[Cite as *State v. Campanelli*, 2015-Ohio-2332.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	CASE NO. 14 CO 23
V.	)	
	)	OPINION
JAMES L. CAMPANELLI,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Municipal Court of Columbiana County, Ohio Case No. 2013TRC2589
JUDGMENT:	Affirmed
APPEARANCES: For Plaintiff-Appellee	No brief filed
For Defendant-Appellant	Attorney Richard J. Hura 9 East Park Avenue Columbiana, Ohio 44408

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: June 11, 2015

[Cite as *State v. Campanelli*, 2015-Ohio-2332.]
DONOFRIO, P.J.

{¶1} Defendant-appellant, James Campanelli, appeals from a Columbiana County Municipal Court judgment convicting him of operating a vehicle under the influence of drugs or alcohol and a red light violation. Appellant's appointed counsel has filed a no-merit brief presenting one potential assignment of error and asking to withdraw.

{¶2} Shortly after 10:00 p.m. on April 27, 2013, Salem Police Officer Michael Garber was dispatched to a possible intoxicated driver based on a tip from an anonymous caller. The caller identified the car as a green Chevy Trailblazer with a tan stripe on the bottom leaving the 600 block of East Sixth Street.

{¶3} Officer Garber saw a vehicle matching the given description and attempted to intercept the vehicle by traveling along a different route. Officer Garber observed the vehicle cross approximately one foot over the lane line. The officer then turned to follow the vehicle. He pulled up behind the vehicle, which was now slowing down for a red light. Officer Garber observed the vehicle "let off its brakes" and drifted across the stop line, slightly into the crosswalk. Simultaneously, the officer observed another vehicle traveling through the intersection swerve to avoid any possible collision with the subject vehicle. The traffic light then turned green and the subject vehicle continued south.

{¶4} Officer Garber followed the vehicle and initiated a traffic stop. Officer Garber completed an impaired driver report. He noted nystagmus in both of appellant's eyes. Appellant refused the walk-and-turn and one-leg-stand tests. Appellant registered a .121 on a breathalyzer test. Officer Garber arrested him for OVI.

{¶5} Appellant was charged with OVI, a first-degree misdemeanor in violation of R.C. 4511.19(A)(1)(a) and R.C. 4511.19(A)(1)(d), and a red light violation, a minor misdemeanor in violation of R.C. 4511.13. He initially entered a plea of not guilty.

{¶6} Appellant then filed a motion to suppress the results of his field sobriety tests and breathalyzer test, among other things. The court held a hearing on appellant's motion. Appellant agreed that the only issue before the court was

whether Officer Garber had reasonable suspicion to stop him for a possible traffic violation. The trial court concluded that neither the anonymous tip nor the stop line violation justified the traffic stop but that Officer Garber's observation of what he reasonably believed was a lane violation did justify the traffic stop. Therefore, the court overruled appellant's motion to suppress.

{¶7} Subsequently, appellant entered into a plea agreement with plaintiff-appellee, the State of Ohio, whereby he entered a no contest plea to OVI in violation of R.C. 4511.19(A)(1)(a) and to the red light violation. The trial court found appellant guilty. The court sentenced appellant to 20 days in jail, 17 days suspended, with the remaining three days to be served in OVI school. It also fined him $675, with $300 suspended, and placed him on two years of probation.

{¶8} Appellant filed a timely notice of appeal on April 7, 2014. Due to appellant's indigency, this court appointed counsel to represent him on appeal.

{¶9} Appellant's appointed counsel has filed a no merit brief and request to withdraw pursuant to *State v. Toney*, 23 Ohio App.2d 203, 262 N.E.2d 419 (7th Dist.1970). In *Toney*, this court set out the procedure to be used when appointed counsel finds that an indigent criminal defendant's appeal is frivolous.

{¶10} The procedure set out in *Toney*, at the syllabus, is as follows:

> 3. Where a court-appointed counsel, with long and extensive experience in criminal practice, concludes that the indigent's appeal is frivolous and that there is no assignment of error which could be arguably supported on appeal, he should so advise the appointing court by brief and request that he be permitted to withdraw as counsel of record.
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> 4. Court-appointed counsel's conclusions and motion to withdraw as counsel of record should be transmitted forthwith to the indigent, and the indigent should be granted time to raise any points that he chooses, pro se.

> 5. It is the duty of the Court of Appeals to fully examine the proceedings in the trial court, the brief of appointed counsel, the arguments pro se of the indigent, and then determine whether or not the appeal is wholly frivolous.
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> * * *
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> 7. Where the Court of Appeals determines that an indigent's appeal is wholly frivolous, the motion of court-appointed counsel to withdraw as counsel of record should be allowed, and the judgment of the trial court should be affirmed.

