[Cite as *State v. Krumm*, 2015-Ohio-814.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-P-0023**
- vs -	:	
DANIEL L. KRUMM,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court, Ravenna Division, Case No. R2013 TRC 12531.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, *Kristina Drnjevich,* Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Jamison A. Offineer, Student Legal Services, Inc., Kent State University, 164 East Main Street, #203, Kent, OH 44240 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Daniel L. Krumm, was found guilty of Operating A Vehicle While Under the Influence ("OVI") after entering a plea of no contest to the charge. At issue is whether the Portage County Municipal Court, Ravenna Division, properly denied his motion to suppress evidence. For the reasons that follow, we affirm the trial court.

{¶2} On September 14, 2013, at approximately 2:30 a.m., Trooper Chester Engle was patrolling on State Route 43, driving northbound. The trooper observed a

vehicle driving southbound without an illuminated license plate. The trooper turned around and followed the vehicle for approximately one mile. After concluding the vehicle had no license plate light, the trooper initiated a traffic stop. As the vehicle pulled over, it drove up onto the road's curb.

{¶3} The trooper approached the driver's side door, at which time he observed a temporary tag in the rear window. Appellant was driving the vehicle with two passengers. The trooper asked for appellant's license, registration, and proof of insurance. Appellant obliged; during the exchange the trooper noticed appellant had red, glassy eyes and detected a strong odor of alcoholic beverage that appeared to be emanating from appellant's person. Appellant admitted he consumed two beers during the evening.

{¶4} The trooper subsequently asked appellant to exit the vehicle to determine whether the odor was coming from appellant or a combination of all individuals in the vehicle. After confirming appellant was the source of the odor, the trooper conducted field sobriety tests. Appellant was ultimately arrested for OVI, in violation of R.C. 4511.19(A)(1)(a) and (d); he was additionally cited with "no plate light," in violation of R.C. 4513.05. His breath test registered .142 BAC.

{¶5} Appellant entered a plea of not guilty to each of the charges and moved the trial court to suppress evidence of the stop, claiming the evidence obtained was a result of an unconstitutional stop and detention. Following a hearing, the trial court denied appellant's motion. The trial court found "Trooper Engle had reasonable articulable facts to initiate a traffic stop[,] i.e. no license plate light. The testimony was that the bumper was black, there was no license plate on the vehicle and that Tpr.

Engle did not see the temporary tag until he was at the driver's door upon stopping Defendant."

{¶6} In light of the court's ruling, appellant entered a plea of no contest and was found guilty of OVI, in violation of or R.C. 4511.19(A)(1)(a). Appellant was sentenced to 180 days in jail, 177 days suspended; a six-month license suspension; and a $1075 fine, $700 suspended. Appellant's sentence was stayed by the trial court pending the disposition of this appeal.

{¶7} Appellant assigns the following error for our review:

{¶8} "The trial court committed reversible error in overruling appellant/defendant, Daniel L. Krumm's, Motion to Suppress since the officer lacked probable cause and reasonable suspicion to stop Defendant's vehicle and request that he produce his driver's license and proof of insurance."

{¶9} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. The appellate court must accept the trial court's factual findings, provided they are supported by competent, credible evidence. *Id*. Thereafter, the appellate court must determine, without deference to the trial court, whether the applicable legal standard has been met. *Id*. Accordingly, we review the trial court's application of the law to the facts de novo. *State v. Cevera*, 11th Dist. Ashtabula No. 2012-A-0053, 2013-Ohio-5483, ¶8.

{¶10} Appellant first asserts the trial court erred in concluding Trooper Engle had reasonable suspicion to stop his vehicle for no license plate light because such a light is unnecessary where a motorist, such as appellant, validly displayed a temporary license placard in plain view from his or her rear window.

{¶11} R.C. 4513.05(A) provides, in relevant part:

{¶12} No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the front and rear of the motor vehicle the distinctive number and registration mark * * *. Either a tail light or a separate light shall be so constructed and placed as to illuminate with a white light the rear registration plate, when such registration plate is required, and render it legible from a distance of fifty feet to the rear.

{¶13} Moreover, R.C. 4503.21 provides that a person issued a temporary license placard may place the placard "in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle * * *."

