

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CODEE L. COPPOCK,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 CO 0042

Criminal Appeal from the
Municipal Court of Columbiana County, Ohio
Case No. 2022-TRC-295

BEFORE:

Carol Ann Robb, David A. D’Apolito, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Vito J. Abruzzino, Prosecuting Attorney, *Atty. Shelley M. Pratt*, Assistant Prosecuting Attorney, Columbiana County Prosecutor’s Office, 135 South Market Street, Lisbon, Ohio 44432 for Plaintiff-Appellee and

Atty. Michael P. Davis, Aronson, Fineman & Davis Co., LPA, 124 E. Fifth Street, East Liverpool, Ohio 43920 for Defendant-Appellant.

Dated: August 17, 2023

Robb, J.

{¶1} Defendant-Appellant Codee L. Coppock appeals the decision of the Columbiana County Municipal Court denying her motion to suppress. She argues law enforcement lacked reasonable suspicion to stop her vehicle for a marked lanes violation. She also argues reasonable suspicion of operation of a vehicle under the influence of alcohol (OVI) did not thereafter arise to justify the administration of field sobriety tests. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} On January 29, 2022, Appellant was cited for a marked lanes offense in violation of R.C. 4511.33(A)(1) and two counts of OVI in violation of R.C. 4511.19(A)(1)(a) (under the influence) and (d) (prohibited breath concentration). She filed a motion to suppress, arguing the trooper lacked reasonable suspicion to stop her vehicle for a marked lanes violation or to detain her during the stop in order to administer field sobriety tests. At the suppression hearing, the state presented the trooper's testimony and his cruiser's dash cam footage (St.Ex. A). The trooper noted the dash cam automatically saved video beginning one and one-half minutes before the initiation of a traffic stop, as confirmed by the video. (Tr. 11).

{¶3} On August 16, 2022, the trial court denied the motion to suppress. The court recited the trooper's testimony on Appellant crossing the white line by half a tire width, considered the totality of the circumstances, and reviewed two Supreme Court cases on the marked lanes statute. The court found the video confirmed the trooper's testimony and showed Appellant "not only drove *on* the white fog lane, which alone would not constitute a lawful stop, but the tires *crossed* over the white fog line." (Emphasis original). It was concluded the case law supported a holding "that crossing the white fog line, even slightly, gives rise to reasonable articulable suspicion to stop the defendant's vehicle" for a marked lanes violation.

{¶4} Next, the trial court ruled the trooper had reasonable suspicion to investigate an OVI offense by administering field sobriety tests. In addition to the driving issues mentioned by the trooper and confirmed in the video, the court pointed to the trooper's testimony on the following factors: bloodshot and glassy eyes; slow and slurred

speech; odor of alcohol; admission to consuming alcohol; and delay in providing registration and insurance documents.

{¶15} On September 14, 2022, Appellant pled no contest to the charges. At sentencing, the OVI related to the breathalyzer was merged with the OVI under R.C. 4511.19(A)(1)(a) for which Appellant was sentenced to 90 days in jail with 87 days suspended and three days of a driving intervention program plus a license suspension. A fine was imposed on the OVI and on the marked lanes offense. Appellant filed a timely notice of appeal.

ASSIGNMENT OF ERROR ONE

{¶16} Appellant sets forth two assignments of error, the first of which contends:

“THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THERE IS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE ARRESTING OFFICER HAD A REASONABLE ARTICULABLE SUSPICION TO STOP AND DETAIN APPELLANT FOR A MARKED LANES VIOLATION.”

{¶17} We review the trial court’s decision on a motion to suppress under a mixed standard of review. *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842, ¶ 14. The trial court's factual findings must be upheld if they are supported by competent, credible evidence. *Id.* The factual findings are so accepted because the trial court occupies the best position from which to evaluate evidence and weigh the credibility of witnesses. *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216, ¶ 41; *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). Legal questions are reviewed de novo. *Turner*, 163 Ohio St.3d 421 at ¶ 14. We thus make an independent determination as to whether the facts satisfy the relevant legal standard. *Mayl*, 106 Ohio St.3d 207 at ¶ 41.

