

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
WOOD COUNTY

State of Ohio/City of Bowling Green

Court of Appeals No. WD-04-094

Appellee

Trial Court No. 03-TRC-09727

v.

Bradley F. Godwin

**DECISION AND JUDGMENT ENTRY**

Appellant

Decided: June 24, 2005

\* \* \* \* \*

Matthew L. Reger, Bowling Green Municipal Court Prosecutor, for appellee.

Albert Potter, II, for appellant.

\* \* \* \* \*

SINGER, P.J.

{¶1} This is an appeal from a judgment of conviction for driving under the influence of alcohol, following a no contest plea in the Bowling Green Municipal Court. Because we find that the trial court erred in denying appellant's motion to suppress, we reverse.

{¶2} The facts of this case are as provided in the agreed statement submitted pursuant to Appellate Rule 9(D).

{¶3} On November 14, 2003 at 2:18 a.m. a Bowling Green Police Officer observed appellant, Bradley F. Godwin, exit a municipal parking lot by means of a

driveway marked with "Wrong Way Do Not Enter" and "No Left/Right Turn" signs. The officer stopped appellant for failure to obey a traffic control device.

{¶4} Based upon observations following the traffic stop, the officer arrested appellant for operating a motor vehicle under the influence of alcohol. Appellant was also charged with failure to obey a traffic control device.

{¶5} Appellant moved to suppress evidence from the traffic stop, arguing that the traffic sign he allegedly disobeyed was improper and could not serve as a basis for a permissible stop.

{¶6} On July 29, 2004, the trial court held a hearing on appellant's motion to suppress and denied the motion in part. The trial court found that the Bowling Green Traffic Commission did not authorize the "Wrong Way Do Not Enter" and "No Left/Right Turn" signs. As a result, the court dismissed the offense of failure to obey a traffic control device. The trial court denied the remainder of the motion, finding that an officer's ignorance of a traffic control sign's authorization does not necessarily render an investigatory stop unreasonable.

{¶7} Following the trial court's ruling, appellant amended his plea to no contest and was found guilty of a violation of R.C. 4511.19(A)(1). Appellant now appeals setting forth the following assignment of error:

{¶8} "The traffic stop of the appellant was unlawful for the reason the officer could not have had reasonable articulable suspicion appellant was violating the law where the traffic sign was a nullity."

{¶9} The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable searches and seizures. The temporary detention of a person during a traffic stop is a seizure. *State v. Vass*, Mahoning App. No. 01CA 4, 2002 Ohio 6887, ¶ 12, citing *Delaware v. Prouse* (1979), 440 U.S. 648. There are two types of traffic stops, with a different constitutional standard applying to each. *State v. Moeller* (Oct. 23, 2000), Butler App. No. CA99-07-128.

{¶10} The first is the ordinary stop in which a police officer witnesses a violation of the traffic code and stops the motorist to issue a citation, a warning, or effect an arrest. For such a traffic stop, there must be probable cause. *Id.* Probable cause is a "reasonable ground for belief or guilt." *State v. Moore* (2000), 90 Ohio St.3d 47, 49, quoting *Carroll v. U.S.* (1925), 267 U.S. 132, 161.

{¶11} The second variety of a traffic stop is an investigatory stop. An investigatory stop is the motorized equivalent of a "Terry" stop, *State v. Moeller*, *supra*; see *Terry v. Ohio* (1968), 392 U.S. 1, and requires the *Terry* standard to be constitutionally acceptable: "articulable and reasonable suspicion" that an offense has been or is being committed. *Delaware v. Prouse*, *supra* at 663.

