

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
PICKAWAY COUNTY

STATE OF OHIO,	:	
	:	Case No. 22CA16
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
BRIAN T. WILLIAMS,	:	
	:	
Defendant-Appellant.	:	<b>RELEASED: 05/28/2024</b>

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APPEARANCES:

April F. Campbell, Campbell Law, LLC, Dublin, Ohio, for appellant.

Judy C. Wolford, Pickaway County Prosecuting Attorney, and Jayme H. Fountain, Assistant Pickaway County Prosecuting Attorney, Circleville, Ohio, for appellee.

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Wilkin, J.

{¶1} This is an appeal from a Pickaway County Court of Common Pleas judgment of conviction in which appellant, Brian T. Williams, was sentenced to 30 months in prison after pleading no contest to operating a motor vehicle while under the influence of alcohol or drug of abuse (“OVI”), a third-degree felony. Williams pleaded no contest after the trial court denied his motion to suppress.

{¶2} Williams presents one assignment of error challenging the trial court’s denial of his motion to suppress. In overruling Williams’ motion to suppress, the trial court found the testimony of Trooper Thomas Ross credible and held that the trooper observed Williams committing several marked lane violations that established probable cause to initiate a traffic stop. Williams contends the trial court’s factual determination for probable cause is not supported by competent

credible evidence because the dash-camera video contradicts the trooper's observations.

{¶3} We disagree. The video does not contradict Trooper Ross' observations of several marked lane violations. The first marked lane violation was at a far distance that the video did not capture clearly. The other marked lane violations are visible in the video and corroborate the trooper's observations.

{¶4} Therefore, based on the totality-of-the-circumstances, we find competent, credible evidence in the record to support the trial court's decision. We overrule Williams' assignment of error and affirm his conviction.

#### FACTS AND PROCEDURAL BACKGROUND

{¶5} On May 16, 2021, while on duty, Trooper Thomas Ross received a call from dispatch to be on the lookout for a red pick-up truck, either a Chevy or a GMC. Dispatch informed the trooper of the pick-up truck's route of travel, which was near the trooper's location. Dispatch reached out to Trooper Ross after someone called in naming two individuals in a red truck who were under the influence of drugs and one of them was the driver of the red truck.<sup>1</sup>

{¶6} While parked at a gas station, Trooper Ross spotted the red pick-up truck on US Route 23, and began to follow it. Within less than two minutes of following the pick-up truck, Trooper Ross observed the truck cross the white-dashed line between the left and right lanes several times, with one almost hitting a vehicle travelling alongside the truck. After observing the traffic violations, Trooper Ross initiated a traffic stop.

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<sup>1</sup> It was later revealed that Williams' wife was the caller.

{¶7} Trooper Ross approached Williams, who was driving the truck, and noticed Williams had constricted pupils, glassy bloodshot eyes, and detected the smell of marijuana emitting from the truck. Trooper Ross administered field sobriety tests and determined Williams was impaired. Williams was placed under arrest for OVI. Williams submitted a urine sample which was tested and contained several drug traces, including methamphetamine and cocaine. The search of the truck revealed drugs near the driver's seat.

{¶8} Williams pleaded not guilty to the five felony charges: three third-degree felony counts for OVI, one count of aggravated possession of drugs as a fifth-degree felony, and one count of possession of drugs also as a fifth-degree felony. Williams filed a motion to suppress the evidence in which he requested the suppression of Trooper Ross' observations and opinion, the results from the field sobriety tests, and any physical evidence obtained from the warrantless search.

{¶9} A motion to suppress hearing was held with Trooper Ross and Lindsie Mayfield with the Ohio Patrol Crime Laboratory testifying. At the hearing, Williams stipulated that Trooper Ross had probable cause to arrest him, and withdrew any challenge to the field sobriety tests and several of his challenges to the collection and testing of his urine.

{¶10} Trooper Ross authenticated the dash-camera video which was admitted as State's Exhibit 1. The video was played with Trooper Ross explaining what he was observing:

The red truck is going to be the second one. It's hard to tell. It's in the right lane ahead of me. There's one car in the left lane and then he would be in the right lane.

\* \* \*

It is hard to see, but at one point the car in the left lane hits their brakes, and that is when his truck went half way in the lane. That's why they jammed on their brake, and then they got up around him, after that, continued to drive, you can see the truck go over the line again.

\* \* \*

The first time you can't because the video is too far away. At this point it was half a truck away. That's when the car hits their brakes and the brake lights light up. You can't see that just because of the distance from the cameras aren't that good. I believe later on you can see him go around a curve, he goes on and over the line.

\* \* \*

Whether it's seen on the video or not I'm not sure, but he did go over it completely, whether it was coming back or on it, I can't recall whether it's seen on the video. But the initial marked lanes, like I said, was half a truck width, and he went over at least one more time throughout that curve.

{¶11} At the conclusion of the suppression hearing, the trial court requested supplemental briefing on the narrow issues addressed at the hearing. After the state and Williams submitted their briefing, the trial court denied the motion to suppress and made the following findings:

Here, the arresting officer, Trooper Ross, testified that he initially followed the defendant in response to a tip called in to his dispatcher. (Transcript at 9:19-22). Almost immediately after Trooper Ross pulled out to follow defendant, the trooper observed defendant's car swerving into the passing lane, causing a vehicle in the passing lane to brake and then pull around the defendant. (*Id.* at 25:14—26:17). Trooper Ross also testified that the defendant crossed the white line into the passing lane again shortly thereafter while going around a curve. (*Id.*)

Defendant claims that Trooper Ross's testimony is "refuted by the video evidence." (Def. Post-Hearing Brief, pg. 2). This is incorrect. This Court has reviewed the video of the traffic stop. As noted by Trooper Ross in his testimony, (*Id.*), the first swerve is too far ahead to be captured distinctly by the video camera, but you can distinguish brake lights and a car moving around, and pulling in front of, the defendant's vehicle. (*Id.*). The second swerve is captured on

the video and the vehicle tires do cross the white line. (Video, 1:20-2:20). Further, the defendant admits that he swerved into the other vehicle on the videotape and attributes it to “distracted driving.” (*Id.* at 20:54-21:09). Finally, this Court finds the testimony of Trooper Ross to be competent and credible, there is no requirement that an incident must be fully captured on videotape for the incident to [be] accepted by the Court as true.

\* \* \*

The totality of the circumstances caused Trooper Ross to suspect that Defendant was unable to safely operate a motor vehicle because he was under the influence of some substance. Trooper Ross’s suspicions were confirmed by the urinalysis, which we will consider next.

\* \* \*

This Court has determined that the urine collection and testing were conducted correctly pursuant to the Ohio Revised Code and Ohio Administrative Code. Therefore, the results are admissible in a court.

{¶12} After the motion to suppress was denied, Williams pleaded no contest to three felony counts of OVI with the state dismissing both drug offenses. At sentencing, the trial court merged the three OVI offenses into one count and imposed a prison term of 30 months, discretionary postrelease control of 2 years, and suspended Williams’ driving privileges for life. The trial court granted Williams appellate bond.

{¶13} It is from this judgment of conviction entry that Williams appeals.

#### ASSIGNMENT OF ERROR

THE TRIAL COURT’S DECISION NOT TO SUPPRESS THE EVIDENCE AGAINST WILLIAMS SHOULD BE REVERSED, BECAUSE THE TRIAL COURT’S FINDING THAT WILLIAMS COMMITTED A TRAFFIC VIOLATION WAS NOT BASED ON COMPETENT, CREDIBLE EVIDENCE, AND BECAUSE THERE WAS NO REASONABLE SUSPICION OR PROBABLE CAUSE TO STOP WILLIAMS.

{¶14} Williams in his sole assignment of error challenges Trooper Ross’ justification for initiating the traffic stop. According to Williams, the state did not

establish reasonable suspicion nor probable cause to justify the stop. In support of his argument, Williams presents several assertions. First, there was no testimony that the truck driven by Williams was the same truck described in the dispatch call. Second, the trial court's finding that Williams committed marked lane violations was not based on competent, credible evidence. This is because the dash-camera video demonstrated that Williams' headlights remained within the marked lanes, contrary to Trooper Ross' testimony that Williams' truck crossed the marked lane by half a truck. As to the second marked lane violation, Williams maintains that he did not cross the white-dashed line, he solely touched the line, which is not a traffic violation. Therefore, the video did not corroborate Trooper Ross' testimony and the trial court's decision overruling his motion to suppress was in error.

{¶15} In response, the state contends that Trooper Ross explained that the dash-camera video did not depict the first marked lane violation because the Trooper was still at a far distance from Williams' truck and the lack of clarity from the camera. The state disagrees with Williams' assertion that the video did not depict the other marked lane violations, in which Williams crossed the white-dashed line and not simply touch it. Accordingly, the state maintains Trooper Ross' observations of the marked lane violations and the video's depiction of some of the marked lane violations establish probable cause to justify the traffic stop. Therefore, the trial court's decision denying Williams' motion to suppress is supported by competent credible evidence.

## I. Law

{¶16} 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, 797 N.E.2d 71, ¶ 8.

When considering a motion to suppress, 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. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539.

*Id.*

{¶17} The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The same protection is provided by Article I, Section 14 of the Ohio Constitution.<sup>2</sup>

A traffic stop is constitutionally valid “if an officer has a reasonable and articulable suspicion that a motorist has committed, is committing, or is about to commit a crime.” *State v. Mays*, 119 Ohio St. 3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 7, citing *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

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<sup>2</sup> Williams did not develop any argument under the Ohio Constitution.

{¶18} Probable cause “is a stricter standard than reasonable and articulable suspicion” and “is a complete justification for a traffic stop[.]” *Id.* at ¶ 23, citing *State v. Evans*, 67 Ohio St.3d 405, 411, 618 N.E.2d 162 (1993). The Supreme Court of Ohio held that “[p]robable cause is “defined in terms of facts and circumstances ‘sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.’ ” (Brackets added in *Gerstein*.) *Gerstein v. Pugh*, 420 U.S. 103, 111-112, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), quoting *Beck* at 91, 85 S.Ct. 223.” *State v. Jordan*, 166 Ohio St. 3d 339, 2021-Ohio-3922, 185 N.E.3d 1051, ¶ 19.

{¶19} “A police officer may stop the driver of a vehicle after observing a de minimis violation of traffic laws.” *State v. Guseman*, 4th Dist. Athens No. 08CA15, 2009-Ohio-952, ¶ 20, citing *State v. Bowie*, 4th Dist. Washington No. 01CA34, 2002-Ohio-3553. One such traffic law is the requirement to drive in marked lanes pursuant to R.C. 4511.33, which in relevant part provides:

(A) Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within municipal corporations traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

R.C. 4511.33(A)(1).

{¶20} As explained by the Supreme Court of Ohio, “R.C. 4511.33(A) establishes that clear markings on a roadway determine whether two or more lanes are present. And R.C. 4511.33(A)(1) then requires a vehicle to stay as nearly as possible within that lane unless the driver can determine that he can



move from that lane safely.” *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842, ¶ 25.

## II. Analysis

{¶21} The issue before us is narrow—whether the trial court’s finding of probable cause for the traffic stop is supported by competent, credible evidence. We find that it is.

{¶22} From the dash camera, we are able to view Trooper Ross leave the gas station and make a right turn to Route 23. Trooper Ross was driving to catch-up to a red Chevy truck, driven by Williams, on the two-lane road with a white-dashed line separating the right and left lanes. As Trooper Ross was driving to catch-up to Williams, in the distance we can see the brake lights of two cars driving side-by-side in the same direction. The video is not clear and the distance is far as Trooper Ross testified. However, consistent with Trooper Ross’ testimony, you can see the vehicle on the left lane hit the brake lights at the moment Trooper Ross testified he observed Williams’ red truck cross the marked lane and veer to the left.

{¶23} The video, contrary to Williams’ assertions, does not contradict Trooper Ross’ testimony. The video is simply not clear enough for us to observe the marked lane violation, as the trial court similarly found. This is due to the distance and the camera’s lack of high visual quality. “We note that observing and evaluating the credibility of the witnesses is the province of the trial court and we defer to the trial court’s judgment here.” *State v. Harris*, 4th Dist. Ross No. 11CA3298, 2012-Ohio-4237, ¶ 22. Additionally, there is no requirement for an

officer's observation of a traffic violation be recorded on video. See *State v. Lemaster*, 4th Dist. Ross No. 11CA3236, 2012-Ohio-971, ¶ 12 (“Competent, credible evidence in the form of the trooper’s testimony from the suppression hearing supports this finding, despite the fact that this violation was not caught on the video.”)

{¶24} Trooper Ross’ observation of Williams’ truck crossing the lane by more than half of his truck was sufficient to establish probable cause and justify a traffic stop. Trooper Ross, however, did not initiate the traffic stop after observing the first marked lane violation. Rather, the traffic stop was initiated after Williams committed other marked lane violations.

{¶25} With regard to Williams’ other marked lane violations, he cites to *State v. Turner*, 163 Ohio St.3d 421, 2020-Ohio-6773, 170 N.E.3d 842, as support for his argument that he merely touched the marked lane, which is not a violation. Williams contends that he must cross the marked lane in order to demonstrate a traffic violation. In *Turner*, the Supreme Court addressed the “legal question of whether touching the solid white longitudinal line—the fog line—violates R.C. 4511.33(A)(1).” *Turner* at ¶ 15. The Supreme Court held that it did not. *Id.* In reaching this conclusion, the Supreme Court applied the plain language of R.C. 4511.33(A)(1), the definition in R.C. 4511.01, the Manual of Uniform Traffic Control Devices (“MUTCD”) Section 3A.06(B), and emphasized that “the single solid white longitudinal line on the right-hand edge of a roadway—the fog line—marks the edge of the roadway and that such a marking

merely “discourages or prohibits” a driver from *crossing* it, not *driving on* or *touching* it.” (Emphasis sic.) *Id.* at ¶ 37.

{¶26} Unlike *Turner*, the matter at bar does not involve the fog line but rather, involves the marked white-dashed line separating two lanes of travel going in the same direction. See *State v. Wilds*, 4th Dist. Scioto No. 19CA3894, 2021-Ohio-2554, ¶ 17 (“Unlike in *Turner*, which is limited to a marked lane violation under R.C. 4511.33(A)(1) pertaining to driving on or touching the fog line, the traffic stop herein occurred because Wilds drove left of center.”)

{¶27} Moreover, Trooper Ross testified that Williams crossed the white-dashed line. This testimony is consistent with the dash-camera video, in which we can observe Williams’ back tire touch and cross past the white-dashed line into the left lane of travel.

{¶28} Based on the totality-of-the-circumstances, we find that there is competent, credible evidence to support the trial court’s probable cause finding justifying Williams’ traffic stop. Wherefore, we overrule Williams’ assignment of error.

#### CONCLUSION

{¶29} Having overruled Williams’ assignment of error, we affirm the trial court’s judgment entry of conviction.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Kristy S. Wilkin, Judge

**NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**