{¶18} In general, a police officer may stop an individual without probable cause when the officer has reasonable suspicion based on specific, articulable facts, that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 20-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). In other words, “a police officer who lacks probable cause but whose observations lead him reasonably to suspect that a particular person's behavior is criminal may detain the person briefly to investigate the circumstances that provoked the suspicion.” *State v.*

Mays, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 13. More specifically, “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.” *Id.* at ¶ 8. See also *State v. Tidwell*, 165 Ohio St.3d 57, 2021-Ohio-2072, 175 N.E.3d 527, ¶ 19-21 (reasonable suspicion for traffic stop).

{¶9} The marked lanes statute provides in pertinent part: “Whenever any roadway has been divided into two or more clearly marked lanes for traffic, * * * [a] vehicle * * * shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.” R.C. 4511.33(A)(1).

{¶10} The trooper testified he was driving on State Route 344, which has one lane going in each direction. At 2:43 a.m., he noticed Appellant’s oncoming vehicle driving “very closely” to the white edge line. Because he believed the car “possibly could have” crossed over the edge line, he turned around to follow Appellant. (Tr. 6). As he followed her, he saw her weave within her lane. He also saw her driving close to the center line and then close to the white edge line. (Tr. 9). Ultimately, he witnessed the tire of her vehicle drive on and then cross the edge line. (Tr. 36-37, 39-40). In describing this marked lanes violation, he testified, “The vehicle went over the line and broke the line half a tire width.” (Tr. 6-7).

{¶11} In arguing a lack of reasonable suspicion to stop her vehicle, Appellant relies on the Supreme Court’s holding that the marked lanes statute prohibits a tire from crossing the solid white fog line but does not prohibit a tire from touching or driving on that line. *Turner*, 163 Ohio St.3d 421 at ¶ 3, 29, 35, 37 (where the defendant’s right tires touched but did not cross the edge line).¹ Initially, she utilizes this holding by claiming the

¹ We note even though a trooper testified Turner’s right tires touched the edge line and the Supreme Court concluded the marked lanes statute is not violated if the line was not crossed, the Court did not order suppression; instead, the Court remanded to address “whether the State Highway Patrol trooper reasonably believed that appellant, Ryan Turner, violated the law when he drove on the fog line, rendering the trooper’s stop of Turner lawful.” *Turner*, 163 Ohio St.3d 421 at ¶ 4 (where the state appealed the trial court’s suppression of the evidence and the appellate court reversed after finding there was reasonable suspicion to stop because touching the line was a violation without addressing whether the trooper had reasonable suspicion because he made a reasonable mistake of law).

video contradicts the trooper's testimony and shows only that her tire touched/drove on the white edge line.

{¶12} However, the trial court evaluated the credibility of the trooper's testimony that Appellant's tire crossed the edge line by half a tire width, watched the video, and agreed Appellant's tire crossed and did not merely touch or drive on the line. We reviewed the transcript and the video, which confirms the trooper's testimony about Appellant's tire crossing over the far edge of the white edge line. Contrary to Appellant's contention, the trial court's decision on this fact was supported by sufficient evidence, which was also competent and credible. In accordance, Appellant's first argument is without merit.

{¶13} Alternatively, Appellant claims that even if her tire touched unpainted pavement on the other side of the edge line, the trooper's testimony (that she crossed the line by a half a tire width) means her tire was simultaneously over the line and on the line. She asks us to compare *Turner* with *Mays* and conclude that crossing over the edge line to the pavement on the other side of the line is not prohibited if part of the tire is still touching the line.

{¶14} In *Mays*, the Supreme Court held: "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." *Mays*, 119 Ohio St.3d 406 at ¶ 16. The Court also said potential defenses (about staying in the lane as nearly as practicable or ascertaining it was safe to cross a line) are irrelevant to the determination of the existence of reasonable and articulable suspicion to initiate the traffic stop. *Id.* at ¶ 17. Accordingly, "when an officer could reasonably conclude from a person's driving outside the marked lanes that the person is violating a traffic law, the officer is justified in stopping the vehicle." *Id.* at ¶ 20. The Court concluded the trooper had reasonable and articulable suspicion to initiate a traffic stop for a marked lanes violation where he twice saw the defendant's vehicle drift across the white fog line by approximately one tire width. *Id.* at ¶ 2, 17, 21.

