

[Cite as *State v. Wood*, 2019-Ohio-3985.]

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 18AP0011

Appellee

v.

PAUL J. WOOD

APPEAL FROM JUDGMENT
ENTERED IN THE
WAYNE COUNTY MUNICIPAL COURT
COUNTY OF WAYNE, OHIO
CASE No. 2017 TRC 00293

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 30, 2019

TEODOSIO, Presiding Judge.

{¶1} Appellant, Paul J. Wood, appeals from his convictions in the Wayne County Municipal Court. This Court reverses and remands.

I.

{¶2} A Wooster police officer was on duty and watching the Nold Avenue Bar with binoculars around 1:00 A.M. He saw Mr. Wood exit the bar, get into his truck, and drive away. The officer followed Mr. Wood and observed two traffic violations before initiating a traffic stop. According to the officer, while speaking to Mr. Wood he noticed slurred speech along with slow and lethargic movements. After returning to his cruiser and running Mr. Wood's information, the officer re-approached the truck and asked Mr. Wood to step out for field sobriety testing.

{¶3} Mr. Wood was ultimately charged with two counts of operating a vehicle under the influence of alcohol under R.C. 4511.19(A)(1)(a) and (d), one count of operation of vehicle

at stop signs under Wooster Codified Ordinance 331.19, and one count of driving in marked lanes or continuous lines of traffic under Wooster Codified Ordinance 331.08. He filed a motion to suppress, which the trial court denied after a hearing. Following a trial, a jury found him guilty of all charges, and the trial court sentenced him accordingly. The sentence was stayed pending appeal.

{¶4} Mr. Wood now appeals from his convictions and raises one assignment of error for this Court's review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY DENYING MR. WOOD'S MOTION TO SUPPRESS, AS THE ARRESTING OFFICER DID NOT HAVE REASONABLE SUSPICION TO PROLONG THE STOP FOR THE PURPOSE OF CONDUCTING FIELD SOBRIETY TESTS.

{¶5} In his sole assignment of error, Mr. Wood concedes the validity of the traffic stop, but argues that the trial court erred in denying his motion to suppress because the police officer lacked the reasonable suspicion of criminal activity necessary to prolong the traffic stop and conduct field sobriety tests. For the reasons set forth below, we sustain Mr. Wood's assignment of error.

{¶6} A motion to suppress presents a mixed question of law and fact:

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. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. 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.

State v. Oberholtz, 9th Dist. Summit No. 27972, 2016-Ohio-8506, ¶ 5, quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶7} “[A] police officer does not need probable cause to conduct a field sobriety test; rather, he must simply have a reasonable suspicion of criminal activity.” *State v. Slates*, 9th Dist. Summit No. 25019, 2011-Ohio-295, ¶ 24. “‘Reasonable suspicion’ is more than an ill-defined hunch * * *.” *State v. Hunter*, 151 Ohio App.3d 276, 2002-Ohio-7326, ¶ 31 (9th Dist.). “[R]easonable suspicion exists if an officer can point to specific and articulable facts indicating that [an individual] may be committing a criminal act.” *State v. Panaro*, 9th Dist. Medina No. 16CA0067-M, 2018-Ohio-1005, ¶ 18, quoting *State v. High*, 9th Dist. Medina No. 17CA0019-M, 2017-Ohio-8264, ¶ 8. “The totality of the circumstances is considered when determining whether reasonable suspicion exists.” *Id.*

{¶8} In its order denying Mr. Wood’s motion to suppress, the trial court determined that the officer had the requisite reasonable suspicion to prolong the traffic stop for field sobriety testing based on the following findings of fact:

[The officer] testified he observed the Defendant leave the Nold Avenue bar in the early morning hours. [The officer] followed Mr. Wood and observed his truck stop over the stop bar before turning right. The right-hand turn was wide and Mr. Wood traveled over the double yellow line into the turning lane for traffic traveling in the opposite direction. [The officer] initiated his overhead lights. Mr. Wood was slow to turn into the Discount Drug parking lot. He parked his vehicle crosswise in the lot.

[The officer] noted Wood’s eyes were red, glossy and watery. His speech was slurred and slow. His movements were lethargic and slow. When asked where Wood was coming from his answer was inconsistent with the Officer’s observations. Six minutes into the stop, [the officer] asked Mr. Wood to exit his vehicle to perform field sobriety tests.

{¶9} Mr. Wood challenges the trial court’s factual findings and argues that the video evidence contradicts the officer’s testimony. This Court recognizes that the trial court is in the best position to resolve factual questions and to evaluate the credibility of witnesses when considering motions to suppress. *See Burnside* at ¶ 8. After reviewing all of the evidence

presented at the suppression hearing, however, we determine that several of the trial court's findings of fact are not supported by competent, credible evidence. The trial court's order relies heavily on the officer's testimony and does not explicitly reference the body cam video or dash cam video. The videos were nonetheless entered into evidence at the suppression hearing, and the transcript reveals that portions of both videos were, in fact, viewed during the hearing.

{¶10} Mr. Wood has not challenged the propriety of the traffic stop on appeal. As to reasonable suspicion, however, the officer testified at the suppression hearing that Mr. Wood “did not initially pull over to the right side of the road and turned into the Drug Mart parking lot[,]” and continued to travel “approximately a block and a half maybe.” The trial court likewise found that Mr. Wood was “slow” to turn into the parking lot. The dash cam video does not support this finding. The video shows that, once the officer's overhead lights are activated, Mr. Wood almost immediately—in less than two seconds—applies his brakes and pulls into the first driveway on his right. Thus, Mr. Wood was not slow to pull over, nor did he travel an additional block and a half before doing so.

