

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellant,	:	CASE NO. CA2004-04-043 (Accelerated Calendar)
-vs-	:	<u>O P I N I O N</u> 2/7/2005
	:	
DANA WALTERS,	:	
Defendant-Appellee.	:	

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT
Case No. 03 TRC 05856

Robert W. Peeler, Mason Municipal Prosecutor, Teresa R. Wade,
5950 Mason Montgomery Road, Mason, OH 45040, for plaintiff-
appellant

Lyons & Lyons Co., L.P.A., Jeffrey Meadows, 8310 Princeton-
Glendale Road, Suite B, West Chester, OH 45069, for defendant-
appellee

POWELL, J.

{¶1} This is an accelerated appeal by the state of Ohio from the decision of the Mason Municipal Court granting the motion to suppress of defendant-appellee, Dana Walters.

{¶2} In December 2003, appellee was pulled over by Officer Miller, a police officer for the city of Mason, after making a

left turn while exiting a gas station. Appellee's left turn was in violation of a "No Left Turn" sign posted at the exit of the gas station. Officer Miller eventually arrested appellee for DUI and drug abuse based upon his observations and discoveries after the stop. Appellee was charged with DUI and drug abuse in the municipal court.

{¶3} Appellee filed a motion to suppress, which the municipal court granted. The court found that "the stop initiated by * * * Miller * * * lacked an objective finding of probable cause as there was no testimony that Defendant committed an actual violation of the law." The court's decision was based on its determination that the "No Left Turn" sign did not conform to the Ohio Manual of Uniform Traffic Control Devices ("OMUTCD") as required by R.C. 4511.11. The court suppressed all evidence obtained by Officer Miller after the stop.

{¶4} The state now appeals. In its sole assignment of error, the state argues that the municipal court erred in granting appellee's motion to suppress. The state argues that Officer Miller's stop was objectively reasonable and did not violate appellee's rights under the Fourth Amendment.

{¶5} When ruling on a motion to suppress, the trial court serves as the trier of fact and is the primary judge of the credibility of witnesses and the weight of the evidence. State v. Fanning (1982), 1 Ohio St.3d 19, 20. Relying on the trial court's findings, the appellate court determines "without deference to the trial court, whether the court has applied the ap-

propriate legal standard." State v. Anderson (1995), 100 Ohio App.3d 688, 691.

{¶6} "Where a police officer stops a vehicle based on probable cause that a traffic violation has occurred or was occurring, the stop is not unreasonable under the Fourth Amendment to the United States Constitution[.]" Dayton v. Erickson, 76 Ohio St.3d 3, 1996-Ohio-431, syllabus. "The establishment of probable cause 'requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.'" State v. Moeller, Butler App. No. CA99-07-128, 2000 WL 1577287, at *3, citing Illinois v. Gates (1983), 462 U.S. 213, 244, fn. 13, 103 S.Ct. 2317. Probable cause has been defined as "facts and circumstances within [an officer's] knowledge * * * sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." Beck v. Ohio (1964), 379 U.S. 89, 91, 85 S.Ct. 223.

{¶7} The "No Left Turn" sign at issue in this case did not conform to the OMUTCD as required by R.C. 4511.11. The sign at issue was a white, rectangular sign with black lettering, stating, "NO LEFT TURN." The "No Left Turn" sign in the OMUTCD is a white, square-shaped sign showing a black arrow pointing left. The arrow is circled in red with a red line slashed through it.

{¶8} R.C. 4511.12 only outlaws disobeying traffic control devices posted in accordance with R.C. Chapter 4511. Because the sign at issue did not conform to the OMUTCD, appellee clearly could not have been convicted of disobeying a traffic

control device. However, the question before the municipal court was not whether appellee was guilty or innocent of the traffic offense, but whether Officer Miller had probable cause to make the stop. We find that the municipal court erred in granting appellee's motion to suppress. The trial court's reason was that "there was no testimony that [appellee] committed an actual violation of the law." The court essentially made an adjudication on the merits of the traffic offense when it should have only been determining whether there was probable cause for the stop.

{¶9} This court reached a similar result in State v. Pfeiffer, Butler App. No. CA2003-12-329, 2004-Ohio-514. In that case, the trial court granted the defendant's motion to suppress because the court determined that the defendant did not commit an actual traffic violation. As the municipal court did in this case, the trial court essentially made an adjudication on the merits of the traffic charge. See *id.* at ¶25. This court reversed the trial court's decision granting the defendant's motion to suppress. Applying the proper probable cause standard, this court determined that the officer had probable cause to believe a traffic violation had occurred. See *id.* at ¶27.

{¶10} We find that, based upon the totality of the circumstances, Officer Miller had probable cause to believe that a traffic violation had occurred. Officer Miller testified that he observed appellee turn left in violation of a clearly visible "No Left Turn" sign. According to Officer Miller, the sign was

posted by the city of Mason after a serious auto accident had occurred at that location. The accident was caused by a van making a left turn across traffic while exiting the gas station. Officer Miller testified that he believed appellee committed a traffic violation when she turned left while exiting the gas station. While appellee technically did not commit a traffic violation because the sign was not posted in compliance with the OMUTCD, we find that the stop was not unreasonable under the Fourth Amendment. See Pfeiffer at ¶27; State v. Dunfee, Athens App. No. 02CA37, 2003-Ohio-5970 (though "No U-turn" signs were posted lower than required by OMUTCD, officer had probable cause to believe traffic violation had occurred when defendant made U-turn).

{¶11} For the foregoing reasons, we sustain the state's sole assignment of error. We reverse the decision of the municipal court granting appellee's motion to suppress and remand this case for further proceedings consistent with this opinion.

YOUNG, P.J., concurs.

WALSH, J., dissents.

WALSH, J., dissenting.

{¶12} Because I disagree with the majority's analysis and conclusion, I respectfully dissent.

{¶13} R.C. 4511.11(D) provides that all traffic control devices "shall" conform to the OMUTCD. Further, R.C. 4511.12

prohibits the enforcement of an alleged traffic violation "if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person." Thus, in order to form the basis for criminal liability, the sign must be "official," and it must be in a "proper position" and "sufficiently legible." One is not engaged in criminal behavior by violating a nonconforming sign. See City of Maple Heights v. Smith (1999), 131 Ohio App.3d 406, 410; In re Tolliver, 149 Ohio App.3d 403, 2002-Ohio-4538, at ¶14-16; City of Lyndhurst v. McGinness (2000), 138 Ohio App.3d 617, 621; City of Bowling Green v. McNamara (1999), 132 Ohio App.3d 240, 242.

{¶14} Nevertheless, the state contends that Officer Miller reasonably believed that appellee was violating the law. According to the state, Officer Miller did not know that the "No Left Turn" sign was not conforming, and believed that appellee committed a traffic offense when she turned left out of the driveway. I find this argument unpersuasive. Police officers are charged with enforcing the laws of Ohio, and consequently must "be aware of which conduct does and does not constitute a violation of the law." State v. Berry, Wood App. No. WD-02-043, 2003-Ohio-1620, ¶10. "An officer's ignorance of the law cannot be considered 'reasonable' under the reasonable and articulable requirement for effecting an investigatory stop." *Id.*

{¶15} For this reason, I conclude that Officer Miller did not have reasonable suspicion based on specific and articulable

facts that appellee was engaged in criminal activity. Accord
id. (officer could not have had reasonable, articulable suspi-
cion that traffic violation occurred because nonconforming traf-
fic sign was a nullity). His stop of appellee was impermissi-
ble, and evidence gained as a result of that stop should be sup-
pressed.

[Cite as *State v. Walters*, 2005-Ohio-418.]