant's vehicle drifted about one foot to the right of the edge line for approximately 25 feet before swerving one foot left of center for approximately 25 feet.

{¶ 3} Also, at the hearing on appellant's motion to suppress, the video of the traffic stop, taken from the officer's vehicle-mounted camera, was admitted into evidence. The officer testified that he could clearly see the marked lane violations on the night in question, explaining that the camera which recorded the video was of too low a resolution to depict what he saw. The officer specifically stated that the camera was "zoomed down," resulting in a poor resolution which made appellant's vehicle appear further away than it actually was. The trial court found the video evidence inconclusive, stating that the "depiction of defendant's operation of his motor vehicle immediately preceding the stop is of such quality and condition that it neither corroborates nor contradicts the

testimony of the officer." In lieu of convincing video evidence, the court relied on the uncorroborated in-court testimony of the officer and concluded that the officer had reasonable suspicion to stop appellant's vehicle. Therefore, the trial court denied appellant's motion.

{¶ 4} Thereafter, appellant attempted to challenge the officer's ability to perceive the alleged marked lanes violation by conducting an experiment in the parking lot of the trial courthouse on January 27, 2011. The officer estimated the distance of ten car lengths, then a patrol car was placed at this estimated distance from appellant's car. The video taken from the patrol car's camera during the experiment revealed that the officer was perceptibly closer to appellant's vehicle in this experiment than he was in the video taken on the date of appellant's arrest. The camera in the experiment was "zoomed down" exactly as the officer described at the suppression hearing. Because appellant thought the experiment contradicted the officer's previous statement as to the distance between the vehicles and the settings of the camera on the night of the arrest, appellant moved to re-open his motion to suppress in order to admit the experiment video into evidence. The trial court admitted the video, but nonetheless denied appellant's motion to re-open his motion to suppress in an entry dated February 11, 2011. Appellant subsequently pleaded no contest to the charge of operating a motor vehicle while intoxicated and was sentenced to a license suspension of six months, three days mandatory attendance in a first time driver's intervention program and fined \$375 and

court costs. The marked lanes violation and open container charges were dismissed as part of a plea agreement.

{¶ 5} Appellant now appeals, asserting the following assignment of error:

{¶ 6} "The trial court erred in overruling defendant-appellant's motion to suppress, thereby denying his rights secured under the Fourth Amendment to the U.S. Constitution, and his rights under Art. 1 §14 of the Ohio Constitution."

{¶ 7} Appellant argues that the trial court should have granted his motion to suppress because the trooper lacked "reasonable and articulable suspicion that [appellant] had committed a marked-lane violation." Specifically, appellant argues the stop was an unreasonable search and seizure in violation of his Fourth Amendment rights.

{¶ 8} In support of his argument, appellant contends that the officer did not actually witness a marked lanes violation, and therefore, there was no reasonable suspicion for the stop. Contrary to the trial court's finding that the video neither contradicted nor corroborated the officer's testimony, appellant argues that the video evidence supports his testimony that the stop was made "based upon suspicion that [appellant] was weaving *within* his lane." (Emphasis added.) Appellant claims that the officer lacked reasonable suspicion and his contradictory testimony regarding the camera made him not credible as a witness. Appellant also contends that the video evidence admitted in the hearing held after the experiment tends to show that the true distance between the vehicles at the time of the traffic stop was greater than the officer's initial estimate of ten car lengths. Using this evidence, appellant argues that "no reasonable

person could possibly have observed" the alleged violation from such a distance. Thus, appellant's argument rests exclusively on the issue of the officer's credibility.

{¶ 9} "When deciding on a motion to suppress, the trial court is the trier of fact and judges the credibility of witnesses and determines the weight to be given to the evidence." *State v. Yeaples*, 180 Ohio App.3d 720, 2009-Ohio-184, ¶ 20, citing *State v. Johnson* (2000), 137 Ohio App.3d 847, 850. "[T]he appellate court must accept the trial court's findings of facts, provided they are supported by competent, credible evidence." *Yeaples* at ¶ 20, citing *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, ¶ 100. An appellate court must independently determine whether the trial court's factual conclusions support the appropriate legal standard. *State v. Hageman*, 180 Ohio App.3d 640, 2009-Ohio-169, ¶ 10. Appellant does not contest the issue of whether a marked lanes violation is legally sufficient for an officer to make a traffic stop. Therefore, we need not expound on the sufficiency of the officer's suspicion in relation to the requisite legal standard. The issue on appeal is limited to whether the trial court properly found the officer's testimony to be credible.

{¶ 10} At the suppression hearing, the officer stated that the cameras mounted in their vehicles were "zoomed down" and therefore objects appeared further away than in reality. Appellant argues that the officer contradicted himself in the subsequent hearing following the experiment when he stated that he "did not zoom in or zoom out at all" and that the camera was essentially on its default setting. It is not known if the officer meant that the camera was on its default setting without zoom, or that it was in fact zoomed out

further than the human eye would see from the officer's vantage point. Regardless, courts have allowed substantial leeway for experienced police officers who rely on their own visual assessments of situations where electronic equipment like cameras cannot confirm their observations. See, e.g., *Barberton v. Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, which held that an officer's visual estimation of speed is sufficient to sustain a conviction for speeding.

{¶ 11} Even construing the facts most favorably to appellant, the officer's misstatements are not indicative of dishonesty or the inability to perceive the event because, assuming the officer was significantly further away than ten car lengths when he saw the marked lanes violations, it does not necessarily follow that he could not see the violations at all. Consequently, we find that the trial court did not err in finding the officer to be a credible witness because the inaccuracy of the officer's estimate as to the distance between the vehicles on the night of the arrest was of little significance. Giving due weight to the factual findings of the trial court, we hold that the trial court did not abuse its discretion when it relied on the officer's testimony that he had witnessed appellant commit a marked lanes violation.

{¶ 12} Appellant's sole assignment of error is not well-taken. Judgment of the Fulton County Court, Eastern District, is affirmed. Pursuant to App.R. 24, appellant is ordered to pay costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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