

[Cite as *Lakewood v. Collins*, 2015-Ohio-4389.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 102953

---

**CITY OF LAKEWOOD**

PLAINTIFF-APPELLEE

vs.

**CARL A. COLLINS**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
**AFFIRMED**

---

Criminal Appeal from the  
Lakewood Municipal Court  
Case No. CR-2014TRC04596

**BEFORE:** Blackmon, J., Kilbane, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** October 22, 2015

**FOR APPELLANT**

Carl A. Collins, Pro Se  
12621 Walnut Hill Drive  
North Royalton, Ohio 44133

**ATTORNEYS FOR APPELLEE**

Pamela L. Roessner  
Chief Prosecutor  
City of Lakewood

By: Mandy J. Gwirtz  
City of Lakewood  
Assistant City Prosecutor  
12650 Detroit Avenue  
Lakewood, Ohio 44107

PATRICIA ANN BLACKMON, J.:

{¶1} In this accelerated appeal, appellant Carl A. Collins (“Collins”) appeals *pro se* from the trial court’s denial of his motion to suppress and assigns three errors for our review.<sup>1</sup>

{¶2} Having reviewed the record and pertinent law, we affirm the trial court’s decision. The apposite facts follow.

{¶3} No transcript of the proceedings before the trial court were submitted as part of the appellate record. However, the facts as gleaned from the record and as recited by the trial court in its Memorandum and Order are as follows.

{¶4} On August 29, 2014, Collins was charged with operating a vehicle while under the influence of alcohol in violation of R.C. 4519.11. Collins was also charged with driving with a suspended license, operating a vehicle under the influence of alcohol with refusal to submit to chemical tests and with prior convictions, failure to wear a seatbelt, and failure to stay in marked lanes.

{¶5} Collins entered a plea of not guilty on September 12, 2014. A jury trial was scheduled for December 10, 2014. On October 20, 2014, Collins’s counsel filed a motion to suppress. A hearing was conducted on the motion to suppress. The trial court subsequently denied the motion, stating as follows:

Upon review of the evidence, the court finds that the Trooper had a reasonable, articulable, suspicion to stop the defendant’s motor vehicle. Based upon the police officer’s observations of the defendant, the court finds that there was probable cause for the arrest. Finally, the evidence shows that the officer complied with the requirements to advise the

---

<sup>1</sup> See appendix.

defendant of the consequences of refusal of the chemical test after the defendant's arrest. Based upon the foregoing, the motion to suppress is overruled.

Journal Entry, November 19, 2014.

{¶6} The parties agreed to continue the jury trial to January 9, 2015. On January 2, 2015, defense counsel withdrew as counsel, and Collins filed a letter to the court stating that he wished to represent himself. On that same date, he filed a pro se motion to suppress. At the final pretrial hearing on January 9, 2015, Collins appeared without counsel. Although the trial court allowed Collins the option of additional time to obtain new counsel, Collins agreed to enter a plea of no contest to an amended charge as proposed by the prosecutor. The charge of operating a vehicle while under the influence in violation of R.C. 45119.19, was amended to a violation of Lakewood Codified Ordinances 333.01. The remaining charges were dismissed.

{¶7} The trial court imposed a \$575 fine. Collins was also placed on one year of community control. The conditions for his community control were that he was to attend four monthly alcohol awareness seminars and perform 24 hours of community service. Collins's driver's license was also suspended for 180 days but he was credited for time served on the license suspension.

### **Illegal Stop**

{¶8} In his first assigned error, Collins argues that the officer lacked a reasonable, articulable suspicion that he committed a traffic violation to support a stop of

his vehicle because the video from the officer's dash-cam showed that he did not cross over his lane of travel.

{¶9} Although Collins provided a copy of the dash-cam video, he failed to provide the transcript of the November 19, 2014 suppression hearing for our review. The appellant has the duty to file the transcript or such parts of the transcript that are necessary for evaluating the trial court's decision. App.R. 9(B); *State v. Peterson*, 8th Dist. Cuyahoga No. 96958, 2012-Ohio-87, ¶ 7. Failure to file the transcript prevents an appellate court from reviewing an appellant's assigned errors. *State v. Turner*, 8th Dist. Cuyahoga No. 91695, 2008-Ohio-6648, ¶ 13. Thus, absent a transcript or alternative record under App.R. 9(C) or (D), we must presume regularity in the proceedings below. *State v. Lababidi*, 8th Dist. Cuyahoga No. 96755, 2012-Ohio-267, ¶ 13; *State v. Rice*, 8th Dist. Cuyahoga No. 95100, 2011-Ohio-1929.