{¶11} This court informed appellant that his counsel filed a *Toney* brief. Appellant did not file a pro se brief. Likewise, the state did not file a brief.

{¶12} Appellant's counsel has examined one potential assignment of error regarding whether the trial court properly denied appellant's motion to suppress. Counsel concludes, "Reasonable, articulable suspicion is satisfied when a suspect commits a lane violation thereby triggering a constitutionally valid stop."

{¶13} Our standard of review with respect to a motion to suppress is first limited to determining whether the trial court's findings are supported by competent, credible evidence. *State v. Winand*, 116 Ohio App.3d 286, 288, 688 N.E.2d 9 (7th Dist.1996), citing *Tallmadge v. McCoy*, 96 Ohio App.3d 604, 608, 645 N.E.2d 802 (9th Dist.1994). Such a standard of review is appropriate as, "[i]n a hearing on a motion to suppress evidence, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate the credibility of witnesses." *State v. Venham*, 96 Ohio App.3d 649, 653, 645 N.E .2d 831 (4th Dist.1994). An appellate court accepts the trial court's factual findings and relies upon the trial court's ability to assess the witness's credibility, but independently determines, without deference to the trial court, whether the trial court applied the appropriate legal standard. *State v. Rice*, 129 Ohio App.3d 91, 94, 717 N.E.2d 351 (7th Dist.1998). A trial court's decision on a motion to suppress will not be disturbed when it is supported by substantial credible evidence. *Id*.

{¶14} In this case, the trial court made the following factual findings. Based on an anonymous tip, Officer Garber was dispatched to look for a possibly impaired driver last seen leaving a residence in the 600 block of East Sixth Street. The anonymous tipster described the vehicle as a green Chevy Trailblazer with a tan stripe across the bottom and gave a registration number. Officer Garber headed toward the reported location when he noticed a vehicle matching the given description. The officer took another route and passed the vehicle heading south on Lincoln while he was travelling north on the same street. Officer Garber turned to follow the vehicle and noticed that it drove approximately one foot left of the center line and then cut back into its lane of travel. The officer next saw the vehicle stop for a red light and then drift beyond the marked stop line so that the line was midway between its front and rear tires. Officer Garber observed no other violations before stopping the vehicle one block further south.

{¶15} Officer Garber's testimony provides competent, credible evidence supporting the trial court's factual findings. Officer Garber testified that based on an anonymous tip, he began looking for a green Chevy Trailblazer with a tan stripe across the bottom in the vicinity of the 600 block of East Sixth Street. (Suppression Tr. 12-13). He stated he noticed a vehicle matching that description and took a route to where he might intercept it. (Suppression Tr. 14-15). He again saw the vehicle traveling toward him on North Lincoln Street. (Suppression Tr. 15-16). The vehicle passed Officer Garber and he observed it cross over the lane markings and travel partially into the next lane. (Suppression Tr. 16). Officer Garber stated that the vehicle's driver's side tire crossed the marked lane by approximately one foot past. (Suppression Tr. 17). Officer Garber executed a three-point turn to follow the vehicle. (Suppression Tr. 16-17).

{¶16} With Officer Garber now behind the vehicle, the vehicle slowed for a red light. (Suppression Tr. 18). The vehicle then let off of its brakes and drifted across the stop line and slightly into the crosswalk. (Suppression Tr. 18). Officer Garber estimated that half of the vehicle drifted across the stop line. (Suppression Tr. 19). The light then turned green. (Suppression Tr. 19). The vehicle proceeded on its way

until Officer Garber initiated a traffic stop as the vehicle turned into Quaker Village. (Suppression Tr. 20).

{¶17} The trial court's findings of fact were gleaned directly from Officer Garber's testimony. Therefore, competent, credible evidence exists to support the court's factual findings.

{¶18} Next, we must consider whether the trial court applied the appropriate legal standard.

{¶19} "The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable searches and seizures, including unreasonable automobile stops." *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 850 N.E.2d 698, 2006-Ohio-3563, ¶11. In order to make an investigative traffic stop, an officer must have a reasonable suspicion, based on specific and articulable facts, that the motorist was engaged in criminal activity or that the vehicle was in violation of the law. *State v. Snyder*, 7th Dist. No. 03 BE 15, 2004-Ohio-3200, ¶5, citing *Dayton v. Erikson*, 76 Ohio St.3d 3, 12, 665 N.E.2d1091 (1996); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

{¶20} The trial court looked at three separate issues bearing on Officer Garber's reasonable suspicion to stop appellant's vehicle: the anonymous tip, the lane violation, and the stop line violation.

{¶21} The court noted that a tip provided by an anonymous informant is usually considered less reliable than a tip from an identified citizen and generally requires independent police corroboration. Therefore, the court found that the unsubstantiated anonymous tip in this case did not serve as a sufficient basis for the traffic stop.