{¶11} The officer also testified that Mr. Wood “parked sideways in the spaces.” The court likewise found that Mr. Wood parked “crosswise” in the lot. However, the body cam video does not support this finding. The video shows Mr. Wood entering a vast and empty parking lot and choosing a nearby parking space in which to park. Although the final positioning of his truck is by no means flawless or impeccable, his positioning within his lightly snow-covered parking space appears neither inappropriate nor unacceptable under the circumstances and is not sideways or crosswise in the lot.

{¶12} The officer also testified that Mr. Wood's “speech was slightly slurred as he spoke.” The court correspondingly found that Mr. Wood's speech was “slurred and slow.” Yet,

the officer's body cam video does not support this finding. Although Mr. Wood speaks with a very pronounced and discernible southern accent, we cannot pinpoint a single occurrence during the encounter in which his speech is either slurred or slow.

{¶13} The officer further testified that Mr. Wood's "movements within the vehicle were slow and lethargic." The court accordingly found that Mr. Wood's movements were "lethargic and slow." But, once again, the officer's body cam does not support this finding of fact. This Court can discern no such slow or lethargic movements exhibited by Mr. Wood from our review of the video.

{¶14} While the evidence supports an inconsistency between the officer's observations and Mr. Wood's statement that he was coming from a friend's house, we cannot conclude that this inconsistency is indicative of impairment under the particular circumstances in this case. Mr. Wood did not admit to consuming any alcohol. Even if he had, "[f]or better or worse, the law prohibits *drunken* driving, not driving after a drink." (Emphasis sic.) *State v. High*, 9th Dist. Medina No. 17CA0019-M, 2017-Ohio-8264, ¶ 14, quoting *State v. Taylor*, 3 Ohio App.3d 197, 198 (1st Dist.1981). "Likewise, it is only a crime to be in physical control of a vehicle *while under the influence*." (Emphasis sic.) *Id.*, citing R.C. 4511.194(B)(1). The officer also testified that he did not notice any odor of alcohol while Mr. Wood was still seated in his truck.¹ He further testified, and the court found, that Mr. Wood had red, glossy, and watery eyes. We note that although red, glossy, and watery eyes are often an indicator of impairment, they do not *always* indicate impairment. *See, e.g., State v. Hochstetler*, 9th Dist. Wayne No. 16AP0013, 2016-Ohio-8389, ¶ 13.

¹ The officer testified that he did not detect the odor of alcohol until *after* he had Mr. Wood exit the truck, although he further admitted that this was not in his detailed narrative and he must have forgotten to include it.

{¶15} Although we understand that an officer may have a heightened suspicion of OVI when he observes someone leave a bar at 1:00 A.M., this Court has recognized that “no single factor is dispositive of whether a law enforcement officer is legally justified in conducting field sobriety tests in any given case.” *Id.* at ¶ 12. In *Hochstetler*, cited by both parties in this matter, this Court concluded that an officer had a reasonable suspicion to administer field sobriety tests based on the totality of the circumstances, which included: a traffic violation described as “erratic” in which the defendant’s entire vehicle crossed into the opposing lane of traffic and avoided a collision by mere seconds; testimony that the officer was concerned for the safety of others; evidence that the stop occurred after 10:00 P.M. on Friday; and glassy, bloodshot eyes. *Id.* at ¶ 13. We find the fact pattern in *Hochstetler* to be distinguishable from the fact pattern in the instant case. Although the trial court stated in open court that Mr. Wood’s driving “might be characterized as erratic[,]” the officer did not explicitly testify that he observed any erratic driving or that he was concerned for the safety of others. While Mr. Wood’s truck crossed over the double-yellow line during his turn, his entire truck did not veer into the other lane, nearly avoiding a collision with oncoming traffic, such as the vehicle in *Hochstetler*. *See id.*

{¶16} Reasonable suspicion is based on the totality of the circumstances. *Panaro*, 2018-Ohio-1005, at ¶ 18. As discussed above, we have determined that several of the trial court’s findings of fact were not supported by competent, credible evidence□e.g., slow to turn, parked crosswise, slurred and slow speech, and lethargic and slow movements□and this Court therefore need not accept them as true. *See Burnside* at ¶ 8. Because the evidence does not support the trial court’s factual findings, we must conclude that the court erred in denying Mr. Wood’s motion to suppress. *See State v. Liscoe*, 9th Dist. Summit No. 25441, 2011-Ohio-1054, ¶ 14.

{¶17} This Court emphasizes that we “in no way condone[] the act of drinking and driving, but the law criminalizes the act only if an individual indulges to the point of intoxication or impairment.” *High* at ¶ 15. Based on our review of the record before us and the totality of the circumstances present in this particular case, we cannot conclude that the State produced enough competent, credible evidence to show that the officer possessed a reasonable suspicion, based on specific and articulable facts, that Mr. Wood was operating a vehicle under the influence of alcohol, which was necessary to further detain him for the purpose of conducting field sobriety testing. *See Slates*, 9th Dist. Summit No. 25019, 2011-Ohio-295, at ¶ 24; *Panaro* at ¶ 18. We must therefore conclude that the trial court erred in denying Mr. Wood’s motion to suppress.

{¶18} Accordingly, Mr. Wood’s sole assignment of error is sustained.

III.

{¶19} Mr. Wood’s sole assignment of error is sustained. The judgment of the Wayne County Municipal Court is reversed, and the cause is remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

THOMAS A. TEODOSIO
FOR THE COURT

CARR, J.
CALLAHAN, J.
CONCUR.

APPEARANCES:

PATRICK L. BROWN, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and ANDREA D. UHLER, Assistant Prosecuting Attorney, for Appellee.