

COURT OF APPEALS  
MORROW COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
	:	Hon: William B. Hoffman, J.
Plaintiff-Appellant	:	Hon: Sheila G. Farmer, J.
	:	
-vs-	:	
	:	Case No. 2009-CA-0010
LAWRENCE G. KENDALL	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Criminal appeal from the Morrow County Municipal Court, Case No. 2009TRC1420
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	January 25, 2010
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APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

ERIC C. PENKAL  
Assistant Prosecutor  
60 East High Street  
Mt. Gilead, OH 43338

ROBERT E. CESNER, JR.  
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*Gwin, P.J.*

{¶1} Upon our granting of the state's motion to reconsider this court is asked to consider whether the trial court's ruling on plaintiff-appellant state of Ohio's sole assignment of error, concerning the trial court's ruling granting the defendant-appellee's motion to suppress should be reversed.

{¶2} Plaintiff-appellant the State of Ohio appeals the August 12, 2009 Judgment Entry of the Morrow County Municipal Court granting defendant-appellee Lawrence G. Kendall's motion to suppress evidence.

{¶3} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶4} "(E) Determination and judgment on appeal. The appeal will be determined as provided by App. R. 11. 1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form. The decision may be by judgment entry in which case it will not be published in any form."

{¶5} One of the important purposes of accelerated calendar is to enable an appellate court to render a brief and conclusory decision more quickly than in a case on the regular calendar where the briefs, facts and legal issues are more complicated. *Crawford v. Eastland Shopping Mall Assn.* (1983), 11 Ohio App.3d 158.

{¶6} Further, we note a reviewing court is not authorized to reverse a correct judgment merely because it was reached for the wrong reason. *State v. Lozier* (2004), 101 Ohio St.3d 161, 166, 2004-Ohio-732 at ¶46, 803 N.E.2d 770, 775. [Citing *State ex*

*rel. McGinty v. Cleveland City School Dist. Bd. of Edn.* (1998), 81 Ohio St.3d 283, 290, 690 N.E.2d 1273]; *Helvering v. Gowranus* (1937), 302 U.S. 238, 245, 58 S.Ct. 154, 158.

{¶7} This appeal shall be considered in accordance with the aforementioned rule.

#### STATEMENT OF THE FACTS AND CASE

{¶8} On May 22, 2009, the Defendant-Appellee was stopped and subsequently cited for operating a vehicle with a cracked windshield in violation of R.C. 4513.24, failure to wear a safety belt in violation of R. C. 4513.263(B)(1), and for OVI in violation of R.C. 4511.19(A)(1)(a)/(A)(2).

{¶9} Appellee challenged the basis for the charges by filing a Motion to Suppress. The Trial Court conducted a hearing on the Motion, at which time appellant offered the testimony of Ohio State Highway Patrol Trooper Mason Boyce.

{¶10} Trooper Boyce testified that on May 22, 2009 at 3:00 P.M. he stopped appellee after observing the appellee driving a vehicle with a cracked windshield and failing to wear a safety belt. Trooper Boyce stated in his report that he immediately detected a strong odor of alcohol coming from the appellee's breath and from inside the vehicle. Trooper Boyce placed appellee into the patrol car, when doing so he observed that the appellee had bloodshot and glassy eyes, slurred speech, and an unsteady gate.

{¶11} The appellee's passenger, when confronted by the officer for providing false information, attempted to flee the scene. The trooper had to pursue to the appellee's passenger and left appellee in his patrol care until other officers arrived. The passenger was soon apprehended and charged with possessing drug paraphernalia, providing false information, and resisting arrest. Due to the commotion caused by the

passenger appellee was not requested to submit to field sobriety tests, until after he was arrested and transported to the Morrow County Jail.

{¶12} Appellee was cited under R.C. 4513.24, which states in relevant part:

{¶13} “(A) No person shall drive any motor vehicle on a street or highway in this state, other than a motorcycle or motorized bicycle, that is not equipped with a windshield.”

{¶14} At the conclusion of Trooper Boyce’s testimony, the trial court observed:

{¶15} “Now, we have more problem than what you gentlemen are bringing forth in [sic.] on this case. I’m going to go back to reasonable articulable suspicion to stop.

{¶16} “During the film I watched that gentleman’s windshield the best I could. I could not see where it was obstructed at all. And then I went to the statute and I couldn’t find in the statute cited where it said that a crack was a violation. So maybe there is an incorrect citation ...

{¶17} “\* \* \*

{¶18} “Now, it is my understanding that if the statute does say cracked windshield, the case law says it has to obstruct your vision. I could not see where it obstructed the gentleman’s vision. So if you guys want to submit some information on that, I think that is all the further we have to go on this case. There is no bad driving, no lack of a turn signal. Officer admitted he pulled him over for a cracked windshield and a seat belt. Seat belt he can’t pull him over for.

{¶19} “So we are down to the cracked windshield and again, it is my understanding it has to interfere with his ability to see and if it doesn’t then that’s not an offense either. So we don’t have any offense to pull him over for.