{¶10} Although Collins contends the video from the officer's dash-cam was sufficient to prove that the officer lacked reasonable suspicion to conduct an investigative stop, the quality of the video is extremely poor. Our review of the video shows that for most of the time that the officer is following Collins's car, the dash-cam only recorded a blur of lights making it hard to distinguish the surrounding cars from Collins's car and near impossible to see the dividing lane lines. *See State v. Comer*, 10th Dist. Franklin No. 13AP-955, 2014-Ohio-5755 (because dash-cam video was of poor quality to prove the lane violation, the court found that the trial court was correct to rely on officer's testimony). Thus, the officer's testimony was crucial evidence in support of the

investigative stop. Without the transcript, we must presume regularity — that is, the officer’s testimony established he had a reasonable articulable, suspicion to stop the defendant’s motor vehicle. Accordingly, Collins’s first assigned error is overruled.

### **Second Motion to Suppress**

{¶11} In his second assigned error, Collins argues that the trial court erred by not conducting a hearing regarding his second motion to suppress.

{¶12} We note that the trial court never actually ruled on the second motion to suppress filed on January 2, 2015. In fact, when Collins decided to enter the no contest plea seven days later, prior to a ruling, the motion was rendered moot. *See State v. Bogan*, 8th Dist. Cuyahoga No. 84468, 2005-Ohio-3412 (because Bogan “entered his plea prior to the trial court’s ruling on his motion to suppress, it was no longer necessary for the trial court to rule on the motion, which had become moot once the plea was entered”).

{¶13} Moreover, when a trial court fails to rule on a motion prior to final disposition, the motion is considered denied. *State v. Collins*, 5th Dist. Licking No. 03-CA-103, 2004-Ohio-3645, ¶ 28; *State v. Olah*, 146 Ohio App.3d 586, 592, 767 N.E.2d 755, Fn. 2 (9th Dist.) citing *Georgeoff v. O’Brien*, 105 Ohio App.3d 373, 378, 663 N.E.2d 1348 (9th Dist.1995). Because the second motion to suppress raised the same issues as the first motion to suppress for which a hearing was conducted, there would be no error in denying a redundant motion. Accordingly, Collins’s second assigned error is overruled.

### **Release of Impounded Vehicle**

{¶14} In his last assigned error, Collins argues that his Fourth Amendment rights are being violated because the trial court has refused to release his vehicle from the impoundment lot.

{¶15} Our review of the record shows that on September 16, 2014, after Collins submitted evidence that he was the lessee of the vehicle, the trial court entered the following order:

Upon motion of the defendant, vehicle at issue, 2013 Chevrolet, to be released to licensed driver authorized by vehicle owner after payment of accrued storage and towing costs. Fees assessed.

Nothing in this order to release the vehicle may be construed to permit the defendant to operate a motor vehicle in the State of Ohio.

{¶16} Therefore, once Collins pays the storage and towing costs, he is free to reclaim his vehicle. No violation of his rights occurred.<sup>2</sup> Accordingly, Collins's third assigned error is overruled.

{¶17} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Lakewood Municipal Court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

---

<sup>2</sup>At oral argument, Collins argued for the first time that his car was impounded a second time in relation to a second case. However, Collins did not appeal the second case; therefore, we have no jurisdiction to review the second impoundment.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, P.J., and  
MARY J. BOYLE, J., CONCUR

## **APPENDIX**

### **Assignments of Error**

I. The trial court erred by not allowing the suppression of the O.R.C. 4511-33 Failure to Drive within marked lanes. The trooper's dash camera does not show weaving out of control driving in or outside of marked lanes.

The statute also lists in O.R.C. 4511-33(A)(1) that a vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane of traffic and shall not be moved from such lane or line until THE DRIVER HAS FIRST ASCERTAINED THAT SUCH MOVEMENT CAN BE MADE WITH SAFETY.

This statute would appear to leave the safeness of driving within the lane up to the driver of vehicle. An outside observer would need to be apprised of the driver's determination of the relative safety of any movement. In the attached video the driver of the observed vehicle does properly use turn signals when changing lanes and when the officer turned on his overhead lights the driver not only put on proper lane change signals, but also activated his warning flashers.

The court rejected the very visual evidence that the arresting officer did not have probable cause to make the initial stop. And court denied the motion to suppress.

II. The defendant dismissed his counsel and determined to continue his defense pro se. At the same time as filing the motion to be pro se the defendant filed a motion to suppress functioning as new attorney. The trial court rejected the defendant's motion for a suppression hearing without giving the new legal defense the ability to present additional evidence to



suppress. The filing to suppress was well outside of the statutory time limits prior to trial and included the new suppression reasoning.

III. The trial court has not caused the release of the defendant's impounded vehicle which has been in a private impound for over six months. During this time the impound fees are accruing and it is creating an unnecessary pre-judgment burden on the defendant. The court has not stated that this was a court ordered immobilization.

The court during sentencing stated in open court that the vehicle would be released upon the complete payment of all fees and court costs. Those fees and court costs have been paid for over a month and the court has not allowed the release of the vehicle from impound.