[Cite as *Mt. Vernon v. Young*, 2010-Ohio-2501.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF MOUNT VERNON

Plaintiff-Appellee

-vs-

TAMMY YOUNG

Defendant-Appellant

JUDGES:
Hon. Julie A. Edwards, P. J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 09 CA 30

O P I N I O N

CHARACTER OF PROCEEDING: Criminal Appeal from the Mount Vernon Municipal Court, Case No. 09 TRC 278

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 3, 2010

APPEARANCES:

For Plaintiff-Appellee

WILLIAM D. SMITH
LAW DIRECTOR
P. ROBERT BROEREN, JR.
ASSISTANT LAW DIRECTOR
5 North Gay Street, Suite 222
Mount Vernon, Ohio 43050

For Defendant-Appellant

BRUCE J. MALEK
BRANDON S. CRUNKILTON
MCFEVITT, MAYHEW & MALEK
One Public Square
Mount Vernon, Ohio 43050

Wise, J.

{¶1} Appellant Tammy Young appeals the decision of the Mount Vernon Municipal Court, Knox County, which denied her motion to suppress evidence in a DUI case. The relevant facts leading to this appeal are as follows.

{¶2} On the morning of January 20, 2009, the Mount Vernon Police Department received an anonymous tip that appellant was leaving her place of employment and appeared to be intoxicated. The tipster also described the white truck appellant would be driving.

{¶3} The information was relayed to Sergeant Troy Glazier. A few minutes after 7:00 AM, from a position in his cruiser on Coshocton Avenue, Glazier observed a white Ford pickup truck pass by. The officer began following, observing that a headlight was out and that fallen snow was partially obscuring the truck's rear license plate. Glazier activated the overhead lights on his cruiser and initiated a traffic stop. Appellant, the driver of the pickup, drove a short distance into a nearby grocery store parking lot and stopped.

{¶4} Glazier approached appellant's truck and conversed with appellant. He noticed a moderate odor of alcoholic beverage on appellant's breath, and observed that appellant's speech was slurred. He also observed that appellant had glassy eyes and seemed somewhat confused.

{¶5} Glazier asked appellant to take a portable breath test, which she agreed to do. The test indicated the presence of alcohol. Glazier also asked her to perform field sobriety testing, to which she also agreed. The officer thereupon placed appellant under arrest for operating a motor vehicle under the influence of alcohol, under Section

333.01(a)(1)(A) of the Mount Vernon City Ordinances. Appellant was also cited for failure to have two operable headlights under Section 337.03 of the MVCO.

{¶6} After Glazier and appellant arrived at the Knox County Sheriff's Office, appellant voluntarily took a breathalyzer test, which indicated a BAC level of .244.

{¶7} Appellant appeared before the trial court and initially pled not guilty to both charges. Appellant filed a motion to suppress on April 22, 2009. A suppression hearing went forward on May 13, 2009. On the same day, the trial court denied appellant's motion to suppress.

{¶8} Appellant thereafter pled no contest to the charge of operating a vehicle while under the influence of alcohol. The trial court found her guilty and sentenced her to 180 days in jail, with 174 days suspended, as well as five years of community control. In addition, appellant's driver's license was suspended, and she was fined $500.00. The headlight violation charge was dismissed.

{¶9} On June 25, 2009, appellant filed a notice of appeal. She herein raises the following three Assignments of Error:

{¶10} "I. THE TRIAL COURT ERRED BY OVERRULING A DEFENSE MOTION TO SUPPRESS THE STOP/DETAINMENT OF MS. YOUNG AS THE OFFICERS WERE UNABLE TO ARTICULATE ANY PLAUSIBLE REASONABLE SUSPICION.

{¶11} "II. THE TRIAL COURT ERRED BY OVERRULING A DEFENSE MOTION TO SUPPRESS THE RESULTS OF A BREATHALYZER TEST THAT WAS NOT CONDUCTED IN COMPLIANCE WITH THE REGULATIONS PROMULGATED BY THE OHIO DEPARTMENT OF HEALTH.

{¶12} "III. THE TRIAL COURT ERRED BY OVERRULING A DEFENSE MOTION TO SUPPRESS EVIDENCE OBTAINED DURING THE ILLEGAL SEARCH OF MS. YOUNG'S VEHICLE."

Standard of Review

{¶13} 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 finding of fact. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. Finally, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this third 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 the 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; *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, 1663, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

I.

{¶14} In her First Assignment of Error, appellant argues the trial court erred in denying her motion to suppress the evidence stemming from the traffic stop. We disagree.

