

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

State of Ohio

Court of Appeals No. E-14-123

Appellee

Trial Court No. 14TRC02039

v.

Erin C. McManus

DECISION AND JUDGMENT

Appellant

Decided: May 1, 2015

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

Kyle R. Wright, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a September 2, 2014 judgment of the Erie County Court of Common Pleas, which denied appellant's motion to suppress in the underlying operating a motor vehicle while intoxicated case. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Erin C. McManus, sets forth the following single assignment of error:

The trial court committed reversible error when it found that the testimony of the officer[,] as well as the dash cam video[,] established reasonable articulable suspicion to stop defendant's vehicle under the Fourth Amendment.

{¶ 3} The following undisputed facts are relevant to this appeal. On May 25, 2014, at approximately 3:00 a.m., Ohio State Highway Patrol Trooper Bryan Mamere ("Mamere"), was on duty in his marked patrol vehicle traveling in the vicinity of Shawmill Road located in Erie County, Ohio.

{¶ 4} Mamere observed appellant driving ahead of him. At this time, appellant was located at a lower elevation than Mamere as appellant was driving down the slope of a hill. This apex position provided Mamere with an unencumbered view of appellant's vehicle.

{¶ 5} Mamere gave unrefuted testimony that he observed appellant's tires go *over* the marked center traffic line and then shift back into the lawful lane of travel. (Emphasis added.) Accordingly, based upon this first observation of a traffic violation, Mamere testified that he continued to follow appellant in order to observe whether additional violations occurred or whether the initial observation may have been an isolated incident so as to possibly consider not initiating a traffic stop.

{¶ 6} Shortly thereafter, Mamere observed appellant's tires again go fully over the marked center traffic line. Notably, the second time that appellant traveled over the line, Mamere observed that it was a more significant degree of encroachment into the wrong lane of traffic in comparison with the lesser degree of encroachment witnessed in the first observation of a violation.

{¶ 7} Upon observing the second, more significant marked lane violation, Mamere determined that a traffic stop should be performed and he initiated the disputed traffic stop.

{¶ 8} In the course of the traffic stop, Mamere detected multiple indicia of alcohol intoxication by appellant, including a strong odor of alcohol, dilated pupils, and bloodshot eyes. Consistent with these observations, appellant subsequently failed the field sobriety tests and produced a positive BAC result of .17, more than double the legal threshold. Appellant was charged with one count of going left of center, in violation of R.C. 4511.25, and one count of operating a motor vehicle while intoxicated, in violation of R.C. 4511.19(A)(1)(a).

{¶ 9} On July 28, 2014, appellant filed a motion to suppress. In support, appellant alleged that there was no reasonable articulable suspicion in support of the underlying traffic stop, thereby arguably compromising the pending charges.

{¶ 10} On August 27, 2014, a hearing on the motion to suppress was conducted. Appellee presented both detailed testimony from the trooper who initiated the stop and the dash cam video. On September 2, 2014, the motion to suppress was denied. The trial

court held in pertinent part, “Based on his observation of the above traffic violations, the officer had reasonable articulable suspicion to stop Defendant’s vehicle and the motion to suppress is therefore, denied.”

{¶ 11} Given the adverse trial court determination on the motion to suppress, on September 15, 2014, appellant entered no contest pleas to the pending traffic violations, was found guilty, and was sentenced. This appeal ensued.

{¶ 12} In the single assignment of error, appellant maintains that the trial court erred in finding reasonable articulable suspicion in support of the disputed traffic stop. We do not concur.

{¶ 13} We note the outset that the Ohio Supreme Court has established the appropriate standard of review of a disputed motion to suppress as follows:

Appellate review of 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. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8 (internal citations omitted).

{¶ 14} In conjunction with the above controlling legal principle, we further note that 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. *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The officer must possess a reasonable suspicion, based upon specific and articulable facts, that an occupant is, or has been engaged in, criminal activity. *State v. Gedeon*, 81 Ohio App.3d 617, 618, 611 N.E.2d 972 (11th Dist.1992). The legitimacy of an investigative stop is reviewed in light of the totality of the circumstances. *State v. Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489 (1988), paragraph two of the syllabus.

{¶ 15} We have carefully reviewed and considered the record of evidence in this matter. The record clearly reflects through the uncontroverted testimony of the eyewitness trooper and the corresponding police report that the trooper observed appellant at approximately 3:00 a.m. on May 25, 2014, unlawfully drive her vehicle tires over the marked center line and encroach into the wrong lane of traffic twice, with the second violation witnessed being more significant than the first. Significantly, the testimony was unequivocal that the tires did not simply drive upon the marked center line, but unlawfully over the marked center line.

{¶ 16} The relevant testimony is reflected as follows:

Q. Where are her tires here?

A. At that point, they are, again, over the center line.

Q. Over the centerline, not on it?

A. Correct.

{¶ 17} Appellant disputes that the testimony and evidence was sufficient to constitute specific and articulable facts showing reasonable suspicion that appellant had violated the law prior to the disputed traffic stop. We are not convinced. The fact that the dash cam video was of limited quality for evidentiary purposes does not negate the uncontroverted testimony of the trooper that he observed appellant unlawfully drive her vehicle tires left of the marked centerline on two occasions immediately prior to initiating the disputed traffic stop.

{¶ 18} In conjunction with the above, we note that the cases upon which appellant principally relies in support of her argument against the propriety of the traffic stop involves cases where the totality of the evidence was not clear that the accused had driven across and over, and not simply upon, the marked center line. As such, these cases are materially distinguishable from the present case in which the totality of the evidence presented to the trial court was clear that appellant had unlawfully driven over, and not upon, the marked center line prior to the initiation of the traffic stop.

{¶ 19} Given the facts and circumstances of this case, we find that the uncontroverted eyewitness testimony of the trooper that appellant drove over the marked centerline on at least two occasions prior to the stop constituted competent, credible evidence demonstrating specific and articulable facts of reasonable suspicion that appellant had committed an offense prior to the trooper initiating the disputed stop.

{¶ 20} Wherefore, we find that the trial court properly denied appellant's motion to suppress. Appellant's assignment of error is found not well-taken. The judgment of the Erie County Court of Common Pleas is hereby affirmed. Appellant is ordered to pay the cost of this appeal 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

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.

CONCUR.

JUDGE