[Cite as *State v. Crisafi*, 2001-Ohio-3254.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 00-CA-40
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	O P I N I O N
	)	
STEPHEN P. CRISAFI	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Mahoning County Area Court No. 2, Mahoning County, Ohio Case No. 99-TR-2327

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. Paul J. Gains
Prosecuting Attorney
Atty. Janice T. O'Halloran
Asst. Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503

For Defendant-Appellant: Atty. Mark A. DeVicchio
3680 Starr Centre Drive
Canfield, Ohio 44406

JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich

Dated: May 3, 2001

WAITE, J.

{¶1} This timely appeal arises from a trial court judgment overruling Appellant's, Stephen P. Crisafi's, motion to suppress evidence and subsequently finding Appellant guilty of violating R.C. §4511.19(A)(1)(3) upon Appellant's plea of no contest. For the following reasons, we affirm the decision of the trial court in full.

{¶2} On May 31, 1999, Trooper Brown of the Ohio State Highway Patrol was following Appellant northbound on South Avenue in Boardman, Ohio. Suspecting that Appellant was exceeding the posted speed limit, Brown followed Appellant and attempted to pace Appellant's car. Brown observed Appellant make a right turn from South Avenue to Lake Park Road without signaling. Brown then observed Appellant turn left into a parking lot without signaling. Brown followed and activated his overhead lights. After approaching Appellant, Brown detected a strong odor of alcohol on Appellant's breath and conducted field sobriety tests which Appellant failed. A BAC Datamaster test indicated that Appellant's blood alcohol content was .159. Brown cited Appellant for driving under the influence of alcohol in violation of R.C. §4511.19(A)(1)(3) and for failure to signal a lane change in violation of R.C. §4511.39.

{¶3} Through counsel, Appellant entered a plea of not guilty and waived his right to a speedy trial on June 1, 1999. Trial was scheduled for September 1, 1999. However, Appellant filed a motion to suppress evidence on that day and the trial court held a hearing on the motion in lieu of a trial. On September 30, 1999, the trial court filed a journal entry overruling Appellant's motion. On October 26, 1999, Appellant filed a notice of appeal from the September 30, 1999, judgment. However, on November 17, 1999, this Court dismissed that appeal, Case No. 99 CA 291, for lack of a final appealable order. On January 26, 2000, Appellant changed his plea to no-contest. On the same day, the trial court found Appellant guilty and sentenced him to 180 days in jail with 170 days suspended, a $300.00 fine, 12 months probation and imposed a one year license suspension. On January 31, 2000, Appellant filed his notice of appeal.

{¶4} Appellant's sole assignment of error alleges:

{¶5} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN OVERRULING THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS SINCE THERE IS INSUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE STATE TROOPER HAD A REASONABLE AND ARTICULABLE SUSPICION OR PROBABLE CAUSE THAT THE DEFENDANT WAS VIOLATING ANY TRAFFIC LAWS."

{¶6} Appellant argues that there was insufficient evidence that a traffic violation occurred to perform a traffic stop and that stopping him for a lane change violation was pretextual

because of Trooper Brown's suspicion that Appellant was driving under the influence. Appellant contends that although Brown suspected that Appellant was speeding, there was no evidence presented to support that suspicion. Appellant also maintains that he was not required to signal his "turning" onto Lake Park Road. According to Appellant, Lake Park Road is actually a continuation of South Avenue and that one must actually turn to stay on South Avenue. Finally, Appellant asserts that he was not required to signal when turning into the parking lot as he did so at the direction of Trooper Brown. Based on the record before us, Appellant's argument lacks merit.

{¶7} When reviewing a motion to suppress, an appellate court may not disturb a trial court's ruling when that ruling is supported by competent, credible evidence. *State v. Winand* (1996), 116 Ohio App.3d 286, 288. An appellate court accepts the trial court's factual findings and relies upon the trial court's ability to assess the credibility of witnesses, but independently determines, "* * * without deference to the trial court, whether the court has applied the appropriate legal standard." *State v. Anderson* (1995), 100 Ohio App.3d 688, 691.

{¶8} To conduct a traffic stop, an officer must have, "* * * a reasonable suspicion based upon specific and articulable facts that a traffic law is being violated." *State v. Carter* (June 14, 2000), Belmont App. No. 99 BA 7, unreported, *3,

citing *State v. Lloyd* (1998), 126 Ohio App.3d 95, *State v. Winand, supra*. To establish that an officer had a reasonable suspicion to justify an investigatory stop, the State must point to specific articulable facts which, when taken together with the rational inferences that arise therefrom, reasonably warrant an intrusion. *State v. Carter*, *3, citing *State v. Andrews, supra* and *Terry v. Ohio* (1968), 392 U.S. 1. Commission of a traffic offense generally will provide ample justification to warrant an investigatory stop. *State v. Carter*, *3, citing *State v. Lloyd* and *State v. Winand*. When reaching a conclusion as to the validity of a stop, a court must look to the totality of the circumstances surrounding the incident in question. *State v. Carter*, *3, citing *State v. Andrews* and *State v. Bobo* (1988), 37 Ohio St.3d 177. Moreover, these circumstances must be viewed through the eyes of a reasonable and prudent police officer on the scene who must react as the events transpire. *State v. Carter*, *3, citing *State v. Andrews,* 87.

