

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       25147

Appellee

v.

DANNY R. SWEATT

APPEAL FROM JUDGMENT  
ENTERED IN THE  
STOW MUNICIPAL COURT  
COUNTY OF SUMMIT, OHIO  
CASE No.     2009TRC04751

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2010

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WHITMORE, Judge.

{¶1} Defendant-Appellant, Danny Sweatt, appeals from the judgment of the Stow Municipal Court, denying his motion to suppress. This Court affirms.

I

{¶2} Officer Jeremy Vecchio of the City of Twinsburg Police Department stopped Sweatt's vehicle at approximately 2:31 a.m. on June 13, 2009. Officer Vecchio stopped the vehicle as a result of several observations that he made while following Sweatt for a short duration. Specifically, he observed Sweatt's vehicle accelerate rapidly, slow to about ten miles per hour, and weave within the lane. Once Officer Vecchio stopped Sweatt, he noted that Sweatt appeared to be intoxicated. The stop ultimately resulted in Sweatt being charged with: (1) operating a vehicle while intoxicated, in violation of R.C. 4511.19(A)(1)(a); (2) refusing to submit to a blood alcohol test, in violation of R.C. 4511.19(A)(2); and (3) weaving, in violation of Twinsburg Codified Ordinance §331.34.

{¶3} On August 24, 2009, Sweatt filed a motion to suppress, arguing that Officer Vecchio lacked reasonable suspicion to stop his vehicle. The court held a hearing on the motion on September 3, 2009 and later denied the motion. Subsequently, Sweatt entered a plea of no contest, and the court stayed his sentence pending appeal. This Court dismissed Sweatt’s appeal for lack of a final, appealable order because Sweatt had not received a sentence. *State v. Sweatt* (Nov. 2, 2009), 9th Dist. No. 25030. The trial court then sentenced Sweatt, but stayed the imposition of the sentence pending appeal.

{¶4} Sweatt now appeals from the court’s denial of his motion to suppress and raises one assignment of error for our review.

## II

### Assignment of Error

“THE TRIAL COURT ERRED BY FAILING TO SUPPRESS ALL EVIDENCE INCLUDING SWEATT’S SOBRIETY TEST SINCE THE STATE LACKED SPECIFIC, ARTICULABLE GROUNDS TO EFFECTUATE A CONSTITUTIONAL TRAFFIC STOP.”

{¶5} In his sole assignment of error, Sweatt argues that the trial court erred by denying his motion to suppress. Specifically, he argues that Officer Vecchio lacked reasonable suspicion to effectuate a traffic stop. We disagree.

{¶6} The Ohio Supreme Court has held that:

“Appellate review of a motion to suppress presents a mixed question of law and fact. When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Consequently, an appellate court must accept the trial court’s findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706.” *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

Accordingly, this Court reviews the trial court's factual findings for competent, credible evidence and considers the court's legal conclusions de novo. *State v. Conley*, 9th Dist. No. 08CA009454, 2009-Ohio-910, at ¶6, citing *Burnside* at ¶8.

{¶7} To justify an investigative stop, an officer must point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 299, quoting *Terry v. Ohio* (1968), 392 U.S. 1, 21. In evaluating the facts and inferences supporting the stop, a court must consider the totality of the circumstances as “viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training.” *State v. Bobo* (1988), 37 Ohio St.3d 177, 179, quoting *United States v. Hall* (C.A.D.C. 1976), 525 F.2d 857, 859. A totality of the circumstances review includes consideration of “(1) [the] location; (2) the officer's experience, training or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances.” *State v. Biehl*, 9th Dist. No. 22054, 2004-Ohio-6532, at ¶14, citing *Bobo*, 37 Ohio St.3d at 178-79.

{¶8} Officer Vecchio, a seven-year veteran of the City of Twinsburg Police Department, was the only person who testified at the suppression hearing. According to Officer Vecchio, he parked his marked police cruiser in the parking lot across the street from Tailgaters Bar & Grill (“Tailgaters”) during the early morning hours of June 13, 2009 to update his daily activity report. The cruiser's headlights were illuminated at the time and pointed toward Tailgaters. Officer Vecchio completed the update to his report and left the parking lot, turning onto East Idlewood Drive and stopping at a red light. Officer Vecchio observed a vehicle, later identified as Sweatt's vehicle, stopped at the red light directly in front of his cruiser. When the light turned green, he observed the “vehicle accelerate rapidly” and the bottom of the vehicle

drop due to the rate of the acceleration. Officer Vecchio followed the vehicle. He testified that the vehicle slowed to approximately ten miles per hour and began weaving within the lane of traffic. The vehicle executed a left-hand turn onto another street, and Officer Vecchio activated his emergency lights and stopped the vehicle.

{¶9} Officer Vecchio testified that he completed an Alcohol and Drug Awareness Program as part of his training, during which he learned how to recognize signs of alcohol impairment. According to Officer Vecchio, he stopped Sweatt due to the fact that Sweatt's vehicle accelerated rapidly, quickly slowed to ten miles per hour once Officer Vecchio began following, and began to "slow[ly] weav[e] from left to right \*\*\* within the lane of travel." Officer Vecchio also noted on cross-examination that Sweatt's vehicle crossed the double yellow line on the road when Sweatt executed a left-hand turn onto another street. Officer Vecchio admitted that he did not note the lane violation on his investigative report.

