

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-13-080

Appellee

Trial Court No. 13-TRC-05420

v.

Shane M. Connelly

DECISION AND JUDGMENT

Appellant

Decided: June 20, 2014

* * * * *

Matthew L. Reger, Bowling Green City Prosecutor, and
Paul A. Skaff, Assistant Prosecuting Attorney, for appellee.

Scott T. Coon and Elizabeth B. Bostdorff, for appellant.

* * * * *

JENSEN, J.

{¶1} Defendant-appellant, Shane Connelly, appeals the November 1, 2013 judgment of the Bowling Green Municipal Court denying his motion to suppress evidence obtained by a Bowling Green police officer who stopped him for violating R.C.

4511.36, improper turn at an intersection, and R.C. 4511.33, driving outside marked lanes. For the reasons that follow, we affirm the trial court's judgment.

I. BACKGROUND

{¶2} At approximately 12:45 a.m. on July 23, 2013, Bowling Green police officer Adam Skaff was driving behind Connelly's vehicle and observed Connelly turn left from the westbound lane of Clough Street onto South Main Street in Bowling Green, Ohio. Connelly turned into the far-right curb lane on South Main instead of turning into the lane just right of the center line dividing southbound South Main from northbound South Main. Once on South Main, Officer Skaff stopped Connelly after allegedly witnessing Connelly's vehicle veer onto, and partially over, the white dashed lines dividing the two southbound lanes of travel. During his encounter with Connelly during the stop, Officer Skaff observed signs that caused him to believe that Connelly was intoxicated. Connelly was ultimately arrested and charged with violations of R.C. 4511.33, driving outside marked lanes, and R.C. 4511.19, operating a vehicle while intoxicated.

{¶3} Connelly moved the trial court on September 17, 2013, to suppress evidence obtained during the traffic stop. During the hearing on Connelly's motion, Officer Skaff testified and described the intersection at issue. Clough Street is a two-lane street with an eastbound and a westbound lane. South Main Street is four lanes, with two southbound lanes and two northbound lanes. Where Clough meets South Main, only the westbound lane continues; it becomes, in effect, a one-way street insofar as eastbound traffic ceases

after crossing South Main. As described by Officer Skaff, Connelly turned left from the westbound lane of Clough Street into the curb lane on South Main instead of turning into what Officer Skaff described as the “first available lane of traffic”-the lane just right of the center line dividing the southbound and northbound lanes.

{¶4} Officer Skaff explained that approximately two blocks after entering South Main, he observed Connelly drive his vehicle on top of the dotted lines dividing the two southbound lanes, momentarily crossing partially over the line. Officer Skaff initiated the traffic stop at that point. He testified that he cited Connelly for the marked lanes violation, but he also believed the left-hand turn to have been a traffic violation despite choosing not to cite him for that offense.

{¶5} Connelly argued that he had committed no traffic violation, therefore, Officer Skaff lacked reasonable, articulable suspicion necessary to justify the traffic stop. As a result, he contended, the evidence leading to his arrest was unlawfully obtained and should be suppressed.

{¶6} The trial court denied Connelly’s motion. It reasoned that (1) Officer Skaff’s testimony at the hearing on the motion to suppress demonstrated that he had a reasonable belief that Connelly committed a traffic violation when he turned left into the curb lane on South Main Street, and (2) the officer’s testimony established that despite the fact that Connelly’s vehicle did not cross completely over the marked lane, his driving on the line

coupled with Connelly's belief that the left-hand turn was improper, justified the traffic stop.

{¶7} Connelly now appeals and assigns the following error for our review:

THE TRIAL COURT ERRED IN DENYING APPELLANT'S
MOTION TO SUPPRESS EVIDENCE OBTAINED FROM THE
ILLEGAL STOP AND ARREST OF APPELLANT ON JULY 23, 2013.

II. STANDARD OF REVIEW

{¶8} Our review of a decision granting or denying a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. The trial court assumes the role of trier of fact and is in the best position to resolve factual discrepancies and to evaluate the credibility of witnesses. *Id.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). We will accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.*, citing *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982). We must then determine, without deference to the trial court's conclusion, whether the facts satisfy the applicable legal standard. *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist.1997).