{¶15} "It is well-settled law in Ohio that reasonable and articulable suspicion is required for a police officer to make a warrantless stop." *State v. Bay*, Licking App.No.

06CA113, 2007-Ohio-3727, ¶ 64, citing *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. " * * * [R]easonable suspicion is not proof beyond a reasonable doubt, but is judged by all the surrounding circumstances." *State v. Boyd* (Oct. 10, 1996), Richland App.No. 96-CA-3. However, when police observe a traffic offense being committed, the initiation of a traffic stop does not violate Fourth Amendment guarantees, even if the stop was pretextual or the offense so minor that no reasonable officer would issue a citation for it. *State v. Mullins,* Licking App.No. 2006-CA-00019, 2006 WL 2588770, ¶ 26, citing *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 1774-75.

{¶16} In the case sub judice, we first consider Sergeant Glazier's observation of an accumulation of snow partially obscuring appellant's rear license plate. R.C. 4503.21(A) states in pertinent part: "No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the front and rear of the motor vehicle the distinctive number and registration mark, including any county identification sticker and any validation sticker issued under sections 4503.19 and 4503.191 of the Revised Code, furnished by the director of public safety ***." In *State v. Molek*, Portage App.No. 2001-P-0147, 2002-Ohio-7159, the Eleventh District Court of Appeals, analyzing an officer's stop of a vehicle based on partial obstruction of a license plate by snow, reiterated that "a police officer's observation of a violation of R.C. 4503.21 provides not only reasonable suspicion, but also probable cause to perform a traffic stop." Id. at ¶ 25, citing *State v. Durfee* (Mar. 6, 1998), Lake App.No. 96-L-198, 1998 WL 156857.[1]

[1] The Court in *Molek* nonetheless concluded under the facts of that case that "[a]lthough there may have been snow on [the defendant's] license plate, it was not obstructing any of the identifying characters." Id. at ¶ 30. In the case sub judice, in

{¶17} The Ohio Supreme Court has aptly recognized that snow and ice are part of wintertime life in Ohio. See *Lopatcovich v. Tiffen* (1986), 28 Ohio St.3d 204, 503 N.E.2d 154. However, we are not herein inclined to create a bright-line rule for traffic stops based solely on snow-covered license plates, as in the case sub judice Sergeant Glazier also observed a non-working headlight on appellant's truck. R.C. 4513.04(A) states as follows: "Every motor vehicle, other than a motorcycle, and every trackless trolley shall be equipped with at least two headlights with at least one near each side of the front of the motor vehicle or trackless trolley." Generally, a traffic stop by a law enforcement officer for a defendant's malfunctioning headlight is proper. See *State v. Fausnaugh* (April 30, 1992), Ross App.No. 1778, 1992 WL 91647, citing *State v. Jones* (Feb. 13, 1991), Ross App. No. 1620. At the suppression hearing in this matter, appellant's counsel presented still photographs gleaned from the cruiser's video camera, which appeared to show both headlights working on appellant's truck. However, when cross-examined, Sergeant Glazier explained that this was attributable to appellant's utilization of her high-beam lights. Tr. at 35

{¶18} Thus, Sergeant Glazier based his stop on a combination of an anonymous tip of possible drunk driving, a partially snow-covered license plate, and observation of a malfunctioning low-beam headlight. Based upon the totality of the circumstances, we hold the State presented sufficient evidence to support a finding of reasonable suspicion to conduct the traffic stop. At that point, the officer's observation of the indicia of intoxication (odor of alcoholic beverage, slurred, confused speech, and glassy eyes)

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contrast, Sergeant Glazier could not read four numerals on appellant's plate until he wiped away the snow following the traffic stop. See Tr. at 8.

justified a further investigatory detention. Therefore, the trial court did not err in denying appellant's motion to suppress on these grounds.

{¶19} Appellant's First Assignment of Error is overruled.

II.

{¶20} In her Second Assignment of Error, appellant argues the trial court erred in denying the motion to suppress on the basis that the testing did not comply with the pertinent ODH regulations. We disagree.

{¶21} R.C. 4511.19(D) requires that the analysis of bodily substances be conducted in accordance with methods approved by the Ohio Director of Health, as prescribed in Ohio Administrative Code regulations. *State v. Raleigh,* Licking App.No. 2007-CA-31, 2007-Ohio-5515, ¶ 40. A related section, R.C. 3701.143, states: "For purposes of sections 1547.11, 4511.19, and 4511.194 of the Revised Code, the director of health shall determine, or cause to be determined, techniques or methods for chemically analyzing a person's whole blood, blood serum or plasma, urine, breath, or other bodily substance in order to ascertain the amount of alcohol, a drug of abuse, controlled substance, metabolite of a controlled substance, or combination of them in the person's whole blood, blood serum or plasma, urine, breath, or other bodily substance. ***."

