[Cite as *State v. Pugh*, 2020-Ohio-7019.]

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

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 20CA6
	:	
vs.	:	
	:	DECISION AND
CHASE A. PUGH,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for Appellant.

Paul G. Bertram, III, Marietta City Law Director, and Catherine Ingram Reynolds, Marietta City Assistant Law Director, Marietta, Ohio, for Appellant.

Smith, P.J.

{¶1} Appellant, Chase Pugh, appeals the judgment of the Marietta Municipal Court convicting him of operating a motor vehicle under the influence of alcohol, a first-degree misdemeanor in violation of R.C. 4511.19(A)(1)(d). Pugh pled no contest to the charge after the trial court denied his motion to suppress any and all evidence resulting from his traffic stop. On appeal, Pugh contends the trial court erred in denying his motion to suppress. However, because we find the trial court's decision denying Pugh's motion to suppress was supported by competent, credible evidence, we cannot conclude the trial court erred in

denying the motion. Accordingly, Pugh's sole assignment of error is overruled and the judgment of the trial court is affirmed.

FACTS

{¶2} Appellant was stopped by Marietta Police Department Patrolman Robert L. Ritchie at 11:03 p.m. on October 29, 2019, while his vehicle was at rest at an intersection. A sworn statement by Ptl. Ritchie attached to the citation that was subsequently issued to Pugh stated that Ptl. Ritchie was immediately behind Pugh and observed that Pugh failed to stop at the painted white stop bar at an intersection, and that instead Pugh had come to a stop in the crosswalk with his rear tires on the stop bar. The sworn statement went on to provide that upon approaching Pugh, Ptl. Ritchie detected a strong odor of an alcoholic beverage on his breath and he also noted Pugh's eyes were bloodshot and glassy. In response to Ptl. Ritchie inquiring whether Pugh had been drinking, Pugh stated he had consumed "one case of Ice House," which Pugh described as a "tall boy" that had "8% alcohol[,]" six hours prior.

{¶3} The statement further provided that Ptl. Ritchie thereafter instructed Pugh to exit his vehicle so that standardized field sobriety tests could be administered. Pugh's overall performance on the standardized field sobriety tests indicated impairment, which led to Ptl. Ritchie administering a portable breath test. The test resulted in a 0.84% blood alcohol level. As a result, Pugh was placed

under arrest for OVI and was transported to the police department. The field sobriety tests were performed for a second time at the police station and Pugh also submitted a breath sample, which resulted in a .093% blood alcohol level.

{¶4} The record indicates that Pugh was ultimately charged with OVI, in violation of R.C. 4511.19(A)(1)(a) and (d), and failing to stop at a stop bar, in violation of R.C. 4511.43. Pugh was arraigned and entered a plea of not guilty on November 1, 2019. On December 13, 2019, Pugh filed a motion to suppress any and all evidence obtained from the traffic stop based upon an argument that Ptl. Ritchie lacked probable cause to stop his vehicle. A hearing was held on the motion on January 13, 2020.

{¶5} At the hearing, Ptl. Ritchie testified on behalf of the State. He testified that he observed Pugh's vehicle exit the Speedway and that he "dropped behind it there on Wooster Street." He testified that he was behind Pugh's vehicle as Pugh "slowed to a stop for the stop sign there in that intersection of Front and Wooster." He testified that Pugh "failed to stop at the stop bar, and then proceeded past that into the crosswalk." He further testified that Pugh's "rear tires were stopped on the stop bar."

{¶6} Regarding his vantage point with respect to Pugh's vehicle, Ptl. Ritchie testified that he was "probably fifty, seventy-five feet behind the vehicle[.]" He testified that "[he] watched from behind, as the vehicle came to a stop." When

asked how clearly he was able to see the "precise location" of Pugh's vehicle tires in relation to the stop bar, Ptl. Ritchie stated, "very clearly[,]" and he further explained that "[w]hen it stopped at the intersection, I was stopped directly behind it." He explained that he could see Pugh's back tires directly in front of him and that they were "actually stopped on the white stop bar." He further testified that Pugh's front tires were in front of the crosswalk and that the entire vehicle was "spread on to the crosswalk, blocking it."

{¶7} When questioned as to whether he, at any point, saw Pugh's vehicle "stop behind the stop line in order to pull forward to see[,]" he responded "No. It was going continuously. It didn't come to a complete stop until it had already proceeded past the stop bar." He testified that as a result of his observations, he initiated a stop of the vehicle based upon a stop bar violation, in violation of R.C. 4511.43.

{¶8} On cross examination Ptl. Ritchie conceded that Pugh would not have been able to get a clear view of northbound traffic on Front Street if he would have stopped at the stop bar. He also clarified that "you'd have to pull forward[]" to be able to see the oncoming traffic. Once Ptl. Ritchie's testimony was concluded, the trial court issued a ruling from the bench denying the motion to suppress. The trial court stated it believed "that the obligation is to stop behind the stop bar[,]" and that "[w]hen violated, it gives the officer a reason to stop a vehicle."

