

[Cite as *State v. Barker*, 2011-Ohio-5769.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

|                      |   |                           |
|----------------------|---|---------------------------|
| State of Ohio,       | : |                           |
|                      | : |                           |
| Plaintiff-Appellee,  | : |                           |
|                      | : | No. 11AP-170              |
| v.                   | : | (C.P.C. No. 09CR-07-4388) |
|                      | : |                           |
| Ryan R. Barker,      | : | (REGULAR CALENDAR)        |
|                      | : |                           |
| Defendant-Appellant. | : |                           |

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D E C I S I O N

Rendered on November 8, 2011

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Robert D. Essex*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Ryan R. Barker ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which denied his motion to suppress. For the following reasons, we affirm.

{¶2} Appellant was indicted on one count of receiving stolen property after stolen golf clubs were found in his truck during a traffic stop executed by Columbus

Police Sergeant Brian Donovan. Appellant filed a motion to suppress that evidence, on grounds that he was unconstitutionally stopped, and the trial court held a hearing on the motion. Donovan testified as follows at the hearing. Donovan was traveling southbound on Indianola Avenue on June 4, 2009. The driver of a truck in front of him, in the same lane of travel, veered right onto East 16th Avenue without using a turn signal. Indianola and East 16th Avenues connect at a "Y" intersection, and there is no traffic control device to regulate traffic driving onto East 16th Avenue. (Dec. 10, 2009, Tr. 11.) Donovan believed that the traffic code required the driver of the truck in front of him to use a turn signal and that the signal would have given others notice that the truck was changing course instead of continuing on Indianola Avenue.

{¶3} Donovan stopped the truck, and he came in contact with the driver, who was appellant. Donovan discovered that appellant was driving with a suspended license. The two passengers in the truck did not have licenses either, so the vehicle needed to be impounded. Donovan found a set of golf clubs while he was impounding the truck. The name tag on the clubs did not match appellant or the two passengers. Therefore, Donovan impounded the golf clubs with the truck. Donovan issued appellant a traffic citation, and appellant left with his friends.

{¶4} The trial court concluded that the traffic stop Donovan executed on appellant was constitutional. Accordingly, the court denied appellant's motion to suppress. Afterward, appellant pleaded no contest to receiving stolen property, and the court sentenced him to community control.

{¶5} Appellant appeals, raising the following assignment of error:

The Trial Court erred to the prejudice of the Appellant when it overruled Appellant's Motion to Suppress Evidence.

{¶6} In his single assignment of error, appellant argues that the trial court erred by denying his motion to suppress. We disagree.

{¶7} When presented with a motion to suppress, the trial court assumes the role of the trier of fact. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Thus, the trial court is in the best position to resolve questions of fact and evaluate witness credibility. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. On review, we must accept the trial court's factual findings if they are supported by competent, credible evidence. *State v. Stokes*, 10th Dist. No. 07AP-960, 2008-Ohio-5222, ¶7. Accepting those facts as true, we must then independently determine, as a matter of law and without deference to the trial court's conclusion, whether the court applied the correct law and whether the facts meet the applicable legal standard. *State v. Coger*, 10th Dist. No. 10AP-320, 2011-Ohio-54, ¶10.

{¶8} In his motion to suppress, appellant asserts that evidence found during the traffic stop executed by Donovan could not be used against him at trial because the stop was unconstitutional. The Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution prohibit unreasonable seizures of persons or property. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, ¶7. A police officer's temporary detention of an individual during a traffic stop, even if only for a brief period and for a limited purpose, constitutes a seizure. *Stokes* at ¶8. Therefore, in order to meet constitutional limitations, the detention must be reasonable under the

circumstances. *Whren v. United States* (1996), 517 U.S. 806, 809-10, 116 S.Ct. 1769, 1772.

{¶9} Donovan stopped appellant for failing to use his turn signal as he veered onto East 16th Avenue from Indianola Avenue. Plaintiff-appellee, the state of Ohio, asserts that appellant violated Columbus City Code 2131.14(a), which states that "[n]o person shall turn a vehicle or move right or left upon a street or highway \* \* \* without giving an appropriate signal."

{¶10} Appellant contends that the absence of a traffic control device at the intersection of Indianola and East 16th Avenues constitutes a defense to a charge under Columbus City Code 2131.14(a). But nothing in the plain language of that ordinance offers a defense due to the absence of a traffic control device at the intersection. In any event, whether or not the defense is available to appellant is irrelevant to the issue of whether Donovan constitutionally stopped him. See *Mays* at ¶17. According to the Supreme Court of Ohio, "[a]n officer is not required to determine whether someone who has been observed committing a crime might have a legal defense to the charge." *Id.*

{¶11} Instead, a traffic stop is valid under the Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution if it was prompted by a police officer having either reasonable suspicion or probable cause that a traffic violation occurred. *Mays* at ¶8, 23. To meet the reasonable suspicion standard, an officer must demonstrate " 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' " a traffic stop. *Stokes* at ¶10,

quoting *Terry v. Ohio* (1968), 392 U.S. 1, 21, 88 S.Ct. 1868, 1880. Probable cause is a stricter standard than the reasonable suspicion standard. *Mays* at ¶23. " 'Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed.' " *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, ¶73, quoting *Henry v. United States* (1959), 361 U.S. 98, 102, 80 S.Ct. 168, 171. "[A]n officer who has probable cause necessarily has a reasonable and articulable suspicion, which is all the officer needs to justify a stop." *Mays* at ¶23.

{¶12} We examine Donovan's traffic stop of appellant with these standards in mind. Donovan stopped appellant for not using a turn signal as he veered onto East 16th Avenue from Indianola Avenue. These streets connect at a " 'Y' " intersection and, therefore, do not require a sharp or well-defined turn. (Dec. 10, 2009, Tr. 11.) But courts in Ohio have upheld traffic stops made after drivers failed to signal gradual turns at similar types of intersections. See *State v. Hoder*, 9th Dist. No. 03CA0042, 2004-Ohio-3083, ¶16 (concluding that reasonable suspicion of a traffic violation existed when a driver failed to signal a turn at a " 'Y' " intersection); *State v. Beacham*, 4th Dist. No. 03CA36, 2003-Ohio-6211, ¶11, 16 (concluding that a police officer had probable cause to believe that a driver violated a traffic law when he failed to signal a turn at an intersection that did not form a "traditional" 90-degree angle); *State v. Crisafi* (May 3, 2001), 7th Dist. No. 00-CA-40 (holding that reasonable suspicion of a traffic violation existed when a driver failed to signal a " 'slight right turn' ").

{¶13} Based on the evidence before us, we similarly conclude that Donovan had, at the very least, a reasonable suspicion that appellant violated Columbus City

Code 2131.14(a) when he failed to use a turn signal as he drove from Indianola Avenue to East 16th Avenue. Specifically, the signal was required because appellant changed his direction of travel and therefore made a turn, as he proceeded onto East 16th Avenue, and the signal would have alerted traffic that he was changing course instead of continuing on Indianola Avenue.

{¶14} Alternatively, this court has held that "[u]nder limited circumstances \* \* \* the exclusionary rule may be avoided with respect to evidence obtained in a stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law.'" *State v. Garnett*, 10th Dist. No. 09AP-1149, 2010-Ohio-5865, ¶18 (citations omitted). Consequently, we need not disturb the trial court's decision to deny appellant's motion to suppress because, even if Donovan was mistaken in his belief that appellant violated Columbus City Code 2131.14(a), it was reasonable for him to believe the violation occurred.

{¶15} For all these reasons, we conclude that the trial court did not err by denying appellant's motion to suppress. Therefore, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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