

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

STATE OF OHIO,	:	
	:	CASE NO. CA2014-10-133
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
	:	7/13/2015
- vs -	:	
	:	
KATHRYN L. WELLS,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT
Case No. 13TRC07130

Bethany S. Bennett, City of Mason Prosecuting Attorney, 5950 Mason-Montgomery Road, Mason, Ohio 45040, for plaintiff-appellee

Meadows Law Firm, Jeffrey C. Meadows, 5900 West Chester Road, Suite E, West Chester, Ohio 45069, for defendant-appellant

M. POWELL, J.

{¶ 1} Defendant-appellant, Kathryn Wells, appeals the denial of her motion to suppress and subsequent conviction by the Mason Municipal Court for operating a vehicle while under the influence of alcohol (OVI).

{¶ 2} Around 2:00 a.m. on November 24, 2013, Warren County Deputy Sheriff Stephanie Barnes observed appellant traveling at a speed of 27 m.p.h. in a 35 m.p.h. zone.

Appellant's slow speed caught the officer's attention. Deputy Barnes subsequently observed appellant stop at a green light at the intersection of Socialville-Foster Road and Columbia Road. Appellant then turned onto Columbia Road where she proceeded to travel at a speed of 30 m.p.h. in a 45 m.p.h. zone. Based upon these observations, Deputy Barnes initiated a traffic stop. Upon contacting appellant, Deputy Barnes noticed that appellant had glossy eyes and a slow, slurred speech. Appellant admitted she had a few drinks at a bar on Socialville-Foster Road. Appellant was arrested for OVI after she both failed and was unable to perform several field sobriety tests. She was then transported to the Deerfield Township post where she refused to submit to a breath test.

{¶ 3} Appellant was charged with one count of OVI in violation of R.C. 4511.19(A)(1)(a). Appellant filed a motion to suppress which was denied by the trial court. Subsequently, appellant entered a plea of no contest to the OVI charge on September 18, 2014, and was sentenced accordingly.

{¶ 4} Appellant appeals, raising one assignment of error:

{¶ 5} THE TRIAL COURT ERRED IN OVERRULING APPELLANT'S MOTION TO SUPPRESS EVIDENCE WHERE THE INITIAL TRAFFIC STOP WAS UNLAWFUL.

{¶ 6} Appellant argues the trial court erred in denying her motion to suppress because the traffic stop was not supported by either probable cause that a traffic violation had occurred or a reasonable and articulable suspicion of criminal activity.

{¶ 7} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8; *State v. Dean*, 12th Dist. Fayette No. CA2013-03-007, 2014-Ohio-448, ¶ 8. When considering a motion to suppress, the trial court assumes the role of the trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *Burnside* at *id.* Consequently, an appellate court must accept the trial court's findings of fact if they are

supported by competent, credible evidence. *Id.* Accepting these facts as true, the appellate court must then independently determine, as a matter of law, and without deference to the trial court's conclusions, whether the trial court applied the proper legal standard. *Id.*; *Dean at id.*

{¶ 8} There are two standards applied to determine whether police have legitimately stopped a vehicle. *State v. Weinheimer*, 12th Dist. Warren No. CA2003-04-044, 2004-Ohio-801, ¶ 8. First, police may stop a vehicle based on "probable cause" that a traffic violation has occurred. *Id.* Second, police may make an investigative stop of a vehicle when they have a "reasonable articulable suspicion" that criminal activity has occurred. *Id.*; *see also Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

{¶ 9} In light of Deputy Barnes' testimony at the suppression hearing that appellant did not commit any traffic violation and that her slow speed did not impede the flow of traffic, we agree with appellant that Deputy Barnes did not have probable cause to initiate the traffic stop. The issue, therefore, is whether the traffic stop was supported by a reasonable articulable suspicion of criminal activity.

{¶ 10} "When assessing whether reasonable suspicion existed, a reviewing court must consider the totality of the circumstances to determine whether the officer had a particularized and objective basis for suspecting wrongdoing." *State v. Bacher*, 170 Ohio App.3d 457, 2007-Ohio-727, ¶ 10 (1st Dist.) (finding that slow speed alone does not provide an officer with reasonable articulable suspicion of criminal activity for an investigatory traffic stop). The purpose of an investigatory traffic stop, or *Terry* stop, is not to accuse, but to investigate. *Pepper Pike v. Parker*, 145 Ohio App.3d 17, 20 (8th Dist.2001). Even legal conduct, or facts that might be given an innocent construction, may, under some circumstances, justify a reasonable suspicion that criminal activity is afoot. *Bacher at id.*; *Parker at id.* However, "reasonable suspicion generally requires that there be a *series* of

innocent acts that when viewed together, gives an officer justification for further investigation." (Emphasis sic.) *Bacher at id.*

{¶ 11} We find that sufficient facts were articulated by Deputy Barnes to justify the investigatory traffic stop. Deputy Barnes testified that appellant drove at 27 m.p.h. in a 35 m.p.h. zone on Socialville-Foster Road, subsequently either stopped at or sat through a green light at the intersection of Socialville-Foster Road and Columbia Road, and then drove at 30 m.p.h. in a 45 m.p.h. zone.¹ The state concedes, and we agree, that slow speed or stopping at a green light alone would not be sufficient to justify an investigatory traffic stop. However, upon viewing the traffic stop in light of the totality of the circumstances, we find that appellant's slow rate of speed on two different roads, the fact she either stopped at or sat through a green light, and the lateness of the hour supported a reasonable articulable suspicion of criminal activity. The trial court, therefore, did not err in denying appellant's motion to suppress.

{¶ 12} Appellant's assignment of error is overruled.

{¶ 13} Judgment affirmed.

PIPER, P.J., and S. POWELL, J., concur.

1. Deputy Barnes testified on direct examination that appellant "stopped at a green light" at the intersection of the two roads. On cross-examination, the deputy testified that after she initiated the traffic stop, she "asked [appellant] if she was aware of her slow speed and that she sat through a green light."