{¶14} Appellant acknowledges he did not have a rear registration plate, as contemplated by R.C. 4513.05(A). He did posses, however, a temporary placard and, pursuant to R.C. 4503.21, had it properly affixed to his rear window. Appellant contends that since neither statute requires a motorist to illuminate the empty space where a permanent registration plate would otherwise be affixed, the trial court erred in concluding the officer possessed reasonable suspicion to stop his vehicle. We do not agree.

{¶15} Although neither statute requires a light to illuminate a blank area, R.C. 4513.05(A) requires a vehicle to display, in plain view, "a distinctive number and registration mark" on both the front and rear of the vehicle. Because the area was not illuminated, Trooper Engle was unable to see whether a "distinctive number and registration mark" existed. And, according to his testimony, he was unable to discern

the temporary tag until he was near the driver's side door. Under these circumstances, the trooper possessed sufficient facts to believe that either (1) appellant had committed a traffic violation by failing to have a rear license plate properly illuminated pursuant to R.C. 4513.05 or (2) appellant was in violation of R.C. 4503.21 to the extent the officer, by his own testimony, was unable to observe the temporary placard, in plain view, from the rear of the vehicle. The trooper therefore possessed specific, articulable facts which, when taken together with rational inferences from those facts, reasonably warranted the stop.

{¶16} Appellant next argues that, even if Trooper Engle had reasonable suspicion to stop his vehicle, the trial court erred in determining the trooper was permitted to detain him further to request his license and proof of insurance. Appellant maintains any reasonable suspicion the trooper may have possessed was eliminated upon observing the temporary license placard displayed on his vehicle's windshield. Thus, he maintains, the trial court erred in failing to suppress evidence obtained after the trooper observed the placard. We do not agree.

{¶17} In *State v. Chatton*, 11 Ohio St.3d 59 (1984), a motorist was stopped because a police officer did not see a front or rear license plate on the vehicle. Upon approaching the vehicle, the officer noticed that a temporary tag was visible in the rear windshield. The Supreme Court held:

> **{¶18}** [W]here a police officer stops a motor vehicle which displays neither front nor rear license plates, but upon approaching the stopped vehicle observes a temporary tag which is visible through the rear windshield, the driver of the vehicle may not be detained

> further to determine the validity of his driver's license absent some specific and articulable facts that the detention was reasonable. *Id.* at 63.

{¶19} The Court further opined that "because the police officer no longer maintained a reasonable suspicion that appellee's vehicle was not properly licensed or registered, to further detain appellee and demand that he produce his driver's license is akin to [a] random detention[.]" *Id.* The court pointed out, however, that a police officer, as a matter of courtesy, may engage a driver and explain the reason he or she was initially detained and send the driver on his or her way. *Id.* If, in the course of this courtesy advisement, the officer develops reasonable suspicion, he or she may proceed accordingly. The *Chatton* Court nevertheless warned that the courtesy explanation cannot be used as a means to further detain a motorist for investigative purposes. *Id.*

{¶20} In this case, the officer only noticed the tag after approaching the driver's side door; the record indicates his observation of the tag was roughly contemporaneous with his contact with appellant. And, upon engaging appellant, the officer immediately observed appellant's eyes were bloodshot and glassy. The officer also detected a strong odor of alcoholic beverage emanating from the vehicle. Only after these observations were made did the officer ask for appellant's license and proof of insurance.

{¶21} Given the facts of this case, we cannot conclude that the officer detained appellant without reasonable suspicion to further investigate. Although the officer could have walked away from the vehicle upon noticing the tag, this behavior would have likely left appellant and his passengers completely nonplussed. And, as the Court in

Chatton noted, an officer may, for courtesy purposes, detain a motorist long enough to explain why he or she was stopped to avoid such confusion. Once the officer engaged appellant to explain the reason for the stop, however, he immediately noticed several clues suggesting appellant may be operating the vehicle in an impaired state. We therefore hold Trooper Engle had reasonable, articulable suspicion to request appellant's information independent of the original reason for stopping him and those facts were obtained in the course of explaining his justification for the stop.

{¶22} Appellant's assignment of error is not well taken.

{¶23} For the reasons discussed in this opinion, the judgment of the Portage County Municipal Court, Ravenna Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J,

concur.