

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. E-12-026

Appellee

Trial Court No. TRC 1200002

v.

Cory A. Paseka

DECISION AND JUDGMENT

Appellant

Decided: June 7, 2013

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, Mary Ann Barylski, Ashley L. Thomas and Nicholas J. Smith, Assistant Prosecuting Attorneys, for appellee.

Benjamin M. Chapman, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This is an appeal from a judgment issued by the Erie County Municipal Court, Milan Ohio, denying appellant, Cory A. Paseka's, motion to suppress. Because the arresting officer lacked reasonable suspicion to stop appellant's vehicle, we conclude

that the trial court erred in denying appellant's motion to suppress. Accordingly, we reverse.

{¶ 2} On December 29, 2011, appellant was pulled over and charged with one count of driving while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). According to the arresting officer, appellant was initially stopped for failing to use a turn signal, a violation of R.C. 4511.39. Appellant filed a motion to suppress on February 21, 2012, challenging the initial stop of his vehicle. The trial court denied his motion. Appellant now appeals setting forth the following assignment of error:

It was error for the trial court to deny appellant's motion to suppress which challenged the propriety of the officer's stop of appellant's vehicle.

{¶ 3} In reviewing a motion to suppress "an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *State v. Montoya*, 6th Dist. No. L-97-1226, 1998 WL 114325 (Mar. 6, 1998), citing *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). "[T]he appellate court must then independently determine as a matter of law, without deferring to the trial court's conclusions, whether the facts meet the applicable legal standard." *Id.*, citing *State v. Klein*, 73 Ohio App.3d 486, 488, 597 N.E.2d 1141 (4th Dist.1991).

{¶ 4} The Fourth Amendment to the United States Constitution prohibits warrantless searches and seizures, rendering them, per se, unreasonable unless an exception applies. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d

576 (1967). In *Terry v. Ohio*, the United States Supreme Court explained that the Fourth Amendment allows a police officer to stop and detain an individual if the officer possesses a reasonable suspicion, based upon specific and articulable facts, that the person stopped has committed or is committing a crime. *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868, 2720 L.Ed.2d 889 (1968); *see also State v. Andrews*, 57 Ohio St.3d 86, 565 N.E.2d 1271 (1991). A traffic offense meets the requirements under *Terry* and constitutes reasonable grounds for an investigative stop. *State v. Davenport*, 8th Dist. No. 83487, 2004-Ohio-5020, ¶ 16, citing *State v. Carlson*, 102 Ohio App.3d 585, 596, 657 N.E.2d 591 (9th Dist.1995).

{¶ 5} In this case, appellant challenges the officer's initial stop of his vehicle. Specifically, he contends that he did not violate R.C. 4511.39 because he was not required to use a turn signal on the road he was traveling.

{¶ 6} R.C. 4511.39 states in pertinent part:

Use of signals for stopping, turning, decreasing speed, moving left or right; limitations

(A) No person shall turn a vehicle or trackless trolley 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.

When required, a signal of intention to turn or move right or left shall be given continuously during not less than the last one hundred feet

traveled by the vehicle or trackless trolley before turning, except that in the case of a person operating a bicycle, the signal shall be made not less than one time but is not required to be continuous.

{¶ 7} The facts in this case involve State Route 6 in Erie County. Appellant was traveling west on State Route 6. At a certain point, Route 6 veers to the left. As appellant approached that area of State Route 6, he chose to maintain a straight-ahead course which automatically placed him on Wahl Road. He was stopped for failing to activate his turn signal in violation of R.C. 4511.39.

{¶ 8} Appellee argues that the westbound area where Wahl and State Route 6 meet is an intersection at which a turn signal is required pursuant to R.C. Sec. 4511.01. This section states in pertinent part:

(KK) “Intersection” means:

(1) The area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways that join at any other angle might come into conflict.

{¶ 9} Westbound Wahl and Route 6 do not join at an angle, and further, vehicles traveling westbound on Wahl or on Route 6 do not come into conflict. It is undisputed that appellant’s straight-ahead entrance onto Wahl Road did not require him to turn his vehicle, nor did it require him to switch into a different lane. As such, we fail to see how

appellant violated R.C. 4511.39. Finding that the officer lacked reasonable suspicion to stop appellant's vehicle, appellant's sole assignment of error is found well-taken. The judgment of the Erie County Municipal Court is reversed. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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