

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-P-0038
BRITTANY D. SMITH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court. Ravenna Division, Case No. 10 TRC 13263R.

Judgment: Affirmed.

Victor V. Viglucci, Portage County Prosecutor, and *Theresa M. Scahill*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Chris J. Sestak, Student Legal Services, Inc., Kent State University, 164 East Main Street, Suite 203, Kent, OH 44240 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Brittany D. Smith, appeals from the judgment of the Ravenna Division of the Portage County Municipal Court, which overruled her motion to suppress a traffic stop. Ms. Smith argues that no reasonable cause existed to stop her at one a.m. on March 1, 2011. However, for the following reasons, we find that reasonable cause did exist for the traffic stop, and, therefore, the trial court did not err in overruling her motion to suppress

{¶2} Substantive Facts and Procedural History

{¶3} Just before one a.m. on March 1, 2011, Trooper Ganley of the Ohio State Highway Patrol was headed northwest on S.R. 14 in the City of Streetsboro, Portage County, when he observed a car traveling southeast along the same road, without headlights. The car appeared to have running or parking lights on, however. Trooper Ganley made a u-turn and effected a traffic stop without incident. The driver of the vehicle, Ms. Smith, acknowledged to Trooper Ganley that it was not her car, and that she was accustomed to automatic headlights. Trooper Ganley ultimately issued Ms. Smith a citation for failure to display headlights, in violation of R.C. 4513.03, and for OVI, in violation of R.C. 4511.19(B)(3). Ms. Smith does not challenge the grounds for the OVI citation; rather, she challenges the permissibility of the initial stop.

{¶4} Ms. Smith pled not guilty to both counts and moved the trial court for suppression of the traffic stop. After a hearing on the matter, the trial court overruled Ms. Smith's motion to suppress. She ultimately pled no-contest to the charges and signed a waiver of rights. The trial court found Ms. Smith guilty, and sentenced her to 30 days in jail, a \$250 fine, and a license suspension of 90 days. The trial court suspended the jail time upon certain conditions, and stayed the entire sentence pending appeal.

{¶5} Ms. Smith filed a timely notice of appeal, and now brings the following assignment of error:

{¶6} "The trial court erred in overruling appellant's motion to suppress."

{¶7} Standard of Review

{¶8} “At a hearing on a motion to suppress, the trial court functions as the trier of fact, and, therefore, is in the best position to weigh the evidence by resolving factual questions and evaluating the credibility of any witnesses.” *State v. McGary*, 11th Dist. No. 2006-T-0127, ¶20, quoting *State v. Molek*, 11th Dist. No. 2001-P-0147, 2002-Ohio-7159, ¶24, citing *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Thus, “[a]n appellate court must accept the findings of fact of the trial court as long as those findings are supported by competent, credible evidence.” *Id.*, quoting *Molek* at ¶24, citing *State v. Retherford* (1994), 93 Ohio App.3d 586. See, also, *City of Ravenna v. Nethken*, 11th Dist. No. 2001-P-0040, 2002-Ohio-3129, ¶13. “After accepting such factual findings as true, the reviewing court must then independently determine, as a matter of law, whether or not the applicable legal standard has been met.” *McGary* at ¶20, quoting *Molek* at ¶24.

{¶9} Whether Reasonable Suspicion Existed for the Traffic Stop

{¶10} “‘It is well established that an officer may stop a motorist upon his or her observation that the vehicle in question violated a traffic law.’ *State v. Boczar*, 11th Dist. No. 2004-A-0063, 2005-Ohio-6910, ¶11, citing *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 11-12. Moreover, this court has repeatedly held that when a police officer witnesses a minor traffic violation, he or she is warranted in making a stop to issue a citation. *Village of Waite Hill v. Popovich*, 11th Dist. No. 2001-L-227, 2003-Ohio-1587, ¶14.” *State v. Brooks*, 11th Dist. No. 2005-L-200, 2007-Ohio-344, ¶32. “In evaluating the propriety of an investigative stop, the reviewing court must examine the totality of the circumstances surrounding the stop as ‘viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.’” *State v.*

Colby, 11th Dist. No. 2002-P-0061, 2004-Ohio-343, ¶21, citing *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88.