{¶12} In a motion to suppress, the state has the burden of proving, by at least a preponderance of the evidence, that a traffic stop was initiated with sufficient cause. *Athens v. Wolf* (1974), 38 Ohio St.2d 237, 241. Consequently, when reviewing the factual findings of the trial court considering the motion to suppress, the reviewing court is bound to accept those findings when they are supported by competent credible

evidence. *State v. Rutherford* (1994), 93 Ohio App.3d 586, 592. In this case, the parties have agreed on the facts. Accepting these facts as true, we must then, independently determine as a matter of law whether these facts meet the applicable standard to justify a traffic stop. *Id.*

{¶13} In this case, the officer stopped appellant for what he thought was a traffic violation, an illegal exit from a municipal parking lot. Normally, observation of a traffic violation provides the police with probable cause to initiate a traffic stop. *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, 9. However, as held by the trial court, there can be no violation of a failure by appellant to obey a traffic control device when the device lacks the proper official authorization.

{¶14} This court dealt with a similar issue in *State v. Berry*, 6th Dist. No. WD-02-043, 2003 Ohio 1620. In fact, the *Berry* case involved the exact same municipal lot. While the lot's signage has changed, our result does not.

{¶15} In *Berry*, this court set forth that in "order to form the basis for criminal liability, [a] sign must be 'official', and it must be in a 'proper position' and 'sufficiently legible.'" *State v. Berry*, supra, at ¶ 8; see also *City of Maple Heights v. Smith* (1999), 131 Ohio App.3d 406, 410. The signage at issue in *Berry* was not recognized by the Ohio Manual of Traffic Control Devices. As a result, we held that such a sign is a nullity, i.e. it does not exist under Ohio law, and cannot serve as a reasonable basis for a traffic stop. *State v. Berry*, supra, at ¶ 12

{¶16} In an attempt to correct the problems in *Berry*, the city of Bowling Green replaced the old signage with those currently at issue. However, the "Wrong Way Do

Not Enter" and "No Left/Right Turn" replacement signs lack the proper authorization as required by the Bowling Green Municipal Code. These new signs are not "official."

Absent the requisite governmental approval, a traffic control device nears the realm of arbitrary. Though we are drawing a technical distinction, such distinction is necessary in order to separate traffic control devices endorsed by the proper authorities and those possibly placed at a person's whim.

{¶17} As this court previously held in *Berry*, "one is not engaged in criminal behavior by violating a non-conforming sign." *State v. Berry*, supra, at ¶ 9. Accordingly, the officer did not observe a traffic violation because the "Wrong Way Do Not Enter" and "No Left/Right Turn" signs were not enforceable. Absent an offense, there is no reason to stop appellant's vehicle.

{¶18} As a result, appellant's sole assignment of error is found well taken.

{¶19} Upon consideration whereof, the judgment of the Bowling Green Municipal Court is reversed. Appellee, the city of Bowling Green, is ordered to pay the costs of this appeal for which sum judgment is rendered against appellee on behalf of Wood County and for which execution is awarded. See App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Arlene Singer, P.J.

\_\_\_\_\_  
JUDGE

William J. Skow, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

Dennis M. Parish, J., dissents and writes separately.

{¶20} I respectfully dissent from the majority opinion in this case.

{¶21} It should be noted that this case deals with the exact same parking lot signage that was successfully challenged in the *Berry* case. In response to *Berry*, signs *fully conforming* to the Ohio Manual of Uniform Traffic Control Devices ("OMUTCD") were subsequently erected. Despite legitimate signs in full conformity with relevant regulations and a driver who violated the sign, the majority holds that the officer nevertheless lacked "reasonable articulable suspicion" to make the traffic stop.

{¶22} Under the reasoning of the majority, the officer lacked "reasonable articulable suspicion" because the new signs were apparently never officially *reauthorized* by the city of Bowling Green. It is unreasonable to expect that an officer on patrol will have specific knowledge on whether or not conforming traffic signs have received official municipal authorization. On the contrary, absent evidence to suggest a sign may be counterfeit, it is logical for the officer to believe the sign would not be present without proper authorization. Thus, the officer clearly possessed the minimal objective justification to initiate the investigative stop. Accordingly, regardless of whether the state of Ohio could satisfy the "beyond a reasonable doubt" standard for the

suspected sign violation, there was "reasonable articulable suspicion" to warrant the stop.

Therefore, I would find in favor of appellee, and respectfully dissent.