

[Cite as *State v. Gist*, 2009-Ohio-4791.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO

:

Plaintiff-Appellee

CASE NO. 22823

:

C.A.

v.

T.C. NO. 2007 CR 1236

:

STEPHEN GIST

:

(Criminal appeal from  
Common Pleas Court)

Defendant-Appellant

:

:

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**OPINION**

Rendered on the 11<sup>th</sup> day of September, 2009.

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DINKELACKER, J. (by assignment)

{¶ 1} Stephen Gist pled no contest to possession of crack cocaine in an amount equal to or more than five grams but less than ten grams, a third degree felony, after the Montgomery County Court of Common Pleas overruled his motion to suppress evidence. The court found him guilty, and it sentenced him to one year in prison, suspended his driver's license for six months, and ordered him to pay court costs.

{¶ 2} Gist appeals from the denial of his motion to suppress. For the following reasons, the trial court's judgment will be affirmed.

I.

{¶ 3} Dayton Police Officer Doug George was the sole witness at the suppression hearing. His testimony established the following facts.

{¶ 4} At approximately 1:00 a.m. on March 29, 2007, Dayton Police Officers Doug George and Jason Barnes were traveling eastbound on Germantown Street in a marked police cruiser. As they drove, they observed a car approach Germantown Street from Burwood Avenue, stop at the stop sign at the intersection of the two roads, and turn right into the westbound lane of Germantown Street. The officers noticed that the vehicle had its high beams on and, after turning onto Germantown Street, the car passed the police cruiser without dimming the headlights.

{¶ 5} Based on the driver's failure to dim the high beam headlights, Officer Barnes, who was driving the cruiser, made a U-turn in order to initiate a traffic stop. As the cruiser turned around, the other vehicle turned left and pulled into the driveway at 935 Stolz Avenue. The officers followed the vehicle, stopped behind it, and turned on the cruiser's lights and spotlight. The driver, who was later identified as Gist, was the

sole occupant of the vehicle.

{¶ 6} While the officers were in their cruiser behind the car, Officer George observed Gist put both hands behind his back and then lean forward toward the floorboard of his vehicle. The officers exited their cruiser and approached the vehicle; Officer Barnes went to the driver's side of the vehicle while Officer George went to the passenger side. Officer George observed through the passenger side window a bag on the floorboard behind the driver's feet. Officer George recognized that the bag contained more than four grams of crack cocaine. Officer George motioned to Officer Barnes to get the driver out of the vehicle. Once Gist was out, Officer George retrieved the crack cocaine from the vehicle.

{¶ 7} Gist was arrested and searched by Officer Barnes. The officer recovered a little more than a gram of crack cocaine from Gist's front right pocket and a digital scale with crack cocaine residue from a jacket pocket. Officer Barnes then placed Gist into the cruiser and ran his name through the cruiser's computer system. The officer learned that Gist had warrants for his arrest and a suspended license. Meanwhile, Officer George conducted an inventory search of Gist's vehicle and located a crack pipe and pay stubs belonging to Gist under a seat. The car was subsequently towed.

{¶ 8} After Officer George completed his search, Officer Barnes informed Gist of his rights in accordance with *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. Gist appeared to be in a "normal state," and he waived his *Miranda* rights. Gist subsequently made an oral statement to the officers. Officer George cited Gist for three traffic violations, including failure to dim his bright lights, in violation of R.C. 4513.15.

{¶ 9} On May 14, 2007, Gist was indicted for possession of criminal tools, in violation of R.C. 2923.24(A), and possession of crack cocaine, in violation of R.C. 2925.11(A). Gist moved to suppress the drugs, drug paraphernalia, and any statements made by him, arguing that the officers lacked a reasonable suspicion of criminal activity to justify stopping and detaining him. He further claimed that he was subjected to a custodial interrogation without being advised of his *Miranda* rights.

{¶ 10} After a hearing, the court orally overruled the motion. The court concluded that the officers had a reasonable and articulable suspicion that a traffic offense had been committed. The court reasoned:

{¶ 11} “\*\*\* [T]he court has the testimony of Officer George that, in part, states that as he and his fellow officer were traveling on Germantown, the defendant, whose car had been stopped at the stop sign on Burwood, takes a right. And, so now the defendant is traveling on Burwood [sic] towards, in the direction of the oncoming cruiser and as the officer testified, the defendant’s vehicle was actually straight and had traveled somewhat on Germantown when they passed.

{¶ 12} “And he testified that the defendant passed with the bright lights on, that he’d failed to dim his lights. And a reasonable inference from this officer’s testimony has to be that the rays from the defendant’s vehicle were projected into the eyes of the oncoming cruiser or else they would not have seen it so I think it’s a reasonable inference that the rays were projecting into the eyes of Officer Green (sic) since they were passing each other.

