

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

State of Ohio

Court of Appeals No. OT-12-034

Appellee

Trial Court No. TRC-1200837 A

v.

Matthew C. Parker

DECISION AND JUDGMENT

Appellant

Decided: August 9, 2013

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew M. Bigler, Assistant Prosecuting Attorney, for appellee.

Kristopher K. Aupperle, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Ottawa County Municipal Court, denying appellant Matthew Parker's motion to suppress. Because the arresting officer lacked reasonable suspicion to stop appellant's vehicle, we conclude that the trial court erred in denying appellant's motion to suppress. Accordingly, we reverse.

{¶ 2} On March 25, 2012, appellant was charged with operating a motor vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a) and (A)(1)(b). Following a plea of not guilty to the charge, appellant filed a motion to suppress which was denied on August 24, 2012. Appellant, thereafter, enter a no contest plea to the charge of operating a motor vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). He was sentenced to serve 90 days in jail with 75 of those days suspended. Appellant now appeals setting forth the following assignment of error:

The trial court erred when it overruled defendant's motion to suppress the evidence when it found that the trooper had reasonable articulate suspicion to stop the defendant's vehicle.

{¶ 3} In reviewing a motion to suppress “an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence.” *State v. Montoya*, 6th Dist. Lucas No. L-97-1226, 1998 WL 114325 (Mar. 6, 1998), citing *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). “[T]he appellate court must then independently determine as a matter of law, without deferring to the trial court's conclusions, whether the facts meet the applicable legal standard.” *Id.*, citing *State v. Klein*, 73 Ohio App.3d 486, 488, 597 N.E.2d 1141 (4th Dist.1991).

{¶ 4} In this case, appellant challenges the officer's initial stop of his vehicle. Specifically, he contends that he did not violate R.C. 4511.33, which was the basis for the trooper's investigative stop. R.C. 4511.33(A)(1) provides that:

[w]henever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

{¶ 5} An investigative stop of a motorist does not violate the Fourth Amendment if the officer has a reasonable suspicion that the individual is engaged in criminal activity. *Maumee v. Weisner*, 87 Ohio St.3d 295, 299, 720 N.E.2d 507 (1999), citing *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868 20 L.Ed.2d 889 (1968). Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts that an occupant is or has been engaged in criminal activity. *State v. Gedeon*, 81 Ohio App.3d 617, 618, 611 N.E.2d 972 (11th Dist.1992). Reasonable suspicion constitutes something less than probable cause. *State v. Carlson*, 102 Ohio App.3d 585, 590, 657 N.E.2d 591 (9th Dist.1995). The propriety of an investigative stop must be viewed in light of the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph two of the syllabus.

{¶ 6} At the suppression hearing, State Highway Patrol Trooper Timothy Grimm testified that he was on duty in the early morning hours of March 25, 2012. At

approximately 1:30 a.m., he was driving behind a silver SUV when he noticed the vehicle weaving several times inside the lane of travel and, he testified, he witnessed the driver of the vehicle commit a marked lanes violation. He then activated his overhead lights to signal the vehicle to stop.

{¶ 7} When asked, he testified what he considered to be a violation of R.C. 4511.33, a marked violation offense: “[A] marked-lanes violation is when the vehicle actually crosses over a designated – either a center divider line on the roadway or the fog line on the right side of the roadway.”

{¶ 8} In *State v. Marcum*, 5th Dist. Licking No. 12-CA-88, 2013-Ohio-2652, the court held that in order to violate the marked lanes statute, a driver must travel completely over both yellow lines, and because the defendant, in that case had not done so, the trooper did not have reasonable, articulable suspicion to stop the driver based on her action in driving on the white fog line.

{¶ 9} State’s Exhibit A, admitted into evidence, shows the dash cam view from Trooper Grimm’s perspective. In denying appellant’s motion to suppress, the court stated: “[I] Clearly saw that there was weaving from one side of the road to another, that there was a touching of the vehicles wheels on a fog line and on a centerline * * *.”

{¶ 10} This court has reviewed said recording and can see no evidence that appellant ever crossed the lines of travel before he was stopped. It is evident that appellant’s vehicle sometimes traveled on the marked lanes but this is not a violation of R.C. 4511.33. *See State v. Franklin*, 5th Dist. Licking No. 11-CA-128, 2012-Ohio-3089.

Accordingly, we do not find that there was competent, credible evidence to support the trial court's denial of appellant's motion to suppress. Appellant's sole assignment of error is found well-taken.

{¶ 11} On consideration whereof, the judgment of the Ottawa County Municipal Court is reversed. This matter is remanded for proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

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

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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