

[Cite as *State v. Pfeiffer*, 2004-Ohio-4981.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellant, : CASE NO. CA2003-12-329
 :
 -vs- : O P I N I O N
 : 9/20/2004
 :
 WILLIAM PFEIFFER, :
 :
 Defendant-Appellee. :

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2003-10-1495

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Fred Miller, 246 High Street, Hamilton, OH 45011, for defendant-appellee

YOUNG, P.J.

{¶1} Plaintiff-appellant, the state of Ohio, appeals a decision of the Butler County Court of Common Pleas granting a motion to suppress filed by defendant-appellee, William Pfeiffer. We reverse the decision of the trial court.

{¶2} In October 2003, Pfeiffer was indicted on one count each of driving while under the influence of alcohol (his

fourth offense), possession of marijuana, possession of an open container of alcohol, driving while under suspension, and driving to the left of center. Pfeiffer moved to suppress evidence on the ground, inter alia, that the arresting officer did not have probable cause to stop him. A hearing on the motion revealed the following facts:

{¶3} On September 16, 2003, shortly before midnight, Officer Patrick Erb of the Hamilton Police Department was stopped at a traffic light on Fair Avenue in Hamilton, Ohio at the intersection of State Route 4 and Fair Avenue. Looking down Fair Avenue, the officer observed Pfeiffer's vehicle pass a white Impala by driving completely to the left of a double yellow centerline in a no-passing zone. At the time, the two cars and the officer's cruiser were headed in the same direction. The officer did not observe the entire pass; by the time he noticed Pfeiffer's vehicle, it was already parallel to the Impala. Upon passing the Impala, both Pfeiffer's car and the Impala drove on. Officer Erb testified he could not recall whether the Impala was stopped or traveling when Pfeiffer passed it. However, the officer did not believe the Impala was stationary as he did not remember seeing the Impala's brake lights.

{¶4} Because the passing occurred in the vicinity of a bar, the officer decided to follow Pfeiffer to see if he could witness any other driving violations. Officer Erb consistently testified that he did not pull over Pfeiffer either immediately

or for several miles after the pass because he wanted to see if Pfeiffer would commit any other driving violations. While following Pfeiffer, with the Impala being between Pfeiffer's car and the cruiser, the officer encountered difficulty in getting closer to Pfeiffer's car because the distance between Pfeiffer's car and the Impala became greater. Nevertheless, the officer did not observe any other driving violations. After traveling a few miles, all three cars reached State Route 4. Pfeiffer turned left onto Route 4 while the Impala turned right.

{¶5} Officer Erb turned left onto Route 4 to continue to follow Pfeiffer who was by then 300 to 400 yards ahead of him.

As the officer was catching up, he observed Pfeiffer turn into a McDonald's parking lot. Officer Erb activated his lights and Pfeiffer stopped his car. The officer testified he stopped Pfeiffer for the passing violation observed earlier on Fair Avenue.

{¶6} Upon approaching Pfeiffer's vehicle, the officer detected a strong odor of alcohol about Pfeiffer's person. Pfeiffer admitted drinking four or five beers since three o'clock that afternoon. Officer Erb tried to explain several times the reason for the stop, to wit, the improper passing on Fair Avenue. When Pfeiffer finally understood the reason, he became confrontational and belligerent. Pfeiffer subsequently failed the horizontal gaze nystagmus test, refused to perform any balancing field sobriety test, and was unable to correctly

recite the alphabet. During the stop, the officer discovered that Pfeiffer's driver's license was suspended. An inventory of Pfeiffer's car revealed a mixed drink in a plastic glass and a bag of marijuana.

{¶7} During the stop, Pfeiffer explained to the officer (and he so testified at the hearing) that the reason he passed the Impala was to assume a lead position. According to Pfeiffer, the individual driving the Impala was a woman he had met earlier that night at a bar, and she had agreed to meet him at a Ramada Inn hotel on State Route 4. Because she did not know how to get there, the plan was for her to follow Pfeiffer in her car. Pfeiffer admitted crossing the double yellow centerline to go around the Impala and lead the way. Pfeiffer first testified that when he passed the Impala, that car was "more or less completely stopped." On cross-examination, Pfeiffer testified that the woman stopped her Impala so he could go around it.

{¶8} During the hearing, the trial court also asked Officer Erb several questions. In response to those questions, the officer admitted the possibility that when Pfeiffer passed the Impala, that "car was maybe stopped or going very slow." The officer explained he did not activate his lights while behind the Impala, which in turn would have allowed him to cross the double yellow centerline to go around the Impala, because he wanted to see whether Pfeiffer was going to commit any other driving violations. The officer admitted he did not

know whether he would have pulled Pfeiffer over if, instead of pulling into the McDonald's parking lot, Pfeiffer had continued driving on without committing any other driving violations.

{¶9} By decision and entry filed on December 19, 2003, the trial court granted Pfeiffer's motion to suppress "all evidence *** following and flowing from the illegal stop of [Pfeiffer's] vehicle" as follows: "To state that crossing a double yellow line to get around a stopped vehicle in the roadway, when there is no incoming traffic, is a violation of [the Hamilton City Ordinance] is absurd. If that were the case we would have massive traffic jams all over the city. There are many times when such a maneuver is necessary where it can be done safely: garbage trucks *** blocking a lane of travel; getting around a double parked vehicle or disabled vehicle; or in a case like this, where one vehicle is going around another vehicle to take a lead position so the other car can follow. ***

{¶10} "*** In this case, there is no evidence to indicate the [Impala] was moving. The evidence indicates it was not. The officer, in his own testimony, indicates he could not tell if the [Impala] was stopped or moving. [Pfeiffer] states it was stopped. The Court finds that there is insufficient evidence to prove that the car was moving. Further, there is no evidence that there were any vehicles approaching the [other] lane so the Court must conclude that a safety hazard was not being created.

{¶11} "***

{¶12} "The evidence is clear that [Pfeiffer], while moving his car around the other vehicle, created no safety hazard. It is equally obvious to the Court that the Officer was either unsure of whether [Pfeiffer] violated any traffic ordinance, or was in fact aware that his observation of [Pfeiffer's] maneuver of his vehicle across the centerline was not in violation of that ordinance and he followed the vehicle to see if he could find [Pfeiffer] committing any violation for which he could justify a stop. He found none.

{¶13} "If the officer believed that [Pfeiffer] violated this ordinance there was no reason given in testimony as to why the vehicle was not pulled over on Fair Avenue. *** The Court can only come to one conclusion and that is that the officer had no reasonable basis to stop [Pfeiffer's] vehicle for the alleged left of center violation since that maneuver was made in a safe manner pursuant to Ordinance 331.01. ***

{¶14} "Since [Pfeiffer] did not violate either Ordinance 331.01 or 331.07 and since the Officer observed no traffic violation during the period he was following [Pfeiffer's] vehicle, the court finds that the stopping of [Pfeiffer's] vehicle at the McDonald's parking lot was without any legal basis, was unreasonable and was therefor illegal."

{¶15} The state now appeals, raising the following two assignments of error:

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT-APPELLEE'S MOTION TO SUPPRESS EVIDENCE."

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED IN APPLYING THE EXCLUSIONARY RULE TO PRECLUDE THE STATE FROM USING ALL EVIDENCE OBTAINED SUBSEQUENT TO THE STOP OF DEFENDANT-APPELLEE'S VEHICLE."

{¶20} In its first assignment of error, the state argues that Officer Erb had probable cause to believe Pfeiffer committed a traffic violation when Pfeiffer drove completely left of a double yellow centerline, thus justifying the stop.

{¶21} When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to evaluate the credibility of witnesses and resolve questions of fact. State v. Moeller (Oct. 23, 2000), Butler App. No. CA99-07-128, at 5-6. In reviewing the decision of a trial court on a motion to suppress, the appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Id.* at 6. Accepting such facts as true, the appellate court must then independently determine, as a matter of law, and without deference to the trial court's conclusion, whether the facts satisfy the applicable legal standard. *Id.*

{¶22} "Where a police officer stops a vehicle based upon 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[.]" Dayton v.