{¶22} Regulations promulgated by the Director of Health in OAC 3701-53-02(D) state in pertinent part that breath samples "shall be analyzed according to the operational checklist for the instrument being used." The operational checklist in this case includes observing the person being tested for twenty minutes prior to testing to

prevent oral intake of any material. See State's Exhibit 3; BAC Datamaster Subject Test Form.

{¶23} The Ohio Supreme Court has held that absent a showing of prejudice by the defendant, rigid compliance with ODH regulations is not required as such compliance is not always humanly or realistically possible. *State v. Plummer* (1986), 22 Ohio St.3d 292, 294, 490 N.E.2d 902. See, also, *State v. Morton* (May 10, 1999), Warren App.No. CA98-10-131. However, in *State v. Kirkpatrick* (June 1, 1988), Fairfield App. No. 43-CA-87, we concluded "that the twenty-minute observation period is mandatory and that there be no oral ingestion of any material during that observation period." Nonetheless, in *State v. Steele* (1977), 52 Ohio St.2d 187, 370 N.E.2d 740, the Ohio Supreme Court recognized that once the officer demonstrates it was highly improbable that the subject ingested any item during the twenty-minute period, it was up to the defendant to overcome that inference with proof that he or she had ingested some substance. Moreover, ingestion has to be more than just "hypothetically possible." *Steele* at 192, 370 N.E.2d 740.

{¶24} The video evidence in the case sub judice indicates that appellant put something in her mouth during the time she was being transported to the Sheriff's Office. However, Sergeant Glazier testified that it was his normal procedure not to commence his twenty-minute observation until after arrival at the office. Tr. at 41. Glazier testified that based on his face-to-face conversation with appellant, it did not appear that she had anything in her mouth during the twenty-minute observation period. Id. We have previously recognized that "[a] mere assertion that ingestion during the twenty-minute period was hypothetically possible, without more, does not render the

test results inadmissible." *State v. Moberger*, Delaware App.No. 08CAC060030, ¶ 36, citing *Raleigh,* supra, at ¶ 51.

{¶25} We therefore hold the motion to suppress was also properly denied on this issue. Appellant's Second Assignment of Error is overruled.

III.

{¶26} In her Third Assignment of Error, appellant contends the trial court committed reversible error in not suppressing the results of the inventory search of her truck. We disagree.

{¶27} To satisfy the Fourth Amendment, an inventory search of a lawfully impounded vehicle must be conducted in good faith and in accordance with reasonable standardized procedures or established routine. *State v. Howard*, 146 Ohio App.3d 335, 342, 766 N.E.2d 179, citing *State v. Hathman* (1992), 65 Ohio St.3d 403, 604 N.E.2d 743, paragraph one of the syllabus. If during a valid inventory search of a lawfully impounded vehicle a law enforcement officer discovers a closed container, the container may be opened only as part of the inventory process if there is in existence a standardized policy or practice specifically governing the opening of such containers. *Id.* citing *Hathman* at paragraph two of the syllabus.

{¶28} In the case sub judice, Officer Tim Arnold, who assisted Sergeant Glazier, discovered two vodka bottles in appellant's handbag while conducting the disputed inventory search. However, appellant herein was charged with DUI based on Glazier's earlier observations of appellant and the breathalyzer test result of .244; no additional charges stemmed per se from the discovered vodka bottles. While the presence of the bottles may have provided some corroborative evidence of appellant's alcohol

consumption, under these circumstances we conclude the trial court's alleged error in denying appellant's motion to suppress the inventory search was harmless. Cf. *State v. Fink*, Warren App.Nos. CA2008-10-118, CA2008-10-119, 2009-Ohio-3538, ¶ 47, citing *State v. Norris,* 168 Ohio App.3d 572, 861 N.E.2d 148, 2006-Ohio-4325, ¶ 13-17.

{¶29} Appellant's Third Assignment of Error is therefore overruled.

{¶30} For the reasons stated in the foregoing opinion, the judgment of the Mount Vernon Municipal Court, Knox County, Ohio, is affirmed.

By: Wise, J.

Edwards, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES

JWW/d 0416

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF MOUNT VERNON	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
TAMMY YOUNG	:	
	:	
Defendant-Appellant	:	Case No. 09 CA 30

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Mount Vernon Municipal Court, Knox County, Ohio, is affirmed.

Costs assessed to appellant.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES