[Cite as *State v. Hudson*, 2018-Ohio-2717.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	Case No. 17CA19
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
DAVID A. HUDSON, JR.,	:	**RELEASED: 07/02/2018**
Defendant-Appellant.	:	

APPEARANCES:

Ryan Shepler, Kernen & Shepler, L.L.C., Logan, Ohio, for appellant.

Jason Holdren, Gallia County Prosecuting Attorney, and Jeremy Fisher, Gallia County Assistant Prosecuting Attorney, Gallipolis, Ohio, for appellee.

Harsha, J.

{¶1} After a traffic stop of the vehicle David A. Hudson, Jr. was driving, a state trooper searched the car and found heroin. Hudson pleaded no contest to possession of heroin, and the Gallia County Court of Common Pleas sentenced him to a prison term and post-release control.

{¶2} Hudson asserts that the trial court erred in denying his motion to suppress because the state trooper did not have reasonable suspicion to make the traffic stop. Because the trooper had a reasonable suspicion that Hudson had committed multiple traffic offenses upon seeing Hudson commit two marked-lane violations and fail to stop at the marked stop line, we reject his assertion and affirm his conviction.

I. FACTS

{¶3} The Gallia County Grand Jury returned an indictment charging David A. Hudson, Jr., with one count of possession of heroin and one count of trafficking in

heroin in an amount exceeding 50 grams but less than 100 grams, both felonies of the first degree. Hudson received appointed counsel and entered a plea of not guilty.

{¶4} Hudson's counsel filed a motion to suppress the evidence seized during a traffic stop on several grounds, including that the state trooper lacked reasonable suspicion to make the stop. At the hearing on the motion Ohio State Highway Patrol Trooper Matthew Atwood testified that on October 14, 2016, he followed Hudson's vehicle, which was eastbound on U.S. Route 35 in Gallia County. According to the trooper he observed Hudson commit four separate traffic violations while driving the vehicle.

{¶5} First, as Hudson passed him, Hudson failed to operate his vehicle to allow him to stop within an assured clear distance ahead. Instead, he was "following too close to the vehicle in front of him" based upon a recommendation to be one car length back for every 10 mph; Hudson was travelling at about 65 mph in a 70 mph area, but was only three car lengths behind the vehicle in front of him.

{¶6} Second, Trooper Atwood observed Hudson commit two marked-lanes violations by twice travelling over the white fog line on the right side of the ramp as he was exiting U.S. Route 35.

{¶7} Third, when Hudson approached the stop sign before turning right to exit U.S. Route 35, he did not stop at the stop line before turning onto State Route 850. Hudson came to a stop behind the first car, which stopped at the stop line before turning onto State Route 850. But after the first car turned Hudson did not stop again as he approached the stop sign. Instead, he rolled through the intersection without stopping at the marked line and turned south onto State Route 850.

{¶8} Trooper Atwood then activated his patrol lights, and Hudson pulled his car into a parking lot where he stopped. Initially Hudson informed the trooper that his driver's license was suspended. Hudson and his female passenger each gave the trooper conflicting stories about where they were travelling. Eventually he consented to a search of his vehicle. The trooper found heroin under the passenger seat and arrested him. After his arrest Hudson told the trooper that he was paid by a person in Dayton to deliver heroin to a house in Gallipolis.

{¶9} The state introduced a dashboard video from the trooper's cruiser, which the trooper conceded did not show the first traffic infraction—the assured clear distance violation. However, the video did show Hudson's two marked-lanes violations by twice travelling over the white fog line on the exit ramp. The video also shows that Hudson did not stop at the stop line near the stop sign, but instead rolled through it while turning right. Although the stop line was partially worn, it remained plainly visible.

{¶10} The trial court denied Hudson's motion to suppress. The court determined that the trooper had a reasonable suspicion that Hudson had committed the four traffic violations that the trooper described, which justified the traffic stop.

{¶11} Hudson withdrew his not-guilty plea, pleaded no contest to heroin possession in return for the dismissal of the heroin trafficking charge, and was found guilty upon his plea. The trial court sentenced him to a nine-year prison term and five years of post-release control.

II. ASSIGNMENT OF ERROR

{¶12} Hudson assigns the following error for our review:

1. THE TRIAL COURT ERRED IN OVERRULING MR. HUDSON'S MOTION TO SUPPRESS.

A. THE TRIAL COURT ERRED BY RELYING UPON THE OFFICER'S TESTIMONY THAT MR. HUDSON COMMITTED AN ASSURED CLEAR DISTANCE VIOLATION, WHERE NO SUCH ASSURED CLEAR DISTANCE VIOLATION WAS COMMITTED.

B. THE TRIAL COURT ERRED BY RELYING UPON THE OFFICER'S TESTIMONY THAT MR. HUDSON COMMITTED A MARKED LANES VIOLATION, WHERE NO SUCH MARKED LANES VIOLATION OCCURRED.

C. THE TRIAL COURT ERRED BY RELYING UPON THE OFFICER'S TESTIMONY THAT MR. HUDSON FAILED TO STOP AT A STOP SIGN, WHERE NO SUCH FAILURE TO STOP OCCURRED.

D. BECAUSE THE VIDEO OF THE STOP CLEARLY ESTABLISHES THAT MR. HUDSON COMMITTED NO TRAFFIC VIOLATIONS, THE OFFICER DID NOT HAVE REASONABLE SUSPICION TO EFFECTUATE THE TRAFFIC STOP.

III. STANDARD OF REVIEW

{¶13} In general "appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7. "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. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. "Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id*. " '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.' " *Codeluppi* at ¶ 7, quoting *Burnside* at ¶ 8.

IV. LAW AND ANALYSIS

A. General Principles

{¶14} To determine whether the trial court erred in denying the motion to suppress, we must consider the reasonableness of the traffic stop. "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14 prohibit unreasonable searches and seizures." *State v. Emerson*, 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787, ¶ 15. This constitutional guarantee is protected by the exclusionary rule, which mandates the exclusion at trial of evidence obtained from an unreasonable search and seizure. *Id.*

{¶15} This case involved an investigatory stop, which must be supported by a reasonable, articulable suspicion that the driver has, is, or is about to commit a crime, including a minor traffic violation. *See State v. Fowler*, 4th Dist. Ross No. 17CA3599, 2018-Ohio-241, ¶ 16, citing *United States v. Williams*, 525 Fed.Appx. 330, 332 (6th Cir.2013), and *Florida v. Royer*, 460 U.S. 481, 501-507, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). "To justify a traffic stop based upon reasonable suspicion, the officer must be able to articulate specific facts that would warrant a person of reasonable caution to believe that the driver has committed, or is committing, a crime, including a minor traffic violation." *State v. Taylor*, 2016-Ohio-1231, 62 N.E.3d 591, ¶ 18 (4th Dist.). The existence of reasonable suspicion depends on whether an objectively reasonable police officer would believe that the driver's conduct constituted a traffic violation based on the totality of the circumstances known to the officer at the time of the stop. *Id.*

{¶16} Moreover, a police officer may stop the driver of a vehicle after observing even a de minimis violation of traffic laws. *See State v. Williams*, 4th Dist. Ross No. 14CA3436, 2014-Ohio-4897, ¶ 9, citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996), and *Dayton v. Erickson*, 76 Ohio St.3d 3, 655

N.E.2d 1091 (1996), syllabus. "[A] traffic stop with the proper standard of evidence is valid regardless of the officer's underlying ulterior motives as the test is merely whether the officer 'could' have performed the act complained of; pretext is irrelevant if the action complained of was permissible." *See State v. Koczwara*, 7th Dist. Mahoning No. 13MA149, 2014-Ohio-1946, ¶ 22, citing *Erickson* at 7 and 11.

{¶17} And the mere fact that an officer may have wrongly believed that a defendant could be convicted of the traffic offenses would not obviate reasonable suspicion for the stop. *See Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 15 ("The trial court correctly concluded that the fact that appellee could not be convicted of failure to obey a traffic-control device is not determinative of whether the officer acted reasonably in stopping and citing him for that offense. Probable cause does not require the officer to correctly predict that a conviction will result"); *see also Heien v. North Carolina*, ––– U.S. ––––, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014) (officer's mistake of law in stopping a vehicle with one functioning brake light, when the state vehicle code requires only one working brake light, was a reasonable mistake that did not violate the Fourth Amendment's prohibition against unreasonable searches and seizures).

B. Marked-Lanes Violations

{¶18} Two of the four traffic violations that Trooper Atwood observed occurred when Hudson twice travelled over the white fog line on the exit ramp from U.S. Route 35 to State Route 850. R.C. 4511.33(A)(1) requires drivers travelling on two or more lane roads to drive "as nearly as practicable, entirely within a single lane or line of traffic." "A traffic stop is constitutionally valid when a law-enforcement officer witnesses

a motorist drift over the lane markings in violation of R.C. 4511.33, even without further evidence of erratic or unsafe driving." *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, syllabus.

