

[Cite as *State v. Webb*, 2016-Ohio-4896.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 26847
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2015-TRC-4070
v.	:	
	:	(Criminal Appeal from
CHANTRELL M. WEBB	:	Kettering Municipal Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 8th day of July, 2016.

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HALL, J.

{¶ 1} Chantrell M. Webb appeals from her conviction and sentence following a no-

contest plea to charges of OVI and violating R.C. 4511.25, Ohio's lanes-of-travel statute.

{¶ 2} Webb's sole assignment of error states: "The trial court erred by overruling appellant's motion to suppress, as the trial court's findings of fact were not supported by competent, credible evidence, and the arresting officer lacked a reasonable, articulable suspicion appellant was operating a motor vehicle under the influence. Further, appellant did not commit the traffic violation upon which the arresting officer based the stop of appellant." (Appellant's brief at 4).

{¶ 3} The record reflects that Webb was charged by a traffic citation with violations of R.C. 4511.19(A)(1)(a) and R.C. 4511.25. She entered not-guilty pleas and later filed a suppression motion. Although Webb's motion raised various issues, the parties stipulated during a suppression hearing that she was challenging only the stop of her vehicle. Her argument was that an officer lacked reasonable, articulable suspicion of criminal activity to make the traffic stop that resulted in her arrest for OVI. (Suppression Tr. at 11-12).

{¶ 4} The lone witness at the suppression hearing was Montgomery County Deputy Sheriff Bradley Fizer. He testified that he saw Webb driving at 12:30 a.m. on May 30, 2015. She was in the right-hand lane of the two west-bound lanes on State Route 725 in Washington Township. According to Fizer, he saw both of her driver's-side tires cross the white dashed line separating the two west-bound lanes. He testified that her tires completely crossed the dashed line two or three times by a distance of five to six inches. Fizer opined that Webb had committed a "lanes of travel" violation of R.C. 4511.25. He explained that he followed her a bit further after observing her tires cross the white line but saw no other violations. He then made a traffic stop based on what he had observed. The only basis for the stop was Webb's "[f]ailure to maintain lanes." During his testimony,

Fizer acknowledged the existence of a cruiser camera video depicting part of the incident. He explained, however, that the video did not show Webb crossing the white line because she did so before he activated the camera.

{¶ 5} On cross examination, Fizer acknowledged that he never saw Webb cross over the center line dividing the two-way traffic. Nor did he see her cross the “fog line” on the right edge of the roadway. The only thing he saw was the driver’s-side front and rear tires “significant[ly]” cross over the white dashed line separating the two west-bound lanes. Fizer also testified that he thought Webb ran over the corner of a curb when he initiated the traffic stop. He also thought she had been “slow to stop.” After reviewing the cruiser video, however, he admitted that it did not show her running over a curb. He also acknowledged that she signaled and stopped within a couple of seconds.

{¶ 6} After hearing the evidence, the trial court filed a July 30, 2015 decision and entry overruling Webb’s suppression motion. The ruling reads as follows:

* * * Prior to the hearing, the Defendant withdrew all branches of her motion except Branch II. Further, Defendant withdrew the allegation in Branch II of no probable cause to arrest [for OVI]; leaving only the allegation of no “reasonable suspicion on which to stop” as the sole basis for the motion.

The evidence offered at the hearing consisted of the video of the Deputy’s in-car camera, and the testimony of the Deputy.

The Deputy testified he stopped the Defendant’s vehicle for an observed traffic violation: failure to drive in a single lane. He testified Defendant drove over the lane divider line several times, with both tires and

the tires were not just on the line, but completely over the line and out of her lane.

Considerable time was then spent analyzing the Prosecutor's presentation of the in-car video. However, the Deputy testified that the video recording is activated with the cruiser's emergency lights, and that the lane violation which formed the basis for the traffic stop occurred prior to the lights being activated; i.e. the video was not enlightening in any way on the issue of the basis for the stop.