III. ANALYSIS

{¶9} Connelly argues that the investigative stop in this case was unlawful because (1) his tires never fully crossed the lane dividers, and (2) his left-hand turn onto South

Main was not improper. He claims that the stop violated his rights under the Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution, both of which prohibit unreasonable searches and seizures.

{¶10} As we explained in *State v. Parker*, 6th Dist. Ottawa No. OT-12-034, 2013-Ohio-3470, ¶ 5:

An investigative stop of a motorist does not violate the Fourth Amendment if the officer has a reasonable suspicion that the individual is engaged in criminal activity. Before a law enforcement officer may stop a vehicle, the officer must have a reasonable suspicion, based upon specific and articulable facts that an occupant is or has been engaged in criminal activity. Reasonable suspicion constitutes something less than probable cause. The propriety of an investigative stop must be viewed in light of the totality of the circumstances. (Internal citations omitted.)

We must, therefore, determine whether Officer Skaff had reasonable, articulable suspicion that Connelly violated R.C. 4511.33 or R.C. 4511.36 so as to render the investigative stop lawful.

{¶11} Under R.C. 4511.33(A)(1), “[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.” Connelly claims that his tires “merely touched” but “never fully crossed” the lane lines, thus he did not violate the marked lanes statute.

{¶12} In *Parker*, we held that the defendant did not violate R.C. 4511.33 where he operated his vehicle on top of, but not across, a marked lane. *Id.* at ¶ 10. In *State v. Devault*, 6th Dist. Ottawa No. 12-027, 2013-Ohio-2942, ¶ 2, 7, we held that the defendant violated R.C. 4511.33 where he “weav[ed] off the right side of the road and then back on top of the center line.”

{¶13} It is difficult to determine from the video evidence offered at the suppression hearing whether Connelly’s car crossed over the lane dividers. Officer Skaff testified that the tires of Connelly’s vehicles drove on, and partially crossed over, the line. The trial court indicated in its judgment entry that “defendant’s vehicle drove on the lane divider on South Main Street for approximately three seconds,” but “defendant’s tires never crossed completely over any lane marking.” The court nevertheless concluded that driving on the line, coupled with what Officer Skaff believed to be an improper left turn, justified Officer Skaff’s decision to initiate the traffic stop.

{¶14} While we may have been inclined to accept the officer’s testimony that Connelly, indeed, crossed the line, in reviewing a motion to suppress we must defer to the trial court’s credibility determinations. We will, therefore, accept the trial court’s finding that Connelly’s vehicle did not cross the lane dividers. Regardless of this conclusion, we

agree with the trial court that Connelly made an improper left-hand turn, thus Officer Skaff had reasonable, articulable suspicion for initiating the stop.

{¶15} R.C. 4511.36 provides, in pertinent part, as follows:

(A) The driver of a vehicle intending to turn at an intersection shall be governed by the following rules:

* * *

(2) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane

of the roadway being entered lawfully available to traffic moving in that lane.

{¶16} Relying on R.C. 4511.36(A)(2) and pages 36-37 of the *Digest of Ohio Motor Vehicle Laws*, the recommended study guide for persons taking the Ohio drivers examination, published by the Ohio Department of Public Safety, the trial court found that Officer Skaff reasonably believed that Connelly's turn onto South Main constituted a traffic violation. The excerpt of the *Digest of Ohio Motor Vehicle Laws* cited by the court, and attached to its decision, states:

{¶17} The driver of a vehicle intending to turn left:

At an intersection where traffic is moving in both directions on each road entering the intersection shall make the approach in the right half of the road nearest the center line. The turn should be made into the lane on the right half of the street nearest the center line.

See <http://publicsafety.ohio.gov/links/hsy7607.pdf> (accessed May 29, 2014). Page 37 of the digest, also attached to the court's judgment entry, features a number of diagrams illustrating the proper procedure for making left-hand turns in a variety of scenarios.