{¶19} Hudson contends that he did not violate R.C. 4511.33(A)(1) because he had a defense under R.C. 4511.36(A)(1), which permitted him to approach and make the right turn onto State Route 850 "as close as practicable to the right-hand curb or edge of the roadway."

{¶20} We reject Hudson's contention. He cites no authority that R.C. 4511.36(A)(1) provides a defense to R.C. 4511.33(A)(1) under these circumstances, where he could have complied with both statutes while exiting U.S. Route 35. Moreover, as the state counters, the term "roadway" for purposes of R.C. Chapter 4511 does not include the berm or shoulder of the highway. R.C. 4511.01(EE). Finally, as the Supreme Court of Ohio has held, "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." *Mays* at ¶ 17. The dashboard video introduced into evidence confirmed Hudson's two marked-lanes violations.

{¶21} Based on a totality of the circumstances known to the trooper at the time of the investigative stop, he possessed a reasonable suspicion that Hudson had committed marked-lanes violations by twice driving over the white fog line on the exit ramp.

C. Failure to Stop at Stop Line when approaching a Stop Sign

{¶22} Trooper Atwood also observed Hudson violate R.C. 4511.43(A) by failing to stop at the clearly marked stop line when approaching the stop sign before entering State Route 850 from the exit ramp. R.C. 4511.43(A) provides that "every driver of a vehicle * * * approaching a stop sign shall stop at a clearly marked stop line."

{¶23} Hudson claims that the trooper did not have a reasonable suspicion that he violated R.C. 4511.43(A) because: (1) the stop line was not clearly marked; and (2) he had stopped behind the vehicle in front of him before turning onto State Route 850, and the statute did not require him to stop a second time.

{¶24} We reject these claims also. The dashboard video introduced into evidence showed that although part of the stop line was worn, it was sufficiently marked to be clearly visible to drivers. And there is nothing in the statute to support Hudson's interpretation that as long as a vehicle is stopped behind another vehicle that is properly stopped at the stop line, the second vehicle need not stop at the stop line after the first vehicle turns.

{¶25} But Hudson relies on language from our decision at ¶ 12 in *State v. Abele*, 4th Dist. Jackson No. 04CA7, 2005-Ohio-2378, that a driver "was under no obligation to stop twice" under R.C. 4511.43. However, Hudson cites this isolated sentence out of its limited context, which was a review of the sufficiency of the evidence to support a conviction. We are reviewing the existence of a reasonable, articulable suspicion to support a traffic stop, not an ultimate finding of guilt. And there are evidentiary distinctions between the two cases. In *Abele* the vehicle in front of the defendant was stopped beyond the marked stop line, and the state "presented no evidence indicating where [the defendant] stopped in relation to the stop line." *Id.* at ¶ 11. Conversely, the

state here introduced evidence through the dashboard video showing that Hudson had stopped behind the vehicle in front of his, which had stopped at the marked stop line. The video shows that once the first vehicle turned, Hudson did not stop at the marked stop line, but instead coasted through it to turn right without stopping.

{¶26} Based on a totality of the circumstances known to the trooper at the time of the investigative stop, he had a reasonable suspicion that Hudson had committed a violation of R.C. 4511.43(A) by failing to stop at the clearly marked stop line when approaching the stop sign at State Route 850.

D. Assured Clear Distance Violation

{¶27} Trooper Atwood further observed Hudson commit a violation of R.C. 4511.21(A) by driving a motor vehicle "upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead." Hudson notes the statute does not prescribe any specific distance that a driver must leave between his vehicle and the vehicle ahead of him. And because R.C. 4511.21(B) makes it prima facie lawful to operate a vehicle that is not exceeding the speed limit, he claims the trooper lacked reasonable suspicion that he violated R.C. 4511.21(A).

{¶28} We have already determined that the trooper had the requisite reasonable suspicion that Hudson had committed two marked-lanes violations and failed to stop at a clearly marked stop line. Accordingly we need not address the potential merits of this claim. *But see State v. Gurley*, 2015-Ohio-5361, 54 N.E.3d 768, ¶ 22 (4 Dist.) (trooper's testimony that driver violated "rule of thumb" for following distance of one car length for every ten miles an hour a vehicle is travelling provided reasonable suspicion that driver violated assured-clear-distance provision of R.C. 4511.21).

{¶29} Because the trooper had a reasonable suspicion that Hudson had committed at least three traffic violations, he was justified in conducting an investigative stop of his vehicle. The trial court correctly denied his motion to suppress. We overrule Hudson's assignment of error.

V. CONCLUSION

{¶30} Having overruled Hudson's assignment of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.