

[Cite as *State v. Landon*, 2009-Ohio-6818.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. William B. Hoffman, J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 09-CA-0009
LEE M. LANDON	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Coshocton County
Municipal Court, Case No.
TRC0900149(A)(B)(C)

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 22, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Gwin, P.J.

{¶1} Defendant-appellant Lee M. Landon appeals the March 11, 2009 Judgment Entry of the Coshocton County Municipal Court denying his motion to suppress evidence. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On February 7, 2009, at approximately 1:26 a.m., Deputy Sheriff Adam Mast was traveling northbound on Second Street in Coshocton, Ohio. He observed appellant stopped at a red light eastbound on Pine Street. Appellant pulled in front of Deputy Mast and headed northbound on Second Street. According to Deputy Mast, there were no traffic violations and he had no suspicion of any criminal activity at the stoplight before appellant turned onto Second Street.

{¶3} Second Street at this particular location has three lanes of travel, a northbound lane, a southbound lane and a middle lane for turning or passing. The middle lane has dotted lines, permitting a driver to either turn left or right back into the north or southbound lanes. The middle lane has a solid line on the outside of the middle lane and a dotted line on the inside. Deputy Mast testified that the dotted line permits drivers to pass once that person is in the middle lane.

{¶4} Shortly after pulling out in front of the deputy, the deputy observed the appellant's truck swerve into the center turn lane causing both drivers' side tires to cross the yellow center turn line. The truck then went back into the northbound lane. The truck then swerved again into the center turn lane with both drivers' side tires crossing into the center turn lane. The truck then went back into the northbound lane. Deputy Mast turned on his lights and appellant immediately stopped by pulling off to the right.

{¶15} Appellant was charged with violations of R.C. 4511.19(A) (1) (a) [OVI], R.C. 4511.19(A) (1) (h) [BAC] and R.C. 4511.33 [failure to travel in marked lane of travel]. Appellant filed a Motion to Suppress alleging that the deputy did not have specific and articulable facts to justify the traffic stop. A hearing on the motion was held March 11, 2009. The trial court found that the deputy did have specific and articulable facts to justify the stop and by Judgment Entry filed March 11, 2009 denied appellant's motion to suppress.

{¶16} On March 11, 2009 appellant entered a plea of no contest to one count of OVI prohibited blood alcohol level. The remaining charges were dismissed. The trial court found appellant guilty and sentenced him ninety days in jail, a \$750.00 fine and court cost. Additionally the court suspended appellant's driver license for 180 days.

{¶17} Appellant has timely appealed raising as his sole assignment of error:

{¶18} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY DENYING HIS MOTION TO SUPPRESS."

I.

{¶19} In his sole assignment of error, appellant cites as error the trial court's decision to overrule his motion to suppress the evidence. Specifically, he contends that the officer did not have a reasonable suspicion based upon articulable facts that he was not traveling within the marked lanes for travel. We disagree.

{¶10} There are essentially three (3) methods of challenging, on appeal, a trial court's ruling on a motion to suppress. An appellant may challenge the trial court's finding of fact. An appellant may also argue the trial court failed to apply the appropriate test or correct law. Finally, an appellant may argue the trial court incorrectly decided the

ultimate or final issue raised in the motion to suppress. See e.g. *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172; *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906; and *State v. Guysinger* (1993), 86 Ohio App.3d 592, 621 N.E.2d 726. As the United States Supreme Court held in *Ornelas v. U.S.* (1996), 517 U.S. 690, 116 S.Ct. 1657, 1663, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶11} In the instant appeal, appellant's challenge of the trial court's ruling on his motion to suppress is based on the third method. Accordingly, this court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in this case.

{¶12} If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid. *State v. Mays*, 119 Ohio St.3d 406, 894 N.E.2d 1204, 2008-Ohio-4538 at ¶ 8.

{¶13} In *Mays*, supra the defendant argued that his actions in the case – twice driving across the white edge line – were not enough to constitute a violation of the driving within marked lanes statute, R.C. 4511.33. *Id.* at ¶ 15. The appellant further argued that the stop was unjustified because there was no reason to suspect that he had failed to first ascertain that leaving the lane could be done safely or that he had not stayed within his lane "as nearly as [was] practicable," within the meaning of R.C. 4511.33(A)(1). The Supreme Court found, "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.” Id. at ¶ 16. Further, the Supreme Court noted, “the question of whether appellant might have a possible defense to a charge of violating R.C. 4511.33 is irrelevant in our analysis of whether an officer has a reasonable and articulable suspicion to initiate a traffic stop. An officer is not required to determine whether someone who has been observed committing a crime might have a legal defense to the charge.” Id. at ¶ 17. The Supreme Court concluded that a law-enforcement officer who witnesses a motorist drift over lane markings in violation of a statute that requires a driver to drive a vehicle entirely within a single lane of traffic has reasonable and articulable suspicion sufficient to warrant a traffic stop, even without further evidence of erratic or unsafe driving.

{¶14} In the case at bar, the record establishes that shortly after appellant pulled out in front of the deputy, the deputy observed the truck swerve into the center turn lane causing both driver's side tires to cross the yellow center turn line. The truck then went back into the northbound lane. Approximately 400 feet later, appellant’s truck swerved again into the center turn lane with both drivers’ side tires crossing into the center turn lane. The truck then went back into the northbound lane. Appellant's driver's side tires went completely over the yellow lines to the point that they were not touching the lines.

{¶15} The judge is in the best position to determine the credibility of witnesses, and his conclusion in this case is supported by competent facts. See *State v. Burnside* (2003), 100 Ohio St.3d 152, 154-55, 797 N.E.2d 71, 74. The fundamental rule that weight of evidence and credibility of witnesses are primarily for the trier of fact applies to suppression hearings as well as trials. *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583, 584. The deputy’s testimony represents competent, credible evidence that

appellant was not traveling within the lanes marked for travel. Therefore, the factual finding of the trial court that appellant was not traveling within the lanes marked for travel is not clearly erroneous.

{¶16} Reviewing courts should accord deference to the trial court's decision concerning the credibility of the witnesses because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St.3d 71. In *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 81, 461 N.E.2d 1273, the Ohio Supreme Court explained: "[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." See, also *State v. DeHass* (1967), 10 Ohio St.2d 230, syllabus 1.

{¶17} We accept the trial court's conclusion that appellant's violation of the traffic laws gave Deputy Mast's reasonable suspicion to stop appellant's vehicle because the factual findings made by the trial court are supported by competent and credible evidence. Thus, the trial court did not err when it denied appellant's motion to suppress on the basis that the initial stop of his vehicle was valid. *State v. Busse*, Licking App. No. 06 CA 65, 2006-Ohio-7047 at ¶ 20.

{¶18} Appellant's sole assignment of error is overruled.

{¶19} For the foregoing reasons the judgment of the Coshocton County Municipal Court is affirmed.

By Gwin, P.J.,

Hoffman, J., and

Edwards, J., concur

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

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