{¶9} With respect to Appellant's argument that he was stopped for failing to signal a turn as a pretext due to Trooper Brown's inarticulable suspicion that Appellant was driving under the influence of alcohol, we are governed by the Ohio Supreme Court's decision in *Dayton v. Erickson* (1996), 76 Ohio St.3d 3. The court held in that case that:

{¶10} "Where 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."

{¶11} *Id.*, syllabus of the court. In so ruling, the Supreme Cour determined that a police officer's stop of a driver for failing to s a turn was constitutionally valid even though the officer was motiva by suspicion that the driver was not licensed.

{¶12} In the present matter, Appellant's argument regarding lack evidence that he was speeding is irrelevant. The trial court certai did not base its decision on any evidence that Appellant was violati the speed limit. Rather, by its journal entry filed on September 30 1999, the trial court unequivocally based its decision on a finding Appellant twice failed to signal a turn. Based on the record before we conclude that the trial court's decision was based on competent credible evidence.

{¶13} With respect to Appellant's failure to signal a turn from S Avenue to Lake Park Road, the record contains specific and articulab facts that Appellant committed a traffic violation. R.C. §4511.39 provides in relevant part that:

{¶14} "No person shall turn a vehicle * * * or move right or left upon a highway unless and until such person has exercised due care to ascertain that the movement can be made with reasonable safety *nor* without giving an appropriate signal in the manner hereinafter provided.

{¶15} "* * *

{¶16} "Any * * * or turn signal required by this section shall be given either by means of the hand and arm, or by signal lights that clearly indicate to both approaching and following traffic intention to turn or move right or left * * *." (Emphasis added).

{¶17} Appellant challenges that he did not "turn" his vehicle whe entering Lake Park Road and was therefore not required to signal. Trooper Brown testified that Appellant, "* * * turned onto Lake Park Road, which would be a slight right turn, without signaling his turn signal." (Tr. p. 4). On cross examination Brown stated that the tu was not a, "definite * * * 90-degree right turn * * *" but that the t is "* * * gradual -- it's not a perfect straightaway." (Tr. p. 11). With the assistance of photographs submitted by Appellant, Brown also testified that South Avenue is bounded by a yellow line that does not continue onto Lake Park Road at the intersection in question. (Tr. p 13). As Trooper Brown's testimony indicates that Appellant turned r from the main thoroughfare to an adjoining road without signaling, we must accept the trial court's conclusion in that regard.

{¶18} With respect to Appellant's failure to signal a turn from L Park Road into the parking lot, Appellant challenges that he was not required to signal the turn as he acted in response to Trooper Brown activating his overhead lights. Trooper Brown testified that Appella

{¶19} "* * * continued north on Lake Park Road, and I was right behind him at the time; and then he slowed down and proceeded to make a left-hand turn into a private parking lot at Lake Park and Thalia without signaling his turn. He pulled into the parking lot, and I pulled in behind him and activated my overhead lights."

{¶20} On cross-examination, Appellant's counsel asked Trooper Bro whether it was possible that Brown activated his lights prior to Appellant turning into the parking lot. Brown responded, "[t]hat I c recall." While this may impact on the credibility of Brown's testim that Appellant turned into the parking lot prior to Brown activating lights, we must rely upon the trial court's ability to assess the credibility of witnesses. *State v. Anderson, supra,* 691. As the re contains testimony that Appellant turned into the parking lot without signaling, we must accept the trial court's factual finding in that regard.

{¶21} Accepting the trial court's factual conclusions, it is apparent based on the record that Trooper Brown had reasonable and articulable suspicion that Appellant committed the traffic offenses. *State v. Carter, supra.* As such, Brown was definitely justified in stopping Appellant for those violations. *Id.* Moreover, it is irrelevant that Brown may have suspected that Appellant was driving under the influence as Brown was warranted in stopping Appellant for the traffic violations. *Dayton v. Erickson, supra*. Accordingly, we hold that the trial court properly denied Appellant's motion to suppress and affirm the judgment of the trial court.

Vukovich, P.J., concurs.

Donofrio, J., concurs.