{¶ 13} “And Officer Green, Officer George is looking directly at the oncoming vehicle being driven by the defendant and he described it as bright lights on and that

there was a failure to dim the lights and that was the citation that was given.

{¶ 14} “So, it’s reasonable to infer that there were glaring rays projected into the eyes of the oncoming officer. And so the court is persuaded by a preponderance of the evidence that this officer had both probable cause and reasonable, articulable suspicion to conclude that 4513.15 had been violated and, therefore, the stop was lawful. And, therefore, all that flowed from the stop, recovery of the drugs, the statement, are lawful.”

{¶ 15} The court further concluded that Gist had knowingly, intelligently, and voluntarily waived his *Miranda* rights and that his subsequent statements were voluntarily given. On May 16, 2008, the court adopted its oral ruling in a written entry.

{¶ 16} Shortly thereafter, Gist pled no contest to possession of crack cocaine, and he was sentenced accordingly. Gist’s prison term was stayed pending appeal.

{¶ 17} Gist appeals from the denial of his motion to suppress, raising one assignment of error.

## II.

{¶ 18} Gist’s sole assignment of error states:

{¶ 19} “THE TRIAL COURT ERRED IN OVERRULING DEFENDANT’S MOTION TO SUPPRESS EVIDENCE AND STATEMENTS BECAUSE THEY WERE OBTAINED AFTER AN UNLAWFUL TRAFFIC STOP.”

{¶ 20} On appeal, Gist claims that the State was required to present testimony that the high beams caused a glaring ray to be projected into Officer Barnes’s eyes or otherwise created a danger to the other driver and, because such evidence was absent, the trial court should have granted his motion to suppress. Gist does not challenge the

trial court's ruling with respect to the waiver of his *Miranda* rights and the voluntariness of his statements.

{¶ 21} In response, the State asserts the officers had a reasonable and articulable suspicion that Gist committed a violation of R.C. 4513.15, a traffic offense, to justify the stop of the vehicle. The State argues that "R.C. 4513.15 does not require independent proof that the lights glared into the driver's eyes." The State further argues that, even if the officer was mistaken about the law, his mistake was objectively reasonable. Alternatively, the State asserts that, due to the existence of outstanding arrest warrants for Gist, the exclusionary rule does not apply even if the search and seizure would otherwise have been unlawful.

{¶ 22} In reviewing the trial court's ruling on a motion to suppress evidence, this court must accept the findings of fact made by the trial court if they are supported by competent, credible evidence. See *State v. Morgan* (Jan. 18, 2002), Montgomery App. No. 18985. However, "the reviewing court must independently determine, as a matter of law, whether the facts meet the appropriate legal standard." *Id.*

{¶ 23} The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures. *Terry v. Ohio* (1968), 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889. A traffic stop by a police officer must comply with the Fourth Amendment's reasonableness requirement. *Whren v. United States* (1996), 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89.

{¶ 24} A police officer may lawfully stop and detain a motorist when he has a reasonable and articulable suspicion that the motorist has committed, is committing, or is about to commit any criminal offense, including a minor traffic offense. *State v.*

*Buckner*, Montgomery App. No. 21892, 2007-Ohio-4329, at ¶8. See, also, *State v. Lawson*, 180 Ohio App.3d 516, 2009-Ohio-62, at ¶18. We determine the existence of reasonable suspicion by evaluating the totality of the circumstances, considering those circumstances “through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold.” *State v. Heard*, Montgomery App. No. 19323, 2003-Ohio-1047.

{¶ 25} According to Officer George’s testimony, Gist was detained based on the officers’ observation that he failed to dim his headlights. R.C. 4513.15 provides, in relevant part:

{¶ 26} “(A) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section 4513.03 of the Revised Code, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons, vehicles, and substantial objects at a safe distance in advance of the vehicle, subject to the following requirements;

{¶ 27} “(1) Whenever the driver of a vehicle approaches an oncoming vehicle, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver.”

{¶ 28} Gist asserts that a traffic stop based on a violation of R.C. 4513.15 is lawful only if there is direct evidence that the headlights caused a glaring ray to be projected into the oncoming driver’s eyes. In support of his argument, Gist relies upon *State v. Mullins*, Licking App. No. 2006-CA-19, 2006-Ohio-4674. In *Mullins*, the Fifth District held that a police officer had a reasonable, articulable suspicion that the appellant had violated R.C. 4513.15 where the police officer testified that he had

observed the appellant's vehicle traveling in the opposite direction with its high beams on, that the appellant had passed him without dimming his headlights, and the lights "were extremely bright and glared in his eyes." *Id.* at ¶2.