Since the video was interesting, but not enlightening, the testimony of the Deputy is the only evidence offered on the issue at hand. His testimony was clear, unambiguous, uncontradicted, and not seriously attacked by cross examination. At the close of the hearing, the unrebutted, and uncontradicted testimony was that the Deputy witnessed a traffic violation (Defendant driving out of her lane of travel several times) which clearly formed an articulable and reasonable suspicion in his mind upon which he based his decision to initiate the traffic stop of Defendant's vehicle.

For this reason, the Court finds that no constitutionally protected right of the Defendant was violated and her motion to exclude evidence is hereby denied.

(Doc. #17 at 1-2).

{¶ 7} Following the trial court's ruling, Webb pled no-contest to OVI in violation of R.C. 4511.19(A)(1)(a) and a lanes-of-travel violation of R.C. 4511.25. The trial court found her guilty and imposed sentence accordingly. It stayed all aspects of the sentence,

pending appeal, except for a driver's-license suspension.

{¶ 8} On appeal, Webb argues that Deputy Fizer's testimony was not credible and, in any event, that it affirmatively demonstrated that she *did not* commit a violation of R.C. 4511.25, the statute he referenced during the suppression hearing and under which she was cited and convicted. That being so, Webb maintains that Fizer stopped her based on his own mistake of law regarding her violation of R.C. 4511.25. Given that she did not commit the referenced traffic offense that formed the only predicate for Fizer's stop, Webb asserts that the stop was impermissible and that her suppression motion should have been sustained.¹

{¶ 9} Upon review, we find Webb's assignment of error to be unpersuasive. As a threshold matter, we agree with her that Fizer's testimony does not establish a violation of R.C. 4511.25. That statute primarily addresses situations in which a driver goes left of center. It generally provides that vehicles shall be driven on the right half of the roadway. It also provides that slower-moving vehicles shall be driven in the right-hand lane. Here Webb was driving on the right half of the roadway. Fizer testified that she did not cross the center line. She also was driving in the right-hand lane. Therefore, he had no reasonable basis to believe that she had violated R.C. 4511.25.

{¶ 10} It does not follow, however, that Fizer had no reasonable, articulable suspicion of a traffic violation to justify stopping Webb's vehicle. As set forth above, he

¹ We note that Webb's assignment of error also makes a reference to Fizer lacking a reasonable, articulable suspicion that she was operating a vehicle while under the influence of alcohol. (See Appellant's brief at 4). This issue was not the subject of the suppression hearing, which was limited to the legality of the stop for an alleged traffic violation. Nor is Fizer's suspicion that Webb was under the influence of alcohol addressed in her appellate brief, which focuses on the legality of him stopping her for a traffic violation.

observed both of her driver's-side tires cross over the white dashed line separating the two west-bound lanes. He saw her do this two or three times. Each time, her tires crossed five or six inches over the white line. Based on this observation, which the trial court found credible, Fizer had reasonable, articulable suspicion that Webb had committed a traffic violation, to wit: a marked-lanes violation of R.C. 4511.33, which provides that a vehicle must be "driven, as nearly as is practicable, entirely within a single lane of traffic[.]"

{¶ 11} Fizer's erroneous issuance of a citation for a violation of R.C. 4511.25 and his incorrect reference to that statute during the suppression hearing were not fatal to the legality of his traffic stop.² For purposes of Webb's suppression motion, the question was not whether Fizer identified the correct statutory section. Rather, the question was whether he had reason to believe she had violated any traffic law. See, e.g., *State v. Jackson*, 6th Dist. Sandusky No. S-14-050, 2015-Ohio-5160, ¶ 9 ("Reviewing the transcript of the suppression hearing and the video recording, we find that appellant's actions violated R.C. 4511.33, which requires that a vehicle be operated within its lane of travel. Although the trooper cited [R.C. 4511.25,] the incorrect Ohio Revised Code section, this does not negate his observation of a traffic violation."); *State v. Thayer*, 9th Dist. Medina No. 11CA0045-M, 2012-Ohio-3301, ¶ 14-21 (affirming denial of suppression motion where officer stopped defendant and cited him for going left of center in violation of R.C. 4511.25 but officer actually observed a different violation).