{¶20} “I’ll give you a couple of weeks to provide me information on that. Like I say, I couldn’t even find in the statute, in the ticket, cited in the ticket, where it said anything about cracked windshield. One paragraph had to do with putting placards and stickers on your windshield and you had to have a windshield, but I didn’t see anything about a cracked windshield.

{¶21} “So I always understood that there was a statute on a cracked windshield, but it had to obstruct your vision. In other words, it had to be spiderwebbed [sic.] to the extent you couldn’t see through your windshield safely.

{¶22} “And like I said, I was watching it on the tape and I could see all the cars looking through his back window and his windshield I could see -- watch all the cars go by the front of his van and there wasn’t any testimony on that anyway.”

{¶23} (T. at 53-54).

{¶24} After reviewing the written briefs submitted by the parties, the court granted the appellee’s motion to suppress on the basis that the trooper lacked reasonable and articulable suspicion to stop the appellee’s vehicle.

{¶25} Appellant now appeals, assigning as error:

{¶26} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO FIND THAT THE TROOPER HAD REASONABLE AND ARTICULABLE SUSPICION TO STOP THE DEFENDANT-APPELLE’S [SIC.] VEHICLE WHERE THE TROOPER OBSERVED A VIOLATION OF BOTH ORC § 4513.24 AND ORC § 4513.26.3.”

## I.

{¶27} The state presents a single assignment of error for review in which it argues that the trial court should not have granted appellee's motion to suppress. We disagree.

{¶28} Our brethren in the Second District rejected the state's argument. *State v. Latham*, Montgomery App. No. 20302, 2004-Ohio-2314. In *Latham* the Court noted,

{¶29} "The State argues that when R.C. 4513.02(A) and O.A.C. 4501:2-1-11 are read in conjunction, it becomes a violation of R.C. 4513.02(A) to operate a vehicle with any cracks in the windshield. Thus, under the State's interpretation, any crack in the windshield, regardless of how minor, renders the vehicle in an unsafe condition such that its operation would endanger persons. We disagree.

{¶30} "O.A.C. 4501:2-1-11 is the administrative section for Motor Vehicle Inspection by the state highway patrol. Thus, we agree with the trial court that this section of the administrative code relates to R.C. 4513.12(B) that authorizes the state highway patrol to stop and inspect vehicles. Although we agree that administrative agencies' rules that are issued pursuant to statutory authority have the force and effect of law, we do not agree that O.A.C. 4501:2-1-11 was issued pursuant to any authority set out in R.C. 4513.02(A). This is in marked contrast to R.C. 4513.241 that specifically authorizes the director of public safety to adopt rules governing the use of tinted glass on vehicle windshields as is set out in O.A.C. 4501-41." *Id.* at ¶ 17-18.

{¶31} The Court concluded that the simple appearance of a crack in a windshield does not give rise to a reasonable suspicion of a violation of R.C. 4513.02(A). *State v. Latham*, Montgomery App. No. 20302, 2004-Ohio-2314 at ¶ 19.

Rather, this Court has recognized that the size and placement of the crack must be sufficient to create a reasonable suspicion that R.C. 4513.02 was being violated. *State v. Repp*, Knox 01-CA-11, 2001-Ohio-7034.

**{¶32}** In the case at bar, the appellant concedes that at the suppression hearing Trooper Boyce could not recall anything about the crack in appellee's windshield. The trial judge who reviewed the videotape of the traffic stop noted, "I could not see where it obstructed the gentleman's vision." Further, the judge agreed, "there wasn't any testimony on that anyway."

**{¶33}** The trial court was unable to see any crack or other obstruction in the windshield on the videotape of the traffic stop. Having reviewed the record before us, we agree with the trial court. There is no testimony as to the location or the size of the crack that Trooper Boyce contends prompted him to stop appellee's vehicle. Considering the lack of testimony on the size and location of the crack in appellee's windshield, we cannot find that the officer had a reasonable suspicion that the windshield crack had rendered the operation of the vehicle unsafe and in violation of R.C. 4513.02(A).

**{¶34}** Therefore, as the officers lacked a reasonable suspicion of a traffic violation to stop appellee, the trial court was proper in granting appellee's motion to suppress.

**{¶35}** The State's assignment of error is without merit and is overruled.

By Gwin, P.J.,

Hoffman, J., and

Farmer, J., concur

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HON. W. SCOTT GWIN

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HON. WILLIAM B. HOFFMAN

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HON. SHEILA G. FARMER

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IN THE COURT OF APPEALS FOR MORROW COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellant

-VS-

LAWRENCE G. KENDALL

Defendant-Appellee

JUDGMENT ENTRY

CASE NO. 2009-CA-0010

For the reasons stated in our accompanying Memorandum-Opinion, the State's assignment of error is without merit and is overruled. Costs to appellant.

HON. W. SCOTT GWIN

HON. WILLIAM B. HOFFMAN

HON. SHEILA G. FARMER