[Cite as *State v. Repp*, 2001-Ohio-7034.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	**JUDGES:**
STATE OF OHIO	:	**Hon. William B. Hoffman, P.J.**
	:	**Hon. Sheila G. Farmer, J.**
Plaintiff-Appellee	:	**Hon. John F. Boggins, J.**
	:	
-vs-	:	
	:	**Case No. 01-CA-11**
DAVID R. REPP	:	
	:	
Defendant-Appellant	:	**O P I N I O N**

CHARACTER OF PROCEEDING:	**Criminal appeal from the Knox County Common Pleas Court Case NO. 00CR110081**
JUDGMENT:	**Affirmed**
DATE OF JUDGMENT ENTRY:	**12/28/2001**

APPEARANCES:

For Plaintiff-Appellee	**For Defendant-Appellant**
JOHN BAKER **Prosecuting Attorney** **114 East Chestnut Street** **Mount Vernon, Ohio 43050**	**JAMES A. GILES** **109 East High Street** **Mount Vernon, Ohio 43050**

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STATEMENT OF THE FACTS AND CASE

On April 23, 2000, Mount Vernon Police Department Patrolman Matthew Dailey initiated a traffic stop of Appellant, David R. Repp, after noticing a large crack across the middle of the driver's side windshield. Appellant was also not wearing his safety belt.

After effectuating the stop, a check was run on Appellant's license plates which revealed that his registration was expired.

At that time, Appellant was cited for expired license plates, failure to wear his safety belt and driving an unsafe vehicle.

As a result of the expired license plates, Appellant's vehicle was impounded and an inventory search was conducted.

The inventory search produced miscellaneous drug paraphernalia and a small bag containing brown and white mushrooms.

On November 6, 2000, Appellant was indicted by the Knox County Grand Jury on one count of Aggravated Possession of Drugs, a fifth degree felony, in violation of R.C.§2925.11(A).

On December 7, 2000, Appellant filed a Motion to Suppress and on January 18, 2001, filed a supplement to said motion.

On February 9, 2001, the trial court held an oral hearing on Appellant's Motion to Suppress, and at said time provided the parties with an opportunity to file written briefs on the suppression issues.

By Judgment Entry dated February 22, 2001, after receiving and reviewing the

written briefs filed in this matter, the trial court overruled Appellant's Motion to Suppress.

On February 27, 2001, Appellant entered a plea of "no contest" to the charge contained in the indictment.

On May 17, 2001, Appellant was sentenced to a 3-year term of community control and a six month driver's license suspension.

Appellant timely appealed and his sentence has been stayed pending appeal.

Appellant's sole assignment of error is as follows:

ASSIGNMENT OF ERROR

> **THE TRIAL COURT ERRED IN FINDING THAT THE INITIAL INVESTIGATIVE STOP AND DETENTION OF THE APPELLANT WAS LAWFUL AND IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE FOUND DURING A SUBSEQUENT INVENTORY SEARCH OF APPELLANT'S VEHICLE.**

The sole issue raised on appeal is whether the trial court erred in overruling Appellant's Motion to Suppress and finding that the stop and detention of Appellant were lawful.

There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the findings of fact are against the manifest weight of the evidence. *See:*

State v. Fanning **(1982), 1 Ohio St.3d 19, 437 N.E.2d 583;** ***State v. Klein*** **(1991), 73 Ohio App.3d 486, 597 N.E.2d 1141,** ***State v. Guysinger*** **(1993), 86 Ohio App.3d 592, 621 N.E.2d 726. Secondly, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact.** ***See: State v. Williams*** **(1993), 86 Ohio App.3d 37, 619 N.E.2d 1141. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case.** ***State v. Curry*** **(1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172,** ***State v. Claytor*** **(1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906, 908, and** ***State v. Guysinger*** **(1993), 86 Ohio App.3d 592, 621 N.E.2d 726. As the United States Supreme Court held in** ***Ornelas v. U.S.*** **(1996), 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed** ***de novo*** **on appeal." In this case, we are concerned with whether the trial court decided the ultimate issue raised in the motion to suppress. Therefore, we must independently determine whether the facts of this case warranted a the stop and detention of appellant's vehicle. In** ***Dayton v. Erickson*** **(1996), 76 Ohio St.3d 3, the Supreme Court of Ohio stated that "where an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation,** ***including a minor traffic violation,*** **the stop is constitutionally valid regardless of the**

officer's underlying subjective intent or motivation for stopping the vehicle in question ." (Emphasis added.) *Id.* at 11-12.

In the case *sub judice*, Patrolman Dailey stopped Appellant for driving an unsafe vehicle; i.e. having a cracked windshield, in violation of Mount Vernon Ordinance No. 337.01(A), which reads:

> **337.01 DRIVING UNSAFE VEHICLES**
>
> **(a) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any street any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or property.**
>
> **(b) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.**
>
> **(c) The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers or agricultural tractors except as made applicable to such articles of machinery.**

This ordinance appears to mirror Ohio traffic law which provides that no person shall drive any vehicle "which is in such unsafe condition as to endanger any person." R.C. §4513.02(A):

> **(A) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person.(B) When directed**

> **by any state highway patrol trooper, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection under division (B)(1) or (2) of this section, as appropriate, and such tests as are necessary**

Patrolman Dailey clearly articulated in the cause *sub judice* that he stopped appellant's car because the cracked windshield was unsafe. With that in mind, we note the following requirement in Ohio Adm.Code 4501: 2-1-11 concerning motor vehicle equipment safety standards: "Every motor vehicle shall be equipped with safety glass as required in Section 4513.26 of the Revised Code: Such glass shall be free of discoloration or diffusion, *cracks* and unauthorized obstructions ..." (Emphasis added.)

The promulgation of this regulation is expressly authorized by R.C. §4513.02. Thus, the rule carries the full force and effect of law. *See Chicago Pacific Corp. v. Limbach* (1992), 65 Ohio St.3d 432, 435; *Doyle v. Ohio Bur. of Motor Vehicle* (1990), 51 Ohio St.3d 46 at paragraph one of the syllabus. This regulation clearly requires that windshield safety glass shall be free from, among other things, cracks. It is uncontroverted below that there was a large crack in appellant's front windshield. His vehicle was thus operating in contravention of Ohio Adm.Code 4501:2-1-11 and he was in violation of the law.

We have reviewed the record in this case, and find from the photographs that there was a substantial crack on the driver's side of the front windshield. Said crack appears to be between one and two feet long and extends into the driver's viewing area. The size and placement of this crack was sufficient to create a reasonable

suspicion that R.C. §4513.02 was being violated.

We find Appellant's sole assignment of error to be without merit.

Appellant's assignment of error is overruled.

[Cite as *State v. Repp*, 2001-Ohio-7034.]

The judgment of the Knox County Court of Common Pleas is affirmed.

By Boggins, J.

Hoffman, P.J. and

Farmer, J. concur

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JUDGES

[Cite as *State v. Repp*, 2001-Ohio-7034.]

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
	:	
-vs-	:	**JUDGMENT ENTRY**
	:	
	:	
DAVID R. REPP	:	
	:	
Defendant-Appellant	:	**CASE NO. 01-CA-11**

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Knox County, Ohio is affirmed. Costs to be assessed to be Appellant.

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JUDGES