

[Cite as *State v. Cronin*, 2011-Ohio-1479.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-100266
	:	TRIAL NO. 09TRC-45143(A)
Plaintiff-Appellant,	:	
vs.	:	<i>OPINION.</i>
JOHN CRONIN,	:	
Defendant-Appellee.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: March 30, 2011

John P. Curp, City Solicitor, *Ernest F. McAdams, Jr.*, City Prosecutor, and *Jacqueline A. Stachowiak*, Assistant City Prosecutor, for Plaintiff-Appellant,

The Farrish Law Firm and *Kelly Farrish*, for Defendant-Appellee.

Please note: This case has been removed from the accelerated calendar.

CUNNINGHAM, Presiding Judge.

{¶1} Plaintiff-appellant, the state of Ohio, appeals the trial court's decision granting defendant-appellee John Cronin's motion to suppress evidence gained following a traffic stop for running a red light. Because we hold that the investigating officer had probable cause to stop Cronin, we reverse.

{¶2} Shortly after midnight on August 29, 2009, Ohio Highway Patrol Sergeant Robert Hayslip brought his marked patrol vehicle to a stop at the intersection of Stanley and Eastern Avenues in the city of Cincinnati. Sgt. Hayslip's vehicle, heading north on Stanley Avenue, was stopped at the traffic signal. Sgt. Hayslip observed Cronin's vehicle run a red light as it travelled eastbound on Eastern Avenue. He then stopped Cronin's vehicle.

{¶3} During the stop, Sgt. Hayslip detected a strong odor of alcohol on Cronin's breath and observed that Cronin's eyes were bloodshot. Cronin admitted that he had consumed some alcohol and that he had been returning from a Cincinnati Reds baseball game. Sgt. Hayslip performed three field sobriety tests on Cronin. He detected two clues of intoxication during the walk-and-turn test in addition to Cronin's swaying and failure to follow some directions during the test. Sgt. Hayslip also observed six clues during the horizontal gaze nystagmus test.

{¶4} Cronin was arrested and charged with operating a motor vehicle while under the influence of alcohol, in violation of R.C. 4511.19(A)(1)(a), and failing to obey a red traffic-control signal, in violation of R.C. 4511.13. Cronin moved to suppress the state's evidence, claiming that the traffic stop was unlawful and that Sgt. Hayslip had failed to administer and score Cronin's field sobriety tests in accordance with the National Highway Traffic Safety Administration ("NHTSA") guidelines and his training.

{¶5} At the suppression hearing, Sgt. Hayslip, an eight-year law-enforcement veteran with extensive training in conducting field sobriety tests, testified that he had stopped Cronin because he had run a red light. Sgt. Hayslip stated that as Cronin's vehicle went "by my vehicle, my light's still red. He just clears the intersection; my light turns green. There is a delay on the red light, a two- to three-second delay * * *. But the light turned red while he was in the intersection." Based on this observation, Sgt. Hayslip determined that Cronin had failed to stop at a red traffic-control signal. The officer went on to recount the evidence of intoxication gained from the field sobriety tests.

{¶6} Sgt. Hayslip also informed the trial court that a sophisticated video-recording system operating in his patrol vehicle had recorded the events prompting the traffic stop. Although the digital recording was admitted into evidence, neither party extensively questioned the officer about the recording.

{¶7} Eleven days after the hearing, the trial court issued a written decision granting the motion to suppress. The trial court had carefully scrutinized the video recording with a device that allowed a viewer to play back the recording in slow motion and to freeze individual images. Relying on the detailed scrutiny that the digital recording allowed, the trial court described its version of the events at the intersection. It referred "the parties to 001442 on the DVD. At that point, when the Court freezes the DVD frame, it appears to the Court that [Cronin's] vehicle * * * was directly underneath the traffic control lights, placing him in the middle of the intersection. It is also at that point that the Court first sees a reflection of a yellow light, both in [Cronin's] windshield, and also on the street. From this observation it appears to the Court that [Cronin's] light did not turn yellow until he was in the middle of the intersection." "Therefore," the court concluded that Cronin "did not run a red light, and there was no reasonable articulable suspicion to stop [Cronin's] vehicle." Because the trial court had found that Sgt. Hayslip had lacked

justification to effect a warrantless stop of Cronin's vehicle, it did not make any findings about whether he had properly administered the field sobriety tests.

{¶8} In its sole assignment of error, the state argues that the trial court erred when it found that Sgt. Hayslip had lacked a "reasonable articulable suspicion" to stop Cronin.