{¶22} The court next noted that an officer's observation of a traffic violation is sufficient cause to justify a traffic stop, regardless of the officer's motive for making the stop. The court found that Officer Garber observed what he reasonably believed was a lane violation. Therefore, it found the officer was justified in stopping the vehicle even though the stop may have been a pretext to accommodate his underlying suspicion of impaired driving.

{¶23} Finally, the court found the evidence did not support a stop line violation. It stated the testimony and dashboard video indicated the vehicle stopped at or very near the stop line and although it drifted forward after the stop, and may have scared another driver, it did not fail to yield to cross traffic.

{¶24} It is widely held that a police officer may effectuate a traffic stop upon noticing any violation of a traffic law, no matter how small the violation. For instance, the Ohio Supreme Court has held: "A traffic stop is constitutionally valid when a law-enforcement officer witnesses a motorist drift over the lane markings in violation of R.C. 4511.33, even without further evidence of erratic or unsafe driving." *State v. Mays*, 119 Ohio St. 3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, at the syllabus. In *Mays*, the only traffic violations the officer observed before making a traffic stop were that the subject vehicle twice "drifted" across the right fog line by approximately one tire width and then drifted back into the lane. *Id*. at ¶2. "[A]ny stop based upon an officer's reasonable belief that a traffic violation has occurred, or is occurring, no matter how minor the violation, is lawful and beyond questioning." *State v. Stephens*, 2d Dist. No. 16727, 1998 WL 257868 (May 22, 1998).

{¶25} Moreover, the Ohio Supreme Court has held that when a law enforcement officer has probable cause to stop a driver for any criminal violation, including a minor traffic violation, the stop is a constitutionally valid regardless of the officer's subjective motivation for stopping the driver. *Erickson*, 76 Ohio St.3d 3. The Eleventh District has found that if the officer observes a single marked-lane violation, no matter what the motive of the arresting officer is, the reasonableness of the traffic stop is not in question. *State v. Helton*, 11th Dist. No. 2005-A-0043, 2006-Ohio-2494, ¶24.

{¶26} This court examined the issue in *State v. Hodge*, 147 Ohio App. 3d 550, 2002-Ohio-3053, 771 N.E.2d 331, ¶50, where we found:

> Hodge committed a readily apparent traffic violation: he left the lane in which he was traveling when it was practicable to stay within his own lane of travel. In addition, Trooper Hughes witnessed two other

> violations for which Hodge could have been but was not cited. Each of these offenses separately would be reasonable suspicion to make an investigatory stop.

{¶27} Based on the above law, once Officer Garber witnessed appellant cross the marked lane, the officer had reasonable suspicion to effectuate a traffic stop. Officer Garber was likely acting with the underlying suspicion that appellant might be impaired, due to the anonymous tip. But the fact remains that he witnessed a traffic violation. And according to the case law, once Officer Garber witnessed a traffic violation, no matter how minor a violation and regardless of any ulterior motive, he had reasonable suspicion to stop the vehicle. Therefore, the trial court applied the appropriate legal standard to the facts of this case in finding that Officer Garber had reasonable suspicion to stop appellant. Because the court found Officer Garber had reasonable suspicion to stop appellant, it correctly overruled his motion to suppress.

{¶28} Because appellant entered a no contest plea, the next matter for this court to review is whether he entered his plea knowingly, voluntarily, and intelligently.

{¶29} Appellant pleaded no contest to a first-degree misdemeanor and to a minor misdemeanor. These are petty offenses as defined by Crim.R. 2(D). For petty offenses, the trial court must comply with Crim.R. 11(E) in accepting a no contest plea or a guilty plea. Crim.R. 11(E) provides the court shall not accept a plea of no contest or guilty without first informing the defendant of the effect of the plea.

{¶30} The Ohio Supreme Court has examined this rule and its requirements, and has held, "In accepting a plea to a misdemeanor involving a petty offense, a trial court is required to inform the defendant only of the effect of the specific plea being entered." *State v. Jones*, 116 Ohio St.3d 211, 2008-Ohio-6093, 877 N.E.2d 677, at paragraph one of the syllabus, construing Crim.R. 11(E). To meet the requirement of informing a defendant of the effect of his plea, a trial court must inform the defendant of the appropriate Crim.R. 11(B) language. *Jones*, at paragraph two of the syllabus. Crim.R. 11(B)(2) specifically defines the effect of a no contest plea:

> The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the indictment, information, or complaint, and the plea or admission shall not be used against the defendant in any subsequent civil or criminal proceeding.

