

[Cite as *State v. Young*, 2004-Ohio-540.]

**COURT OF APPEALS  
THIRD APPELLATE DISTRICT  
SENECA COUNTY**

**STATE OF OHIO**

**CASE NUMBER 13-03-52**

**PLAINTIFF-APPELLEE**

**v.**

**O P I N I O N**

**LINDA YOUNG**

**DEFENDANT-APPELLANT**

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**CHARACTER OF PROCEEDINGS: Criminal Appeal from Municipal Court.**

**JUDGMENT: Judgment reversed and cause remanded.**

**DATE OF JUDGMENT ENTRY: February 9, 2004**

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**ATTORNEYS:**

**JAMES W. FRUTH  
Attorney at Law  
Reg. #0064805  
60 Sycamore Street  
Tiffin, OH 44883  
For Appellant.**

**RICHARD H. PAULAU  
Assistant City Prosecutor  
51 East Market Street  
Tiffin, OH 44883  
For Appellee.**

**SHAW, P.J.**

{¶1} The appellant, Linda Young, appeals the August 12, 2003 judgment of conviction and sentence of the Tiffin Municipal Court, assigning as error the trial court's decision to overrule her motion to suppress.

{¶2} On April 21, 2003, Young was stopped by Officer Shawn Vallery of the Tiffin Police Department for improperly turning onto East Market Street in Tiffin, Ohio. Upon speaking with Young, Officer Vallery conducted field sobriety tests of her and placed her under arrest for operating a motor vehicle while intoxicated. Young subsequently submitted to a breath test and was charged with violating R.C. 4511.19(A)(6). However, Young was not charged with committing any other type of traffic offense.

{¶3} Young initially entered a plea of not guilty. On June 16, 2003, Young filed a motion to suppress, asserting, inter alia, that the initial stop of her vehicle was unconstitutional. A hearing was held on the matter, and Young's motion was overruled. Thereafter, Young changed her plea to that of no contest. The trial court then found her guilty and sentenced her accordingly. This appeal followed, and Young now asserts one assignment of error.

**THE OFFICER LACKED PROBABLE CAUSE TO INITIATE  
A TRAFFIC STOP AND ARREST APPELLANT, AND ALL  
EVIDENCE FLOWING FROM THE TRAFFIC STOP  
SHOULD HAVE BEEN SUPPRESSED AS A RESULT.**

{¶4} Initially, we note that the Appellate Rules state: “if an appellee fails to file his brief within the time provided by this rule, or within the time as extended, he will not be heard at oral argument \* \* \* and in determining the appeal, the court may accept the appellant’s statement of the facts and issues as correct and reverse the judgment if appellant’s brief reasonably appears to sustain such action.” App. R. 18(C). Here, the appellee, the State of Ohio, failed to submit a brief to this Court. Accordingly, we elect to accept the statement of facts and issues of Young, the appellant, as correct pursuant to App. R. 18(C). Upon a reading of the brief, Young’s argument reasonably supports a reversal for the following reasons.

{¶5} In the case sub judice, Officer Vallery testified that he witnessed Young make a right turn from a driveway onto East Market Street. The officer further testified that East Market Street is a one-way street with two lanes of travel in the same direction. Specifically, Officer Vallery noticed Young turn right into the left lane of travel rather than into the immediate lane, the lane to the right. Therefore, Officer Vallery stopped Young’s vehicle for making an improper lane change. However, when questioned during cross-examination as to the legality of this type of turn, the officer also testified that Young made an improper lane change by failing to signal before driving into the left lane.

{¶6} Young contends that neither premise for stopping her vehicle was valid because she did not violate the relevant statutes, i.e. R.C. 4511.33, entitled

“Rules for driving in marked lanes,” and R.C. 4511.36, entitled “Rules for turns at intersections.” Revised Code section 4511.33 states:

**Whenever any roadway has been divided into two or more clearly marked lanes for traffic \* \* \* the following rules apply:**

**(A) A vehicle or trackless trolley shall be driven, as nearly as is practicable, entirely within a single lane or line 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.**

Recently, this Court addressed this specific statute and held that a driver commits a violation of this statute when he leaves the lane in which he was traveling when it is practicable to stay within his own lane of travel without any evidence that something or someone was blocking the roadway in any fashion or without otherwise properly changing lanes. *State v. Lamb*, 3<sup>rd</sup> Dist. No. 14-03-30, 2003-Ohio-6997, at ¶ 11, 2003 WL 22995157.

{¶7} Here, Young was not traveling in one lane and then changed to another. To the contrary, she was turning onto the roadway and elected to proceed in the left lane rather than choosing to turn into the right lane. Furthermore, Officer Vallery testified that Young was the only vehicle on this portion of the street when she made the turn. Thus, Young did not violate R.C. 4511.33(A).

{¶8} The other statute referenced in Young’s brief is R.C. 4511.36. This statute provides rules for turns made at intersections. Specifically, the relevant portion of the statute states that “a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.” R.C. 4511.36(A). However, R.C.

4511.36 only applies to “[t]he driver of a vehicle intending to turn at an intersection[.]” R.C. 4511.36. An intersection is defined as:

**The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.**

R.C. 4511.01(KK).

{¶9} In the case sub judice, Officer Vallery testified that Young made a right turn from a driveway, not a roadway. Thus, R.C. 4511.36 did not apply to her. Accordingly, Young committed no violation of either this statute or R.C. 4511.33. Therefore, Officer Vallery did not have a reasonable, articulable suspicion of criminal activity in order to constitutionally stop Young’s vehicle. As such, the trial court erred in overruling Young’s motion to suppress, and the assignment of error is sustained.

{¶10} For these reasons, the judgment of the Tiffin Municipal Court is reversed and the cause remanded for further proceedings in accordance with law.

Judgment reversed  
and cause remanded.

BRYANT and CUPP, JJ., concur.