{¶ 12} Although Fizer cited Webb under the wrong statute, the fact remains that he *did* observe an apparent traffic violation when he saw her fail to stay within her marked

² We express no opinion as to whether the trial court erred in finding Webb guilty following her no-contest plea to violating R.C. 4511.25. She has not raised that issue as an assignment of error on appeal.

lane. He testified at the suppression hearing that the violation he witnessed involved Webb “failing to maintain her lane” and “cross[ing] over the white dash line that separates the two westbound lanes.” (See, e.g., Suppression Tr. at 9). Webb’s conduct gave Fizer reasonable, articulable suspicion to believe she had violated R.C. 4511.33. See *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 15-16 (“Appellant argues that his actions in this case—twice driving across the white edge line—are not enough to constitute a violation of R.C. 4511.33. * * * Appellant’s argument is not persuasive. R.C. 4511.33 requires a driver to drive a vehicle entirely within a single lane of traffic. When an officer observes a vehicle drifting back-and-forth across an edge line, the officer has a reasonable and articulable suspicion that the driver has violated R.C. 4511.33.”). Therefore, Fizer acted lawfully when he stopped Webb’s vehicle.³ See *State v. Mobley*, 2d Dist. Montgomery No. 26044, 2014-Ohio-4410, ¶ 13, quoting *State v. Buckner*, 2d Dist. Montgomery No. 21892, 2007-Ohio-4329, ¶ 8 (“ ‘A police officer may lawfully stop a vehicle if he has a reasonable articulable suspicion that the motorist has engaged in criminal activity[,] including a minor traffic violation.’ ”); *State v. White*, 8th Dist. Cuyahoga No. 100624, 2014-Ohio-4202, ¶ 14 (“It is well settled that a traffic stop is lawful even if the traffic violations are minor, or ‘de minimis.’ ”).

{¶ 13} The only remaining issue is whether the trial court erred in crediting Fizer’s testimony that he observed Webb’s tires cross over the white line dividing the two west-bound lanes. In ruling on a motion to suppress, the trial court “assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate

³ In light of this determination, we need not address the State’s alternative claim that Webb failed to preserve her argument about the traffic stop being unlawful due to Fizer’s reference to the wrong statute. (See Appellee’s brief at 4).

the credibility of the witnesses.” *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994); *State v. Knisley*, 2d Dist. Montgomery No. 22897, 2010-Ohio-116, ¶ 30. Accordingly, we must accept the trial court’s findings of fact if they are supported by competent, credible evidence. *Retherford* at 592.

{¶ 14} Here Fizer, the only witness at the hearing, provided consistent and un rebutted testimony that he observed Webb’s tires cross completely over the white dashed line two or three times. On cross examination, defense counsel attempted to impeach Fizer by pointing out the absence of the alleged traffic violation on the cruiser video and by challenging Fizer on his initial claim that Webb had struck a curb and had been slow to stop her vehicle. In response, Fizer provided a reasonable explanation for the absence of the traffic violation on the video. He also conceded that Webb may not have driven over a curb or been slow to stop.

{¶ 15} In the end, the trial court remained free, in its role as trier of fact, to believe Fizer’s key testimony that he saw Webb’s tires cross over the white line dividing the lanes. Accepting that testimony as true, which the trial court had discretion to do, the record supports its legal conclusion that Fizer’s traffic stop was lawful. As a result, the trial court properly overruled Webb’s suppression motion.

{¶ 16} Based on the reasoning set forth above, we overrule Webb’s assignment of error and affirm the judgment of the Montgomery County Common Pleas Court.

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FROELICH, J., and WELBAUM, J., concur.

Copies mailed to:

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