{¶10} In addition to Officer Vecchio's testimony, the State and defense counsel jointly moved to admit a video recording from the recording device in Officer Vecchio's cruiser. Officer Vecchio recorded the entire incident from the time that he was parked across the street from Tailgaters until the time that he stopped Sweatt's vehicle, and the State played the video during his direct examination. The video depicts Officer Vecchio's parked cruiser facing Tailgaters. On the top, right-hand side of the video, one can see Sweatt enter his vehicle and leave Tailgaters' parking lot. Officer Vecchio's cruiser then exits the parking lot across the street from Tailgaters, pulls onto the same road, and pulls directly behind Sweatt's vehicle at a red light. When the light turns green, Sweatt's vehicle noticeably jerks and its back end drops. Officer Vecchio's cruiser then follows Sweatt's vehicle through the intersection. Sweatt quickly reduces his speed and proceeds slowly down the street. After a short time, Sweatt activates his

left-hand turn signal and turns onto another road. While turning, both front tires of Sweatt's vehicle cross over the double yellow line on the road from which he is turning. After Sweatt completes the turn, Officer Vecchio activates his emergency lights and stops Sweatt.

{¶11} This Court cannot discern any apparent lane weaving from the video recording of Sweatt's stop. The video recording does, however, corroborate Officer Vecchio's testimony that Sweatt rapidly accelerated when the stoplight turned green so as to make the back end of his vehicle drop and then quickly reduced his speed once Officer Vecchio followed him through the intersection. The lower court also had before it the fact that these events occurred at 2:31 a.m., directly after Sweatt left Tailgaters, a bar and grill. See *Biehl* at ¶14 (noting that the concept of the "totality of the circumstances" includes the location and surrounding circumstances). Moreover, the video depicts both front tires of Sweatt's vehicle crossing over the double yellow line when he executed a left-hand turn; a point which Officer Vecchio raised on cross-examination. The lower court judge noted this fact on the record, but was unsure what legal weight he could afford it because Officer Vecchio did not include this fact in his report or testify to it on direct examination.

{¶12} Sweatt argues on appeal that Officer Vecchio stopped him on the basis of "a mere inchoate hunch or suspicion." He argues that he did not engage in any illegal acts by accelerating rapidly or driving at a slow rate. This Court recognizes that unusual driving, by itself, will not give rise to reasonable suspicion. *State v. Hatch*, 9th Dist. No. 24870, 2010-Ohio-53, at ¶7. Based on the facts set forth in the record, however, this is not an instance where the State only presented evidence of unusual driving. In addition to accelerating rapidly and quickly slowing after leaving a bar and grill at approximately 2:31 a.m., the video recording that the State introduced during Officer Vecchio's direct examination shows that both front tires of

Sweatt's vehicle crossed the double yellow line, in violation of R.C. 4511.36(A)(2), when he turned left onto another street. Compare *Hatch* at ¶8 (concluding that officer lacked reasonable suspicion to stop vehicle because "the stop did not violate any traffic laws and was not accompanied by any other indications of erratic driving"). The trial court noted this fact, but was unsure of what weight to afford it in light of the fact that Officer Vecchio did not identify it in his direct examination as the basis for the stop.

{¶13} It is of no importance that Officer Vecchio did not testify to the traffic violation on direct examination because the video recording showed the traffic violation, Officer Vecchio pointed it out on cross-examination, and both sides jointly moved to admit the video at the hearing. Furthermore, because an objective standard applies in an evaluation of the totality of the circumstances, it makes no difference that Officer Vecchio himself did not use Sweatt's traffic violation as the basis for his stop. "[T]he United States Supreme Court has held that a traffic stop is lawful, regardless of an officer's motives in stopping a vehicle, so long as a reasonable officer could stop the vehicle for a traffic violation." *State v. Hunter*, 9th Dist. No. 06CA008871, 2006-Ohio-5810, at ¶14. This Court also has held that "[w]here an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, *including a minor traffic violation*, the stop is constitutionally valid[.]" (Internal quotations and citations omitted.) *State v. Campbell*, 9th Dist. No. 05CA0032-M, 2005-Ohio-4361, at ¶11. See, also, *State v. Balog*, 9th Dist. No. 08CA0001-M, 2008-Ohio-4292, at ¶13 (concluding officer executed valid traffic stop where he witnessed the driver violate both R.C. 4511.33(A)(1) and 4511.36(A)(2)). Based on the evidence the State presented at the suppression hearing, the trial court did not err by concluding that Officer Vecchio conducted a constitutionally valid stop. Therefore, Sweatt's sole assignment of error lacks merit.

## III

{¶14} Sweatt's sole assignment of error lacks merit. The judgment of the Stow Municipal Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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BETH WHITMORE  
FOR THE COURT

DICKINSON, P. J.  
CONCURS

CARR, J.

CONCURS IN JUDGMENT ONLY, SAYING:

{¶15} I concur in judgment with the majority but write separately to emphasize that, in my opinion, reasonable suspicion existed based on the totality of the circumstances regardless of the traffic infraction.

APPEARANCES:

CHARLES A. NEMER and DANIEL M. SINGERMAN, Attorneys at Law, for Appellant.

DAVID MAISTROS, Prosecuting Attorney, for Appellee.