{¶ 29} Although the officer in *Mullins* testified that the high beams had "glared in his eyes," the Fifth District does not require direct evidence that the headlights glared into the officer's eyes in order for an officer to have a reasonable and articulable suspicion that the driver committed a violation of R.C. 4513.15. Indeed, as more recently stated by the Fifth District:

{¶ 30} "[T]he trooper's testimony that appellant drove past the oncoming police cruiser without deactivating his high-beam headlights is sufficient in justifying the initial stop of appellant. \*\*\* [A] driver violates the statute by continuing to use the high beam headlights of his vehicle 'upon approaching' such traffic. The statute requires the driver to shift to the low beam lights at the latest when the glaring rays project into the eyes of an oncoming driver." *State v. Raleigh*, Licking App. No. 2007-CA-31, 2007-Ohio-5515, at ¶24.

{¶ 31} Other districts have held similarly. See *State v. McCleese* (July 16, 2001), Brown App. No. CA2000-12-038 (trooper had probable cause to believe appellant had committed a traffic violation by failing to dim the vehicle's high beams as he approached an oncoming vehicle); *State v. Emerick* (July 13, 2001), Ashtabula App. No. 2000-A-64 (traffic stop justified by appellant's failure to dim his headlights); *State v. Burghardt* (July 16, 1999), Erie App. No. E-98-060 ("Appellant's failure to dim his lights when approaching the officer's car was a violation of R.C. 4513.15."). We agree with our sister districts.

{¶ 32} In this case, Officer George testified that he noticed Gist's vehicle going southbound on Burwood Avenue, stop and turn right onto Germantown Street, and pass the police cruiser with its bright lights on. The trial court reasonably inferred from Officer George's testimony that Gist's headlights were aimed such that the glaring rays projected into oncoming drivers' eyes. Based on the officers' observation that Gist approached and passed the officers' oncoming cruiser without dimming his high beam headlights, the officers had a reasonable and articulable suspicion that Gist had committed a violation of R.C. 4513.15. Accordingly, the trial court properly found that the officers' traffic stop was lawful.

{¶ 33} Because we agree with the State that the officers observed Gist commit a traffic violation justifying the stop of his vehicle, we need not address the State's alternative arguments.

{¶ 34} Having concluded that Gist was lawfully stopped, Officer George was permitted to seize the baggie of crack cocaine in the car under the plain view doctrine. The plain view exception authorizes the seizure, without a search warrant, of an illegal object or contraband that is immediately recognizable as such when it is in plain view of a law enforcement official. *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 465-466, 91 S.Ct. 2022, 29 L.Ed.2d 564; *State v. Davie* (1993), 86 Ohio App.3d 460, 464. "Under [the plain view] doctrine, an officer may seize an item without a warrant if the initial intrusion leading to the item's discovery was lawful and it was 'immediately apparent' that the item was incriminating." *State v. Waddy* (1992), 63 Ohio St.3d 424, 442.

{¶ 35} Officer George's testimony established that the baggie was in plain view and that it was immediately apparent to him that the baggie contained crack cocaine.

Officer George stated that he had made numerous drug arrests prior to that night and that he was familiar with how crack cocaine looked. He testified: “As soon as I got to the passenger side of the vehicle, in plain view looking from outside the vehicle into the car, I saw a bag of crack. It was over four grams on the floorboard behind [Gist’s] feet. His feet were up front and it was not under the seat, it was on the floorboard and I motioned to Barnes to get the driver out.” The officer further testified that the baggie had “big white chunks. And through my experience, it was drugs, crack cocaine.” Officer George indicated the vehicle was well lit from the house and a traffic light pole, and he could readily see the drugs without using his flashlight. Accordingly, the trial court did not err in failing to suppress the drugs that were seized from the vehicle.

{¶ 36} In addition, having lawfully seized the crack cocaine from the vehicle, the officers had probable cause to arrest Gist. Because Gist was lawfully arrested, Officer Barnes’s subsequent search of his person, which revealed additional crack cocaine and a digital scale, was justified under the search warrant exception for a search incident to a lawful arrest. See *United States v. Robinson* (1973), 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427; *State v. Wilcox*, Montgomery App. No. 18908, 2002-Ohio-276. The trial court thus properly overruled Gist’s motion to suppress evidence.

{¶ 37} The assignment of error is overruled.

III.

{¶ 38} The judgment of the trial court will be affirmed.

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BROGAN, J. and GRADY, J., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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