Erickson, 76 Ohio St.3d 3, 1996-Ohio-431, syllabus. Thus, as a general matter, a police officer's decision to stop a vehicle is reasonable whenever the officer has "probable cause to believe that a traffic violation has occurred." Whren v. United States (1996), 517 U.S. 806, 810, 116 S.Ct. 1769.

{¶23} As we stated in Moeller, "the [United States] Supreme Court stated only that probable cause need be found, not that, upon investigation, it be confirmed that a traffic offense occurred. The establishment of probable cause 'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.'" Moeller, Butler App. No. CA99-07-128, at 6, citing Illinois v. Gates (1983), 462 U.S. 213, 103 S.Ct. 2317. Probable cause has been defined as "facts and circumstances within [an officer's] knowledge *** which were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." Beck v. Ohio (1964), 379 U.S. 89, 91, 85 S.Ct. 223. The focus, therefore, is not on whether an officer could have stopped the suspect because a traffic violation had in fact occurred, but on whether the arresting officer had probable cause to believe that a traffic violation had occurred. See State v. Terrell (Oct. 23, 2000), Clinton App. No. CA99-07-020.

{¶24} When a police officer observes a vehicle driving left of the centerline, that officer has witnessed what appears to be a violation of the law. See State v. Kuno (Nov. 6, 1997), Franklin App. No. 97APC04-497. In the case at bar, Pfeiffer

admitted, and the trial court found, that Pfeiffer crossed the double yellow centerline of Fair Avenue. Because Officer Erb observed this traffic violation, he clearly had probable cause to initiate a traffic stop. See Terrell.

{¶25} The trial court, however, determined that because the Impala was stopped, Pfeiffer had no other alternative but to cross the double yellow centerline to go around the Impala and take the lead, and that he had done so safely, thus creating no safety hazard. Based upon these findings, which essentially constituted a decision on the merits of the traffic violation for which Pfeiffer was cited, see State v. Parks (Sept. 18, 1998), Hamilton App. Nos. C-970814 and C-970815, the trial court then held that there was no legal basis justifying Pfeiffer's stop.¹

{¶26} It is well-established that the fact that an offender "may have a reasonable explanation why he traveled left of center might be a defense to the charge. That fact would not negate the fact that the officer had reason to believe that the law had been violated. *** The fact there may be a logical reason to excuse what would otherwise be a traffic violation does not, in hindsight, eradicate a proper cause for stopping the vehicle in the first instance." State v. Grimsley,

1. In granting Pfeiffer's motion to suppress, the trial court also makes much ado about the fact that Officer Erb did not stop Pfeiffer for several miles after witnessing the improper pass. However, we are not aware of any requirement, and the trial court does not cite any legal authority, that a law enforcement officer witnessing a traffic violation must stop the offender within seconds or feet before the stop becomes stale. Again, the test is not whether the offender is guilty of the traffic violation, but rather whether the officer had probable cause to believe a traffic violation occurred or was occurring.

Franklin App. No. 02AP-502, 2003-Ohio-514, ¶15-16. See, also, McComb v. Andrews, Hancock App. No. 5-99-41, 2000-Ohio-1663 (fact that driver may have reasonable explanation for traveling left of center has no bearing on propriety of initial contact).

{¶27} We find that Pfeiffer's stop was reasonable because Officer Erb had probable cause to believe that Pfeiffer committed a traffic violation when he crossed the double yellow centerline. Pfeiffer's explanation for crossing the double yellow centerline does not obviate the conclusion that the officer had probable cause to believe a traffic violation had occurred. Accordingly, the trial court erred by granting Pfeiffer's motion to suppress evidence. The state's first assignment of error is well-taken and sustained. Given this resolution, the state's second assignment of error is moot.

{¶28} The judgment of the trial court granting Pfeiffer's motion to suppress evidence is accordingly reversed and this matter is remanded to the trial court for further proceedings according to law and consistent with this opinion.

{¶29} Judgment reversed and cause remanded.

POWELL and VALEN, JJ., concur.