{¶18} Connelly contends that when he turned from Clough to South Main, he remained in the westbound lane until completing his turn. He argues that the purpose of R.C. 4511.36, as enunciated in the dissenting opinion in *State v. Stadlemann*, 1st Dist. Hamilton No. C-130138, 2013-Ohio-5035, ¶ 14, is to require drivers to "square their

turns” and that R.C. 4511.36(A)(2) is silent as to which lane to turn into. He then goes on to argue that R.C. 4511.36 does not apply at all because once Clough Street crosses South Main, it becomes a one-way street, allowing only westbound traffic. He claims that at that point there is no eastbound traffic approaching from Clough, there is no traffic signal for eastbound traffic, and Clough Street effectively becomes an alley, merely providing access to the parking lot behind the buildings facing South Main Street. To that end, he argues that under our decision in *State v. Hageman*, 6th Dist. Williams No. WM-08-014, 2009-Ohio-169, there was no violation of R.C. 4511.36 because R.C. 4511.36 applies only to turns at an “intersection.” He suggests that the point where Clough meets South Main is an “alley” and not an “intersection.”

{¶19} The state correctly points out that Connelly failed to make this argument in the trial court. It also asserts that R.C. 4511.36(A)(3)-not (A)(2)-was the provision of the statute that Connelly violated.

{¶20} In *Stadelmann*, the defendant was pulled over after turning into a curb lane. The court acknowledged that R.C. 4511.36(A)(2) could be interpreted in two ways: one interpretation would require a driver to turn into the lane closest to the center line when making a left hand turn; the second interpretation would require a driver to complete a turn without driving left-of-center i.e., into oncoming traffic. *Id.* at ¶ 3. The majority opined that the more likely interpretation is the first, but it held that because the statute could give way to multiple interpretations, it was objectively reasonable for the officer to

conclude that the wide turn was a violation of the law, sufficient to justify the traffic stop. *Id.* at ¶ 4.

{¶21} In *State v. Lewis*, 4th Dist. Scioto No. 08CA3226, 2008-Ohio-6691, interpreting R.C. 4511.36(A)(3), the court held that the officer had reasonable, articulable suspicion that the defendant violated the law after she observed him execute a left-hand turn into the far right lane. *Id.* at ¶ 23. The court held that whether the defendant had a viable defense to the violation was irrelevant to whether the officer had reasonable, articulable suspicion to initiate the stop. *Id.*

{¶22} In our view, regardless of whether (A)(2) or (A)(3) applies, Officer Skaff was reasonable in his belief that Connelly violated R.C. 4511.36. Both provisions, at least arguably, prohibit a driver from turning into the far-right curb lane upon making a left-hand turn. Additionally, the diagrams pictured at page 37 of the *Digest of Ohio Motor Vehicle Laws* illustrate how to make a proper left-hand turn, including where a two-lane, one-way street meets a four-lane highway, and where a two-lane, two-way street meets a four-lane highway. The illustrations show that in both situations, the turn should be made into the lane closest to the center line dividing the opposite lanes of travel.

{¶23} Turning to Connelly's contention that R.C. 4511.36 is inapplicable because the point at which Clough and South Main meet is not an "intersection," we find this argument to be without merit. First, Connelly waived this argument by failing to raise it

in the trial court. *See State v. Richcreek*, 196 Ohio App.3d 505, 2011-Ohio-4686, 964 N.E.2d 442, ¶ 53 (6th Dist.). In any event, in *Hageman*, 6th Dist. Williams No. WM-08-014, 2009-Ohio-169, we found no violation of R.C. 4511.36 because the officer was unsure whether the driver turned from the roadway or from a parking lot. *Hageman* at ¶ 18. In the present case, there is no question that Connelly was turning from one roadway onto another roadway.

{¶24} For these reasons, we find that Officer Skaff had reasonable, articulable suspicion to initiate the traffic stop and we find Connelly's assignment of error not well-taken.

IV. CONCLUSION

{¶25} We find Connelly's assignment of error not well-taken and affirm the November 1, 2013 judgment of the Bowling Green Municipal Court denying his motion to suppress evidence. The costs of this appeal are assessed to Connelly pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.