

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 16
v.	:	T.C. NO. 09 CR 0177
BRIAN SAMMONS	:	(Criminal appeal from Common Pleas Court)
Defendant-Appellant	:	
	:	

OPINION

Rendered on the 18th day of February, 2011.

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DONOVAN, J.

{¶ 1} Defendant-appellant Brian Sammons appeals from his conviction and sentence for one count of operating a vehicle while under the influence of alcohol or drugs (OVI), in violation of 4511.19(A)(2), a felony of the fourth degree.

I

{¶ 2} On the night of February 18, 2009, Officer Christopher Burns of the

Wittenberg Police Department was on patrol in the area of West College Avenue in Springfield, Clark County, Ohio, when he observed an individual in a red Jeep come to an abrupt stop at a stop sign, squealing the vehicle's tires and almost traveling into the intersection. Without activating his overhead flashing lights, Officer Burns pulled alongside the Jeep in order to speak with the driver, later identified as Sammons. Officer Burns' cruiser was pointed in the opposite direction of Sammons' vehicle.

{¶ 3} Upon initiating verbal contact, Officer Burns noticed that Sammons was leaning out of the window of his vehicle and that his speech was slurred. Believing Sammons to be intoxicated, Officer Burns ordered him to stay where he was. Officer Burns asserted that Sammons responded that he was in a hurry and he instead drove away from the scene. Officer Burns indicated that he turned his cruiser around and stopped Sammons approximately three blocks down the street. Once Officer Burns removed Sammons from the vehicle, he detected a strong odor of alcoholic beverages on Sammon's breath and person. After being asked by Officer Burns, Sammons refused to participate in field sobriety tests. Officer Burns then arrested Sammons on suspicion of OVI and transported him to jail.

{¶ 4} On February 23, 2009, Sammons was indicted for two counts of OVI, in violation of 4511.19(A)(1)(a) and 4511.19(A)(2). On February 26, 2009, Sammons plead not guilty to the charged offenses.

{¶ 5} Sammons filed a motion to suppress on April 2, 2009. A hearing was scheduled for the motion to suppress on June 5, 2009. On June 5, 2009, Sammons orally withdrew his motion to suppress and requested that the trial date

originally set for June 30, 2009, be continued. The court reset the trial date for August 24, 2009.

{¶ 6} On August 26, 2009, in return for dismissal of one of the counts, Sammons pled guilty to one count of OVI, a felony of the fourth degree. On August 28, 2009, an entry was filed wherein the judge who took the plea recused himself on the basis that he knew Sammons personally. The case was subsequently transferred to another judge's docket. On September 18, 2009, Sammons filed a motion to withdraw his guilty plea in light of the original judge's recusal, and the motion was granted.

{¶ 7} On December 2, 2009, Sammons re-filed his motion to suppress in which he challenged the basis for the stop and sought exclusion of any statements he made to law enforcement personnel. After a hearing held on December 7, 2009, the court overruled in part and sustained in part Sammons' motion to suppress. The court suppressed statements Sammons made to a mental health professional while he was being processed after his arrest. Following the court's ruling, Sammons elected to plead no contest to one count of OVI. The trial court found Sammons guilty and ultimately sentenced him to two years in prison on January 7, 2010. Additionally, the court suspended Sammons driver's license for ten years, imposed a fine of \$7,500.00, and ordered the forfeiture of his vehicle.

{¶ 8} It is from this judgment that Sammons now appeals.

II

{¶ 9} Sammons' sole assignment of error is as follows:

{¶ 10} “THE TRIAL COURT ERRED TO THE PREJUDICE OF THE DEFENDANT BY FAILING TO PROPERLY SUPPRESS THE EVIDENCE DISCOVERED AS THE RESULT OF AN ILLEGAL STOP.”

{¶ 11} In his sole assignment, Sammons contends that the trial court erred when it denied his motion to suppress all of the evidence seized as a result of the “pretextual” traffic stop conducted by Officer Burns. Specifically, Sammons argues that after their initial encounter, Officer Burns did not have probable cause to stop Sammons’ vehicle since no traffic violation had occurred.

{¶ 12} In regards to a motion to suppress, “the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses.” *State v. Hopper* (1996), 112 Ohio App.3d 521, 548, quoting *State v. Venham* (1994), 96 Ohio App.3d 649, 653. The court of appeals must accept the trial court’s findings of fact if they are supported by competent, credible evidence in the record. *State v. Isaac* (July 15, 2005), Montgomery App. No. 20662, 2005-Ohio-3733, citing *State v. Retherford* (1994), 93 Ohio App.3d 586. Accepting those facts as true, the appellate court must then determine, as a matter of law and without deference to the trial court’s legal conclusion, whether the applicable legal standard is satisfied. *Id.*

{¶ 13} Initially, we note that the record establishes that Officer Burns did not conduct a traditional “stop” of Sammons at the intersection. Officer Burns testified that he heard Sammons bring his red Jeep to an abrupt stop, squealing his tires in the process and almost traveling into the intersection. Officer Burns further testified that he merely pulled alongside Sammons’ vehicle without activating his

overhead lights or sirens in order to speak with him about the potential traffic violation. On cross-examination, Officer Burns testified that he was not making a traffic stop at first, rather he was merely attempting to “advise [Sammons].” As we stated in *State v. Tooson*, Montgomery App. No. 23290, 2009-Ohio-6269, “[a] police officer may approach a person in a public place without implicating the Fourth Amendment, as long as ‘the police officer has not, by physical force or a display of authority, restrained the person’s liberty such that a reasonable person would not feel free to walk away.’ *State v. Schott* (May 16, 1997), Darke App. No. 1415, citing *United States v. Mendenhall* (1980), 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497; *Terry v. Ohio* (1968), 392 U.S. 1, 21-2, 88 S.Ct. 1868, 20 L.Ed.2d 889.” On the record before us, the evidence supports a conclusion that Officer Burns’ initial contact with Sammons did not constitute a traffic stop, but was a consensual encounter. We note that initially Sammons voluntarily engaged in conversation with Officer Burns and did not pull off.

{¶ 14} After Officer Burns initiated the contact with Sammons, he observed the telltale signs of intoxication from Sammons’ behavior and demeanor, namely slurred speech and leaning out of the vehicle too far. Based on his observations and experience, Officer Burns formulated a reasonable and articulable basis to stop Sammons for suspicion of operating his vehicle while intoxicated. When Officer Burns directed Sammons to remain where he was, this converted the consensual encounter into an attempted traffic stop. However, Sammons drove away from the intersection, requiring Officer Burns to effectuate a traffic stop approximately three blocks away. Therefore, Officer Burns’ decision to stop Sammons was justified.

Moreover, once he initiated the stop, Officer Burns personally observed Sammons have difficulty standing, as well as detecting a strong odor of alcoholic beverages emanating from his breath and person. At this point, Officer Burns had probable cause to arrest Sammons for OVI. Thus, the trial court did not err when it overruled that portion of Sammons' motion to suppress relating to the evidence adduced as a result of Officer Burns' decision to initiate a traffic stop.

{¶ 15} Sammons' sole assignment of error is overruled.

III

{¶ 16} Sammons' sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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FAIN, J. and FROELICH, J., concur.

Copies mailed to:

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