{¶9} Thereafter, Pugh entered into a negotiated plea agreement with the State whereby he pled no contest to the R.C. 4511.19(A)(1)(d) charge in exchange for the dismissal of the R.C. 4511.19.(A)(1)(a) and 4511.43 charges. The trial court issued a judgment entry on February 27, 2020, and it is from that final order that Pugh now brings his timely appeal, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

I. "THE TRIAL COURT ERRED IN OVERRULING DEFENDANT-APPELLANT'S MOTION TO SUPPRESS."

{¶10} In his sole assignment of error, Pugh contends the trial court erred in denying his motion to suppress. In raising this assignment of error, Pugh questions whether R.C. 4511.43(A) requires a driver to stop at a stop line where it is not possible for the driver to view crossing traffic while stopped at the line. Pugh further questions whether R.C. 4511.43(A) actually allows a driver to "do his best to comply with the traffic law by moving forward only so far as is necessary to view the crossing traffic." The State contends the trial court did not err in denying the motion to suppress.

¶11} 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.

{¶12} In order 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*.

{¶13} 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. Hudson*, 4th Dist. Gallia No. 17CA19, 2018-Ohio-2717, ¶ 14; *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. 491, 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*.

{¶14} 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, 665 N.E.2d 1091, syllabus (1996). "[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, quoting *Erickson* at 7 and 11.

{¶15} Here, there was no body cam or cruiser cam video of the traffic violation or traffic stop. All that is available for our review is the testimony of Ptl. Ritchie, who stated that he had a very clear view of Pugh's vehicle at the time it crossed the stop bar without stopping and instead came to a stop with the rear tires on the stop bar and the rest of the vehicle blocking the crosswalk. Furthermore, Pugh argues that in a situation where oncoming traffic is not visible when stopped at a stop bar, a driver should be able to drive beyond the stop bar to the point where oncoming traffic can be seen. Thus, we conclude that implicit in Pugh's argument on appeal is a concession that he did not stop at or before the stop bar.

R.C. 4511.43 is titled "Driving in response to stop or yield sign" and provides in section (A) as follows:

> Except when directed to proceed by a law enforcement officer, every driver of a vehicle or trackless trolley approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

This Court has recently considered the requirements of drivers when encountering a stop bar, or stop line, as set forth in R.C. 4511.43(A).

{¶17} For example, this court addressed the issue of a failure to stop at a stop line in *State v. Hudson*, 4th Dist. Gallia No. 17CA19, 2018-Ohio-2717.

Hudson committed several traffic violations, including the failure to stop at a stop bar. *Id.* at ¶ 9. Video footage admitted into evidence demonstrated that Hudson initially stopped behind another vehicle that was stopped at a stop sign, however, Hudson then traveled through the intersection without stopping at the stop line. *Id.* at ¶ 9. Based upon those facts, we held that the trooper "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 * * *." *Id.* at ¶ 26.

{¶18} Moreover, in *State v. Levine*, this Court recently held "that the statutory requirement to stop 'at a clearly marked stop line' requires a driver to come to a complete stop *before* the vehicle comes into contact with the stop line." *State v. Levine*, 4th Dist. Washington No. 18CA19, 2019-Ohio-265, ¶ 23, quoting R.C. 4511.43(A). In reaching our decision, we relied on the reasoning of the Third District Court of Appeals in *State v. Miller*, 3d Dist. Marion No. 9-14-50, 2015-Ohio-3529. The *Miller* court issued an instructive decision regarding the meaning of the phrase "at a clearly marked stop line" as contemplated in R.C. 4511.43(A). *Id.* at ¶ 20. The *Miller* court ultimately concluded that "it must be interpreted to mean 'before' rather than 'on' that line." *Id.* In *Levine*, the trial court found that the defendant's car straddled the stop bar during its stop at a flashing red light. *Id.*

Based upon those facts and in light of the reasoning contained in *Miller*, *supra*, we found that the trial court erred in granting Levine's motion to suppress.

{¶19} Because the trial court is the trier of fact and is in the best position to resolve factual questions, we must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Burnside* at ¶ 8. Here, although the trial court had no video to review, it heard Ptl. Ritchie's testimony that he had a very clear view of Pugh driving past the stop bar without stopping, and that, instead, Pugh came to a stop in the crosswalk, with his back tires on the stop bar. The trial court found as follows, on the record, during the hearing:

> I believe that the evidence is satisfactory, that the Court would find that Mr. Pugh, as many people do when they're driving, did not stop behind the stop bar. He is not the only person that doesn't do that. I think probably two-thirds, three-fourths of the people who drive in this town don't stop behind the stop bar. They stop where they can see what's coming either direction. I realize that. But I don't think the way I understand the case law or the plain meaning of the statute, that I am permitted to put a common sense interpretation into it. I believe that the obligation is to stop behind the stop bar. When violated, it gives the officer a reason to stop the vehicle. This is not a violation of the Defendant's Constitutional rights.

{¶20} Because the trial court's findings are supported by competent, credible evidence, we accept the trial court's factual findings. Further, in light of the foregoing case law, we agree with the trial court's legal determinations regarding the requirement that drivers must stop before the stop bar prior to proceeding forward in order to have a clear view of oncoming traffic at an

intersection. Thus, we cannot conclude that the trial court erred in denying Pugh's motion to suppress. Accordingly, Pugh's sole assignment of error is overruled, and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Marietta Municipal Court 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.

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding 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.