[Cite as *State v. Vlachos*, 2009-Ohio-915.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SHELBY COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 17-08-24**

v.

MATTHEW G. VLACHOS, **O P I N I O N**

DEFENDANT-APPELLANT.

Appeal from Sidney Municipal Court
Trial Court No. 08-TRC-00746

Judgment Affirmed

Date of Decision: March 2, 2009

APPEARANCES:

Gary C. Schaengold **for Appellant**

Tonya K. Thieman **for Appellee**

SHAW, J.

{¶1} Defendant-Appellant Matthew Vlachos ("Vlachos") appeals from the August 8, 2008 Entry of the Sidney Municipal Court, Shelby County, Ohio, finding him guilty of Operating a Vehicle under the Influence of Alcohol, in violation of Ohio Revised Code Section 4511.19(A)(1)(a).

{¶2} This matter stems from events occurring on February 7, 2008 in Sidney, Ohio. On this date at approximately 12:22 a.m. Officer Christopher Burmeister ("Burmeister") of the Sidney Police Department was in his police vehicle at the northwest corner of Ohio Avenue and North Street when he observed a vehicle (subsequently determined to be driven by Vlachos) come out of the alley beside the Ohio Building. Vlachos' vehicle turned northbound on Ohio, even though Ohio is a one-way southbound street. Burmeister then observed Vlachos stop his vehicle close to the intersection of Ohio and North for no apparent reason, and observed Vlachos yelling out his car window for approximately 20-30 seconds.

{¶3} Burmeister then turned down Ohio Ave., pulled his police vehicle behind Vlachos' vehicle, and activated his emergency lights. Burmeister approached Vlachos' vehicle and advised him that he was on a one-way street going the wrong way. Vlachos appeared as if he didn't understand Burmeister and when Burmeister asked for Vlachos' license, he noticed an odor of alcohol.

Burmeister asked Vlachos to step out of the vehicle and observed the odor of alcohol coming from Vlachos' breath. Burmeister then conducted field sobriety tests including the horizontal gaze nystagmus ("HGN") test and the one-leg-stand test. Based upon the results of these tests, his observations, and the results of a portable breath test, Burmeister placed Vlachos under arrest.

{¶4} Vlachos was charged with Operating a Vehicle Under the Influence of Alcohol in violation of R.C. 4511.19(A)(1)(a) and (A)(1)(d), and with a One Way Streets and Rotary Traffic Islands violation as contained in section 331.28 of the Codified Ordinances of the City of Sidney, Ohio. On February 13, 2008 Vlachos entered a plea of not guilty to these offenses. On March 26, 2008 Vlachos filed a motion to suppress the evidence seized as a result of the traffic stop, the field sobriety tests, and the arrest.

{¶5} The trial court conducted a hearing on Vlachos' motion to suppress on May 13, 2008. On June 18, 2008 the trial court issued an Entry overruling Vlachos' motion to suppress. This matter was scheduled for trial on August 20, 2008. However, on this date Vlachos entered a plea of no contest and the trial court found Vlachos guilty of a violation of R.C. 4511.19(A)(1)(a). The remaining charges were dismissed. In its August 20, 2008 Entry, the trial court sentenced Vlachos to 180 days in jail, suspending 177 days on the condition that Vlachos violate no laws of the State of Ohio for one year. Additionally, the court

ordered that it would give Vlachos credit for three days in jail if Vlachos attended a 72-hour intervention program within 90 days, placed Vlachos under a Class 5 Driver License Suspension for a period of one year, and fined him $250.00 plus costs.

{¶6} Vlachos now appeals, asserting two assignments of error.

ASSIGNMENT OF ERROR NO. 1

DID THE STATE HAVE THE RIGHT TO STOP THE APPELLANT'S VEHICLE.

ASSIGNMENT OF ERROR NO. 2

DID THE STATE HAVE THE RIGHT TO DETAIN THE APPELLANT FOR THE PURPOSE OF CONDUCTING FIELD SOBRIETY TESTS.