{¶15} A comparison of *Turner* (touching the edge line by driving on it was not a marked lanes violation while noting crossing the line is prohibited) with *Mays* (crossing the edge line by a tire width was a violation) does not lead to the conclusion proposed by Appellant. Crossing over the far edge of the fog line so that the tire touches the pavement

on the other side of this line constitutes a prohibited crossing of the line even if the tire may still be touching the line. See e.g., *State v. Byrd*, 8th Dist. Cuyahoga No. 111330, 2022-Ohio-4635, ¶ 17 (reasonable suspicion to initiate a traffic stop where part of a tire went over the fog line even if it was only “for a fleeting moment”). Again, the trooper only needed reasonable suspicion of a traffic violation (he did not need proof beyond a reasonable doubt or even probable cause to make the traffic stop). *Mays*, 119 Ohio St.3d 406 at ¶ 6, 23. (In any event, the trooper’s testimony would have established even probable cause for a marked lanes violation, based on his testimony as confirmed by the video.) Appellant’s second argument under this assignment of error is without merit. This assignment of error is overruled.

ASSIGNMENT OF ERROR TWO

{¶16} Appellant’s second assignment of error argues:

“THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO SUPPRESS BECAUSE THE ARRESTING OFFICER DID NOT HAVE REASONABLE ARTICULABLE SUSPICION TO REQUEST APPELLANT PERFORM FIELD SOBRIETY TESTS.”

{¶17} After initiating a valid traffic stop, a police officer may develop suspicion about the driver’s intoxication status. To lawfully administer field sobriety tests, the officer must have reasonable and articulable suspicion to believe the driver was under the influence of alcohol, based on the totality of the circumstances existing before, during, and immediately after the stop. *State v. Hughes*, 7th Dist. Columbiana No. 17 CO 0024, 2019-Ohio-2690, ¶ 27. See also *State v. Batchili*, 113 Ohio St.3d 403, 2007-Ohio-2204, 865 N.E.2d 1282, ¶ 22 (during a lawful stop, reasonable suspicion under the totality of the circumstances can justify further detention for investigation).

{¶18} In evaluating a suppression motion on the topic of reasonable suspicion to conduct field sobriety testing, some of the factors to be considered may include: day of the week and time of day; location of the stop (such as near a bar); type of driving observed (including erratic driving or indicators of impaired judgment or coordination); prior reports on the driver’s possible intoxication; condition of the eyes (including bloodshot, glassy, glazed, or closing); speech issues (such as slurring or overly deliberate); odor of alcohol (including odor location and intensity); actions after the stop

indicating a lack of coordination (including dropping or fumbling for items and stumbling or falling); avoidance of eye contact or other indicia of excessive nervousness; admission of alcohol consumption (including amount and timing); and the officer's previous experience in dealing with drunken drivers. *State v. Reed*, 7th Dist. Belmont No. 05 BE 31, 2006-Ohio-7075, ¶ 11. See also *Hughes*, 7th Dist. No. 17 CO 0024 at ¶ 27.

{¶19} In arguing the trooper's testimony did not provide reasonable suspicion of intoxication to support the administration of field sobriety tests, Appellant claims the only relevant factors were the alleged marked lanes violation, the time of night, and her admission to drinking two drinks. She arrives at this argument by contesting various aspects of the trooper's testimony, which we review before conducting a final review of the facts articulated by the trooper.

{¶20} As to her admission to drinking two alcoholic beverages mixed with pop, Appellant complains the trooper did not ascertain the timing of this consumption. There was no recording of the earlier conversation when she was still in her vehicle; his body audio recorder was charging in the cruiser. (Tr. 43). However, after she alighted from her vehicle, the trooper can be heard on the dash cam eliciting statements related to the timing of her consumption. Initially, he recapped, "So, you went to the Eagles. You had a few drinks. What did you have to drink there?" After she disclosed what and how many she drank, the trooper asked how many drinks she had later at her friend's house, and she claimed she did not drink while at her friend's house. We also point out that her claims on the amount and the timing need not be accepted as credible.