{¶9} Appellate review of the trial court's resolution of a motion to suppress entails a two-step inquiry.¹ The first step is a review of the trial court's findings of historical fact.² We must accept those findings of fact if they are supported by competent and credible evidence.³ Then, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether the properly supported facts meet the applicable legal standard.⁴ In this case, the resolution of the state's assignment of error depends upon the latter determination of whether the trial court applied the correct legal standard in concluding that Sgt. Hayslip had lacked a constitutional justification to stop Cronin.

{¶10} Although the trial court articulated its decision to grant the motion in the words associated with an investigatory, or *Terry*, stop,⁵ the Ohio Supreme Court has held that a traffic stop is reasonable for Fourth Amendment purposes if the police officer has probable cause to believe that a driver has violated an applicable traffic regulation.⁶

{¶11} Probable cause can exist even if the officer incorrectly determines that a traffic violation has occurred or if the officer misunderstands the law that the driver is allegedly violating.⁷ The test is whether an objectively reasonable police officer would

¹ See *State v. Deters* (1998), 128 Ohio App.3d 329, 333, 714 N.E.2d 972.

² See *id.*

³ See *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶8.

⁴ See *id.*; see, also, *State v. Deters*, 128 Ohio App.3d at 334-335, 714 N.E.2d 972.

⁵ *Terry v. Ohio* (1968), 392 U.S. 1, 21-22, 88 S.Ct. 1868; see, also, *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690.

⁶ See *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶9; see, also, *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769; *State v. Leonard*, 1st Dist. No. C-060595, 2007-Ohio-3312, ¶9.

⁷ See *Bowling Green v. Godwin* at ¶15; see, also, *State v. Leonard* at ¶14.

believe that a traffic violation has occurred based upon the totality of the circumstances.⁸ This is an objective standard, not a subjective one.⁹

{¶12} The proper focus is not on whether a defendant could have been stopped because a traffic violation had in fact occurred, but on whether the officer had probable cause to believe an offense had occurred. The fact that a defendant could not ultimately be convicted of failure to obey a traffic signal is not determinative of whether an officer acted reasonably in stopping him for that offense.¹⁰ “Probable cause does not require the officer to correctly predict that a conviction will result.”¹¹

{¶13} Here, Sgt. Hayslip, without the benefit of a digital review of the events, testified that when the traffic-control signal “turned red,” Cronin’s vehicle was in the intersection. This observation, made by an experienced law-enforcement officer, provided objective evidence from which a reasonable police officer could have concluded that a traffic violation had occurred. When, as here, an officer personally observes what he reasonably believes to be a traffic violation, the officer has probable cause to initiate a traffic stop.¹² The trial court erred in reaching its legal conclusion that Sgt. Hayslip lacked an appropriate justification to stop Cronin’s vehicle.

{¶14} The state next urges this court to review the other evidence adduced at the motion hearing and to determine that there was probable cause to arrest Cronin for operating a motor vehicle while under the influence of alcohol. Sgt. Hayslip testified at the hearing that Cronin had smelled of alcohol, that his eyes were bloodshot, that he had admitted drinking, and that he had failed several field sobriety tests. Because the trial court erroneously determined that Sgt. Hayslip lacked a constitutional basis to stop

⁸ See *State v. Leonard* at ¶14.

⁹ See *State v. Deters*, 128 Ohio App.3d at 333, 714 N.E.2d 972; see, also, *State v. Whitty*, 1st Dist. Nos. C-100101 and C-100102, 2010-Ohio-5847, ¶15.

¹⁰ See *Bowling Green v. Godwin* at ¶15.

¹¹ *Id.*

¹² See *id.* at ¶16; see, also, *State v. Leonard* at ¶15, citing *Bowling Green v. Godwin* at ¶13 (“Our determination that the officer had probable cause to believe that an offense had been committed obviates our need to separately consider the lesser standard of reasonable suspicion.”).

Cronin, it chose not to “make any decision regarding whether the officer was in substantial compliance” with the NHTSA guidelines.

{¶15} In the absence of the trial court’s findings of historical fact regarding whether Cronin was under the influence of alcohol and its legal conclusions surrounding those facts, the trial court has not fully “determined” the motion as required under Crim.R. 12(E), and thus those issues are not ripe for our review.¹³ The assignment of error is otherwise sustained.

{¶16} Therefore, the trial court’s entry granting Cronin’s motion to suppress is reversed on the grounds that Sgt. Hayslip possessed probable cause to stop Cronin and to investigate any illegal activity that became apparent to him pursuant to that lawful stop. This case is remanded for further proceedings consistent with law and this decision.

Judgment reversed and cause remanded.

SUNDERMANN and HENDON, JJ., concur.

Please Note:

The court has recorded its own entry on the date of the release of this opinion.

¹³ See, also, *State v. Deters*, 128 Ohio App.3d at 334, 714 N.E.2d 972, and *Ornelas v. United States* (1996), 517 U.S. 690, 116 S.Ct. 1657.