{¶11} Trooper Ganley testified at the suppression hearing that he was headed northwest on S.R. 14, when he passed Ms. Smith driving in the opposite direction on the same road. Not only did he personally observe that Ms. Smith's vehicle did not have its headlights illuminated, Trooper Ganley stated, in the video recording taken by the cruiser's dash cam, that he observed another car on the road flash its lights at Ms. Smith. He further stated that the light emanating from Ms. Smith's car was comparatively much less intense than the light from other cars on the road that night, and that he found it difficult to locate Ms. Smith's vehicle upon approach from the opposite direction. Trooper Ganley testified at the hearing that he did not observe Ms. Smith driving erratically, nor did he observe any other violation. He pulled her over specifically for the observed lack of headlights.

{¶12} The video recording shown at the hearing supports Trooper Ganley's testimony, demonstrating that Ms. Smith's vehicle appeared to have illuminated running or parking lights, but no headlights. The video further elucidated that when Trooper Ganley approached the vehicle and informed Ms. Smith that she did not have her headlights illuminated, Ms. Smith replied "Oh this is not my car, this is her car. My car is automatic, I'm sorry."

{¶13} **Headlight Statutes**

{¶14} R.C. 4513.03 requires that "(A) [e]very vehicle, other than a motorized bicycle, operated upon a street or highway within this state shall display lighted lights

and illuminating devices as required by sections 4513.04 to 4513.37 of the Revised Code during all of the following times:

{¶15} “(1) The time from sunset to sunrise;

{¶16} “(2) At any other time when, due to insufficient natural light or unfavorable atmospheric conditions, persons, vehicles, and substantial objects on the highway are not discernible at a distance of one thousand feet ahead;

{¶17} “(3) At any time when the windshield wipers of the vehicle are in use because of precipitation on the windshield.”

{¶18} R.C. 4513.15 defines headlights as “a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons, vehicles, and substantial objects at a safe distance in advance of the vehicle, subject to the following requirements.” Furthermore, R.C. 4513.03 prohibits the operation of a vehicle “upon a street or highway within this state using only parking lights as illumination,” thus clearly differentiating parking lights from headlights and determining they lack sufficient illumination to qualify as headlights under R.C. 4513.15.

{¶19} It is quite evident, from both Trooper Ganley’s testimony and the video recording, that Ms. Smith failed to properly display the lights on the vehicle. No doubt exists that she had some form of illumination activated that evening, either running or parking lights, but also no doubt exists that her headlights, as required under R.C. 4513.03, were not properly activated.

{¶20} Ms. Smith argues no reasonable suspicion for the traffic stop existed, because Trooper Ganley had no way of knowing whether the lights she displayed that night sufficiently illuminated the road so as to meet the requirements of R.C. 4513.03.

Regardless of whether she could in fact see in front of her the required 1000 feet, Trooper Ganley observed what he firmly believed to be a traffic violation, and acted on that observation by effecting a traffic stop. He was well within his rights and duties to conduct the stop and issue a citation for a clearly perceived violation of the Ohio Revised Code.

{¶21} Even if Ms. Smith was technically in compliance with the headlight statute that evening, suppression of the traffic stop would not have been appropriate, given the reasonableness of Trooper Ganley's conduct. "Under limited circumstances, the exclusionary rule may be avoided with respect to evidence obtained in an investigative stop based on conduct which a police officer reasonably, but mistakenly, believes is a violation of the law. * * * Because courts must be cautious in overlooking a police officer's mistakes of law, the mistake must be objectively reasonable." *City of Wilmington v. Connor*, 144 Ohio App.3d 735, 740, citing *State v. Greer* (1996), 114 Ohio App.3d 299, 300-301, 305. See, also, *State v. Ross* (Aug. 29, 2007), 2d Dist. No. 16135, 1997 Ohio App. LEXIS 3805, *7.

{¶22} A careful review of the record reveals that Trooper Ganley acted in an objectively reasonable manner when he executed a traffic stop of Ms. Smith's car. The dash cam video demonstrates that the lights Ms. Smith displayed on the front of her car that evening were comparatively dimmer than other cars on the road at the same time. Even if Ms. Smith was ultimately able to prevail on the issue of whether the lights she displayed were sufficient to meet the requirements of R.C. 4513.03, Trooper Ganley's belief that she was in violation of the statute was not objectively unreasonable.

Therefore, the traffic stop was permissible, and the evidence flowing therefrom admissible.

{¶23} Competent, credible evidence was presented to support the trial court's finding that Trooper Ganley had reasonable cause to stop Ms. Smith's vehicle and issue a citation. Therefore, the trial court did not err in overruling Ms. Smith's motion to suppress the traffic stop. The assignment of error is without merit and the judgment of the trial court is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.