{¶7} In his first assignment of error, Vlachos argues that the trial court erred in denying his motion to suppress as the officer did not have probable cause to stop his vehicle. In his second assignment of error, Vlachos argues that the trial court erred in denying his motion to suppress as it was improper for the officer to detain him for the purpose of conducting field sobriety tests. As Vlachos' assignments of error are substantially related, we shall address them together.

{¶8} When a trial court considers a motion to suppress, it must make both factual and legal determinations. *State v. Jones*, 9th Dist. No. 20810, 2002-Ohio-1109 citing *Ornelas v. U.S.* (1996), 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911, 920. When reviewing a trial court's decision that evidence arising

out of a challenged seizure should not be suppressed we apply the law, *de novo,* to the facts as determined by the trial court. *Id.* At a suppression hearing, 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. *State v. Carter* (1995), 72 Ohio St.3d 545, 552, 651 N.E.2d 965; *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972.

{¶9} Furthermore, when reviewing a trial court's decision on a motion to suppress, an appellate court must uphold the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Dunlap* (1995), 73 Ohio St.3d 308, 314, 652 N.E.2d 988. We must defer to "the trial court's findings of fact and rely on its ability to evaluate the credibility of witnesses[,]" and then independently review whether the trial court applied the correct legal standard. *State v. Anderson* (1995), 100 Ohio App.3d 688, 691, 654 N.E.2d 1034.

{¶10} The Fourth Amendment of the United States Constitution and Section 14, Article I of the Ohio Constitution protect persons from "unreasonable searches and seizures" by the government. *State v. Jackson* (2004), 102 Ohio St.3d 380, 381, 811 N.E.2d 68. Under the exclusionary rule, evidence gained during an unreasonable search and seizure must be suppressed. *Id.* Normally, a police officer is required to have a reasonable, articulable suspicion in order to stop a motorist. *State v. Keck*, 3rd Dist. No. 5-03-27, 2004-Ohio-1396 at ¶11; *State*

v. Bobo (1988), 37 Ohio St.3d 177, 179, 524 N.E.2d 489; *Terry v. Ohio* (1968), 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889. Moreover, the Ohio Supreme Court has stated that "[w]here a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution even if the officer had some ulterior motive for making the stop, such as a suspicion that the violator was engaging in more nefarious criminal activity." *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 665 N.E.2d 1091, syllabus. See also, *Whren v. U.S.* (1996), 517 U.S. 806, 810-813, 116 S.Ct. 1769, 135 L.Ed.2d 89; *State v. Dicke*, 3rd Dist. No. 2-07-29, 2007-Ohio-6705.

{¶11} Initially, when evaluating the constitutionality of a traffic stop, this court must evaluate whether an officer had sufficient reasonable articulable suspicion necessary to commence a traffic stop by evaluating the objective facts surrounding the traffic stop and disregarding the officer's subjective intention or motivation. *Erickson*, 76 Ohio St.3d at 11-12, 665 N.E.2d 1091.

{¶12} In *State v. Purtee*, 3rd Dist. No. 8-04-10, 2006-Ohio-6337 this court reasoned as follows:

> **"'Specific and articulable facts' that will justify an investigatory stop by way of reasonable suspicion include: (1) location; (2) the officer's experience, training, or knowledge; (3) the suspect's conduct or appearance; and (4) the surrounding circumstances." *State v. Gaylord*, 9th Dist. No. 22406, 2005-Ohio-2138 at ¶ 9, citing *State v. Bobo* (1988), 37 Ohio St.3d 177, 178-79, 524 N.E2d 489;**