{¶21} Appellant next argues the trooper's testimony that he smelled a "strong" odor of alcohol coming from the vehicle as he stood two to three feet away outside driver side window was not credible because he merely referred to an odor of alcohol without using the "strong" adjective in certain forms he completed. (Tr. 7, 30). However, the trooper explained the form provided only a limited amount of space for him to list his reasons for suspecting intoxication. (Tr. 48).

{¶22} Appellant also says the trooper's testimony about her eyes being glassy and bloodshot lacked credibility, opining this is not evident in the dash cam video when she looks toward the camera. Contrary to Appellant's contention, the video does not contradict the trooper's testimony on glassy eyes. As to the bloodshot descriptor, the

trooper explained his use of the term referred to a pinkish hue, not a bright red color. (Tr. 45-46). He also pointed out the lighting in the background of what the dash cam recorded on a dark street at night was distinct from what he saw by the illumination of his flashlight pointed in her direction during his conversation with her before she exited the vehicle. (Tr. 48-49).

{¶23} Next, Appellant says the dash cam video does not support the trooper's testimony about her speech. The trooper testified her speech was slow and slurred. (Tr. 7). He watched the video at trial more than once and was asked by defense counsel how he could say Appellant's speech was slurred. The trooper insisted it sounded slurred to him. (Tr. 35, 46). The recorded portion of their interaction contains at least one answer that began in a somewhat slurring manner, and there was no audio of the trooper's initial interaction with Appellant before she exited the car.

{¶24} In addition to the observations made as to each of these arguments, we reiterate the trial court occupied the best position from which to evaluate evidence and weigh the credibility of witnesses. *Mayl*, 106 Ohio St.3d 207 at ¶ 41; *Mills*, 62 Ohio St.3d at 366. We agree with the state's argument that the trooper was presented with various circumstances providing reasonable suspicion of an OVI offense.

{¶25} First, as discussed in the prior assignment of error, the trooper observed a marked lanes violation. He also witnessed a possible violation when he decided to begin following her and then saw near violations, plus drifting within the lane, while following her before the marked lanes violation. The video for the marked lanes violation confirms she came extremely close to the centerline multiple times, including around a curve when an oncoming vehicle was approaching.

{¶26} Notably, it was the weekend (Friday night had turned to the early morning hours of Saturday). The time of night was 2:43 a.m., just after many bars must stop selling alcohol. See Ohio Adm.Code 4301:1-1-49. Furthermore, when the trooper approached the driver side window, he smelled a strong odor of alcohol from two to three feet away, and Appellant was alone in the vehicle. (Tr. 7, 9). In the light of his flashlight, the trooper believed Appellant's eyes appeared bloodshot in the sense of a pinkish hue; her eyes also seemed glassy. (Tr. 7, 45-49). She admitted she drank at least two mixed drinks

that night. (Tr. 7, 26, 31). The trooper described her speech as slow and slurred. (Tr. 7, 35, 46).

{¶27} When asked for her registration and proof of insurance, “she had to pause for a little bit, think about what she was going to grab”; she followed instructions “after pausing.” (Tr. 7, 22-23). She also slightly stumbled after alighting from the vehicle and approaching the cruiser. (Tr. 24).² This off-balanced movement when turning to get away from the road can be noticed in the video. She can also be seen making odd movements with her keys (as if she wanted to hand them to the trooper).

{¶28} In sum, there was reasonable and articulable suspicion to investigate Appellant for OVI and administer field sobriety tests. This assignment of error is without merit.

{¶29} For the foregoing reason, the trial court’s judgment is affirmed.

D’Apolito, P.J., concurs.

Hanni, J., concurs.

² It is well established an officer can ask a person to exit a vehicle during a lawful traffic stop without reasonable suspicion of further criminal activity. *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977).

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Municipal Court of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution

NOTICE TO COUNSEL

This document constitutes a final judgment entry.