

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 11AP-220
	:	(M.C. No. 2010 TRC 148924)
David M. Koren,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 27, 2011

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellee.

Christopher T. Cicero, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶1} David M. Koren is appealing from his convictions on charges of OVI and failure to drive in marked lanes. He assigns a single error for our consideration:

ASSIGNMENT OF ERROR: The trial court erred when in overruling Appellant's Motion to Suppress when it found the Trooper had probable cause or reasonable and articulable suspicion that a "marked lane" violation occurred where clearly from the on dash camera of the trooper he did not.

{¶2} Koren entered pleas of "no contest" to the charges against him after the trial court overruled his motion to suppress. The sole issue before us is whether the trial court was correct in ruling on the motion to suppress.

{¶3} Koren was driving on Bethel Road in Columbus, Ohio, in the early morning hours of July 2, 2010. Sean Carpenter, a trooper with the Ohio State Highway Patrol pulled Koren over and cited him on the charges mentioned.

{¶4} Carpenter's patrol car was equipped with a video and audio recording device which was mounted slightly to the passenger side of the vehicle. The video camera recorded the trooper's encounter with Koren and the time frame during which the violation alleged by the trooper supposedly occurred.

{¶5} The trial court judge who conducted an evidentiary hearing on the motion to suppress reviewed a DVD of the encounter and prior driving by Koren. The trial court judge commented:

Admittedly, the technology we have here, the video, is limited in that it isn't very clear and it's blurry; the Court can't quite see the left of center, the car going left of center. I just sort of see lights blurring, and so I can't say for sure that that, in fact, was the defendant's vehicle moving left of center.

However, I do think that the Court has to rely on the testimony of the trooper and his firsthand witnessing of the defendant going left of center. He indicated on two occasions indicating that there was -- on the first occasion he was one tire width over the line, and the second occasion, about two and a half feet over the line.

Also, the Court is taking into consideration the trooper's clarification of where the camera was located, which was to his right. And so the camera did not have the benefit of the

trooper's location in the vehicle and the trooper's perspective of witnessing the left-of-center.

So I do find that the trooper had probable cause to stop the defendant and to cite him for driving left of center and, therefore, the initial stop was a valid stop.

(Tr. 29-30.)

{¶6} The DVD is part of the appellate record. Upon review of the DVD, we concur with the trial court's comments. The DVD does not demonstrate that Trooper Carpenter was less than credible when he testified that he saw Koren's vehicle go left-of-center on two occasions. If the DVD did not exist, nothing in the record before us would provide a basis for changing the trial court's evaluation of the trooper's credibility. Since nothing in the DVD demonstrates that the trooper was less than truthful in his claim that he saw Koren's vehicle go left-of-center, we have no basis for overturning the trial court's ruling on the motion to suppress.

{¶7} The single assignment of error is overruled.

{¶8} The judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.