> ***State v. Davison*, 9th Dist. No. 21825, 2004-Ohio-3251 at ¶ 6. However, the reasonable articulable suspicion need not be a suspicion of criminal activity. *State v. Norman*, 136 Ohio App.3d 46, 53-54, 735 N.E.2d 453, 1999-Ohio-961. In *Norman*, this court held that:**
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> **Clearly, under appropriate circumstances a law enforcement officer may be justified in approaching a vehicle to provide assistance, without needing any reasonable basis to suspect criminal activity. See *State v. Langseth* (N.D. 1992), 492 N.W.2d 298, 300; *State v. Brown* (N.D. 1993), 509 N.W.2d 69; *People v. Murray* (1990), 137 Ill.2d 382, 148 Ill.Dec. 7, 560 N.E.2d 309; *Crauthers v. Alaska* (Alaska App. 1986), 727 P.2d 9; *State v. Pinkham* (Me. 1989), 565 A.2d 318; *State v. Marcello* (Vt. 1991), 157 Vt. 657, 599 A.2d 357; *State v. Oxley* (N.H. 1985), 127 N.H. 407, 503 A.2d 756. Police officers without reasonable suspicion of criminal activity are allowed to intrude on a person's privacy to carry out "community caretaking functions" to enhance public safety. The key to such permissible police action is the reasonableness required by the Fourth Amendment. When approaching a vehicle for safety reasons, the police officer must be able to point to reasonable, articulable facts upon which to base her safety concerns. Such a requirement allows a reviewing court to answer *Terry's* fundamental question in the affirmative: "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" [*Terry*], 392 U.S. at 21-22.**

State v. Purtee, 2006-Ohio-6337 at ¶ 9-10 citing *State v. Norman* (1999), 136 Ohio App.3d 46, 54, 735 N.E.2d 953. See also *State v. Andrews*, 3rd Dist. No. 2-07-30, 2008-Ohio-625; *State v. Karkiewicz*, 3rd Dist. No. 17-07-14, 2008-Ohio-2256.

{¶13} In the present case, our review of the record reveals that Officer Burmeister testified at the suppression hearing that on February 7, 2008 he observed Vlachos come out of the alley beside the Ohio Building and turn

northbound on Ohio. Burmeister testified that "Ohio Avenue runs southbound the entire length of the road," and that this is what drew his attention to Vlachos' vehicle. Burmeister testified that he then observed Vlachos' vehicle stop in the road close to the intersection of North and Ohio for approximately 20-30 seconds.

{¶14} Burmeister testified that he stopped Vlachos because "[h]e's the wrong way on a one-way street and he's parked in the middle of traffic. It was a danger for the roadway for him to be there facing that direction." Burmeister also testified that when he approached Vlachos' vehicle and explained that he (Vlachos) was going the wrong way on a one-way street, Vlachos gave "kind of a—like he didn't understand look" so Burmeister pointed to the traffic lights and explained that Vlachos was "facing the back of the traffic signal due to the fact that it's a one-way street going the opposite direction of the way you're traveling."

{¶15} Additionally, Burmeister then testified that when he asked Vlachos for his license he could smell the odor of alcohol coming from the vehicle. Burmeister asked Vlachos if he had been drinking, and after Vlachos said no, asked him to step from the car to see if the odor of alcohol was coming from his person. Burmeister testified that once Vlachos was outside the vehicle, he could smell the odor of alcohol coming from Vlachos' breath, so he had Vlachos perform the HGN test. Burmeister testified that he investigated Vlachos to see if he was able to operate a motor vehicle because he "could smell the odor of

alcoholic beverage coming from his (Vlachos') breath and the fact that he just wasn't grasping the concept of the one-way street thing" as well as the fact that Vlachos was going the wrong way on a one-way street."

{¶16} Additionally, our review of the record reveals that in overruling Vlachos' motion to suppress, the trial court set forth the following conclusions of law:

> **1. Given the facts that the Defendant was driving the wrong way on a one-way street at 12:22 a.m., that he stopped his vehicle in the middle of the street and was seen yelling out the window, the Court finds that the officer had a reasonable and articulable suspicion to stop the Defendant to investigate whether criminal or safety issues were present;**
>
> **2. Given the Defendant's state of confusion and odor of alcohol the officer had a right to investigate the possible impairment of the Defendant.**

(See June 18, 2008 Entry).

{¶17} Based on the foregoing, we find that the officer had a reasonable and articulable suspicion to stop Vlachos to investigate whether criminal or safety issues were present and therefore, cannot say in this instance that the decision of the trial court was not supported by some competent credible evidence or was otherwise contrary to law. Accordingly, Vlachos' first and second assignments of error are overruled.

{¶18} Therefore, the August 8, 2008 Entry of the Sidney Municipal Court, Shelby County, Ohio is affirmed.

Judgment Affirmed

PRESTON, P.J. and WILLAMOWSKI, J., concur.

/jlr