{¶31} This court has previously explained that there are three points of information in Crim.R. 11(B)(2) that the trial court must convey about the effect of a no contest plea. *State v. Dosch*, 7th Dist. No. 08 MA 63, 2009-Ohio-6534, ¶12. First, the plea is not an admission of guilt. *Id*. Second, the plea is an admission of the truth of the facts alleged in the indictment, information, or complaint. *Id*. And, third, the plea cannot be used against the defendant in any subsequent civil or criminal proceedings. *Id*.

{¶32} The test used to determine whether an advisement on the effect of the plea being entered was adequate is a substantial compliance standard. *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶12. Under this standard, a slight deviation from the text of the rule is permissible as long as the totality of the circumstances indicates that "the defendant subjectively understands the implications of his plea and the rights he is waiving." *State v. Nero*, 56 Ohio St.3d 106, 108, 564 N.E.2d 474 (1990).

{¶33} When the trial court does not substantially comply in regard to a nonconstitutional right, such as the effect of a no contest plea, reviewing courts must determine whether the trial court partially complied or failed to comply with the dictates of the rule in question. *State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶32. If there is partial compliance, such as mentioning mandatory postrelease control without explaining it, the plea is only to be vacated if the defendant demonstrates a prejudicial effect. *Id*. The test for prejudice is "whether the plea would have otherwise been made." *Id*. quoting *Nero* at 108. However, if the trial court completely fails to comply with the rule, the plea must be vacated; a showing of prejudice is not needed to be demonstrated in that instance. *Id*.

{¶34} In this case, the trial court did not specifically advise appellant of the Crim.R. 11(B)(2) requirements at the hearing. The court did not inform appellant that a no contest plea is not an admission of guilt. It did not inform appellant that a no contest plea is an admission of the truth of the facts alleged in the complaint. And it did not inform appellant that his plea could not be used against him in any subsequent proceedings.

{¶35} But the court did ask appellant if he signed the waiver form, if he understood the form, if he understood the rights he was giving up, and if he had any questions regarding the form. (Plea Tr. 4-5). And the waiver form substantially complies with advising appellant of the effect of his plea. The waiver form, signed by appellant and referenced by the trial court, states that appellant has been informed of the effect of his plea. It states that if appellant enters a no contest plea, the court will consider the ticket or complaint. And it states that appellant is giving up any further explanation of circumstances and stipulating to a finding of guilt, without admitting guilt.

{¶36} The only information the waiver form in this case fails to mention is that appellant's plea cannot be used against him in any subsequent civil or criminal proceedings. But if a defendant is not advised of a potential benefit effect of the plea, "it is difficult to imagine a scenario where such a defendant sustains any prejudice for such a failure." *State v. Ramey*, 7th Dist. No. 13 MA 64, 2014-Ohio-2345, ¶19.

{¶37} The waiver form in this case, along with the court's questioning appellant about the waiver form, is adequate to comply with Crim.R. 11(B)(2)'s requirements. "Whether orally *or in writing*, a trial court must inform the defendant of the appropriate language under Crim.R. 11(B) before accepting a plea." (Emphasis added). *State v. Jones*, 116 Ohio St. 3d 211, 2007-Ohio-6093, 877 N.E.2d 677, ¶51. See also, *State v. Lindenmayer*, 5th Dist. No. 08-CA-142, 2009-Ohio-3982, ¶75 (Because the court informed the appellant in writing of the effect of her plea, it complied with Crim. R. 11(B)). Because appellant was informed of the effect of his plea in the written waiver form and the court questioned appellant about his understanding of the form, the court substantially complied with Crim.R. 11(B).

{¶38} Moreover, appellant did not suffer any prejudice in this case. Appellant never asserted his innocence. And appellant did not file a pro se brief where he could have argued his plea was not made knowingly, voluntarily, and intelligently.

{¶39} Therefore, there was partial compliance on the trial court's part in advising appellant of the effect of the plea. The waiver form contained sufficient information regarding the effect of the no contest plea and the trial court, in addressing appellant, made sure that appellant fully understood the form and had no questions regarding it. Additionally, appellant has suffered no prejudice.

{¶40} The only other potential issue in this case would be regarding appellant's sentence. In this case, however, the state and the defendant agreed on a recommended sentence, which the trial court imposed. (Plea Tr. 2-4, 8). Thus, no sentencing error can be raised. A jointly recommended sentence that is authorized by law and is accepted and imposed by the trial court is not subject to appeal. *State v. Baker*, 7th Dist. No. 12 MA 32, 2013-Ohio-862, ¶11.

{¶41} In sum, the potential assignment of error identified by appellant's appointed counsel is without merit. Furthermore, upon review of the case file and appellate filings, there are no appealable issues.

{¶42} For the reasons stated above, the trial court's judgment is hereby affirmed and counsel's motion to withdraw is granted.

Waite, J., concurs.

DeGenaro, J., concurs.