

[Cite as *State v. Bloom*, 2010-Ohio-2302.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JON E. BLOOM

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 09 CA 63

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Fairfield Municipal
Court, Case No. 2009 TRC 2465

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 20, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant Jon E. Bloom appeals the decision of the Fairfield County Municipal Court overruling his motion to suppress.

{¶2} Appellee is State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On March 16, 2009, Appellant Jon E. Bloom was driving his car east on Walnut Street in Lancaster, Ohio, when he notice that a police patrol car was behind him. (T. at 44). After travelling several blocks, Appellant eventually made a right turn onto Broad Street and then turned left into the parking lot of Tavern at the Mill. (T. at 45). At this time, the officer driving the patrol car, Officer Henry Lanham, activated his overhead lights and effectuated a traffic stop of Appellant. Upon request by Officer Lanham, Appellant performed field sobriety tests and submitted to a breath-alcohol test which resulted in .085 grams of alcohol per 210 liters of breath. As a result, Appellant was charged with operating a motor vehicle under the influence, operating a motor vehicle with a prohibited breath-alcohol level and operating a vehicle while under several different license suspensions, in addition to driving on a curb in violation of Lancaster Municipal Ordinance 331.37.

{¶4} On March 23, 2009, Appellant filed a Motion to Suppress all evidence obtained as a result of the traffic stop.

{¶5} On August 12, 2009, the trial court conducted a hearing on Appellant's motion to suppress. At the commencement of the hearing, counsel for Appellant informed the trial court that it was waiving all challenges raised in the motion to suppress with the exception of the issue of the Fourth Amendment challenge to the

traffic stop, arguing that Officer Lanham did not have reasonable and articulable suspicion to make the traffic stop.

{¶6} The trial court heard testimony from Officer Lanham wherein he stated that when Appellant made his right turn “his right rear tire actually ran over top of the curb and then back onto the street.” (T. at 7). Officer Lanham stated that he therefore had reasonable cause to believe Appellant had violated Lancaster Municipal Ordinance 331.37 and further, that it “lead [him] to believe that there was a possibility that the gentleman was possibly under the influence of alcohol, or a drug or a combination at that time.” Id.

{¶7} A video of the traffic stop was also played during the suppression hearing and was admitted into evidence. However, the video does not show Appellant’s vehicle drive over the curb because the vehicle is “off camera” when it made the right hand turn and remained off camera until Office Lanham completed his right hand turn to follow Appellant. However, you can audibly hear Officer Lanham say to his civilian passenger “he went up over the curb there, did you see that”.

{¶8} Appellant presented the testimony of Steven Dillon and Natalie Poor. Dillon stated that he was standing outside in the parking lot of Tavern at the Mill when he noticed Appellant turn into the parking lot, and that he did not witness any traffic violations. (T. at 23-25). Upon cross-examination Dillon admitted that he was not really monitoring the street for traffic violations. (T. at 28). Poor, who worked at the Tavern, testified that she was hanging up posters when she saw Appellant pull into the parking lot and that she did not see any traffic violations. (T. at 34-36). Upon cross-

examination Poor admitted that she was not really paying very close attention until she saw the police car. (T. at 39-40).

{¶19} Appellant also testified at the suppression hearing. During his testimony he admitted that he became nervous when he noticed the officer behind him and that while he did not hit the curb, it was possible that he did without knowing it. (T. at 45, 48). He also admitted that he had been drinking that evening. (T. at 48).

{¶10} At the conclusion of the hearing, the trial court denied Appellant's motion to suppress.

{¶11} On October 16, 2009, Appellant changed his plea of not guilty to no contest. As a result, the trial court sentenced appellant to 180 days in jail with 140 days suspended, a \$575.00 fine and three years of community control sanctions on the charge of Operating a Vehicle while Under the Influence and 180 days in jail with 180 days suspended, a \$100.00 fine and three years of community control sanctions on the Failure to Reinstate charge. The remaining charges were dismissed.

{¶12} Appellant now appeals, assigning the following errors for review:

ASSIGNMENTS OF ERROR

{¶13} "I. THE TRIAL COURT ERRED WHEN IT EVALUATED THE WARRANTLESS TRAFFIC STOP AND SEIZURE OF APPELLANT UNDER THE WRONG CONSTITUTIONAL STANDARD.

{¶14} "II. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE WARRANTLESS TRAFFIC STOP AND SEIZURE OF APPELLANT WAS JUSTIFIED BY A VIOLATION OF LANCASTER MUNICIPAL ORDINANCE 331-37."

I., II.

{¶15} We shall address Appellant's assignments of error together, as they both challenge the trial court's decision overruling his motion to suppress.

{¶16} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154-155, 797 N.E.2d 71, 74, 2003-Ohio-5372 at ¶ 8. When ruling on a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and to evaluate the credibility of witnesses. See *State v. Dunlap* (1995), 73 Ohio St.3d 308, 314, 652 N.E.2d 988; *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583. Accordingly, a reviewing court must defer to the trial court's factual findings if competent, credible evidence exists to support those findings. See *Burnside*, supra; *Dunlap*, supra. However, once an appellate court has accepted those facts as true, it must independently determine as a matter of law whether the trial court met the applicable legal standard. See *Burnside*, supra. [Citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539]; See, also, *United States v. Arvizu* (2002), 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740; *Ornelas v. United States* (1996), 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911. That is, the application of the law to the trial court's findings of fact is subject to a *de novo* standard of review. *Ornelas*, supra. Moreover, due weight should be given "to inferences drawn from those facts by resident judges and local law enforcement officers." *Ornelas*, supra at 698, 116 S.Ct. at 1663.

{¶17} If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all

the circumstances, then the stop is constitutionally valid. *State v. Mays*, 119 Ohio St.3d 406, 894 N.E.2d 1204, 2008-Ohio-4538 at ¶ 8.

{¶18} Lancaster Municipal Ordinance 331.37 provides:

{¶19} “DRIVING UPON SIDEWALKS, STREET LAWNS OR CURBS

{¶20} “(a) No person shall drive any vehicle, other than a bicycle, upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

{¶21} “(b) No person shall drive a vehicle on a street lawn area or the curb of a street, except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.”

{¶22} In the case at bar, Officer Lanham testified the he observed Appellant drive up and over the curb, which is a violation of the above city ordinance. The trial court found that the officer’s observations gave him the requisite reasonable suspicion needed to stop appellant’s vehicle. (T. at 63).

{¶23} The judge is in the best position to determine the credibility of witnesses, and his conclusion in this case is supported by competent facts. See *State v. Burnside* (2003), 100 Ohio St.3d 152, 154-55, 797 N.E.2d 71, 74. The fundamental rule that weight of evidence and credibility of witnesses are primarily for the trier of fact applies to suppression hearings as well as trials. *State v. Fanning* (1982), 1 Ohio St.3d 19, 20, 437 N.E.2d 583, 584. The deputy’s testimony represents competent, credible evidence that appellant drove over or upon the curb. Therefore, the factual finding of the trial court that appellant drove on or over the curb is not clearly erroneous.

{¶24} Reviewing courts should accord deference to the trial court's decision concerning the credibility of the witnesses because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St.3d 71, 523 N.E.2d 846. In *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 81, 461 N.E.2d 1273, the Ohio Supreme Court explained: “[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.” See, also *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, syllabus 1.

{¶25} We accept the trial court's conclusion that appellant's violation of the traffic laws gave Officer Lanham reasonable suspicion to stop appellant's vehicle because the factual findings made by the trial court are supported by competent and credible evidence. Thus, the trial court did not err when it denied appellant's motion to suppress on the basis that the initial stop of his vehicle was valid. *State v. Busse*, Licking App. No. 06 CA 65, 2006-Ohio-7047 at ¶ 20.

{¶26} Appellant's assignments of error are overruled.

{¶27} For the reasons stated in the foregoing opinion, the judgment of the Fairfield Municipal Court, Fairfield County, Ohio, is affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

/S/ JOHN W. WISE_____

/S/ WILLIAM B. HOFFMAN_____

/S/ SHEILA G. FARMER_____

JUDGES

JWW/0511

