

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
October 24, 2017

v

NICHOLAS LOUIS STAPELS,
Defendant-Appellee.

No. 337933
Oakland Circuit Court
LC No. 2017-261675-FH

Before: SHAPIRO, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

This interlocutory appeal arises following the trial court’s order suppressing the results of a DataMaster breathalyzer test conduct on defendant, Nicholas Stapels, in December 2016. The prosecutor appeals by leave granted.¹ For the reasons stated in this opinion, we reverse and remand.

I. BASIC FACTS

On December 22, 2016, Stapels was pulled over after making an illegal left turn. The police officer conducting the traffic stop testified at the preliminary examination that he observed Stapels eating Altoid mints as he approached the vehicle. The officer noted the strong odor of intoxicants when Stapels rolled down his window, and he noticed that his movements were slow and uncoordinated as he reached for his driver’s license. The officer had Stapels step out of the vehicle to perform field sobriety tests; however, Stapels was unable to complete them. Stapels was transported to the police station, where he agreed to take a breathalyzer test. After a 15-minute waiting period, the officer twice administered the breathalyzer test. The first test showed that Stapels’s blood alcohol content (BAC) was 0.20, and the second test showed that his BAC was 0.19.

Stapels was charged with operating while intoxicated or impaired, third offense, MCL 257.625(1), and operating while license suspended or revoked, MCL 257.904(3). Following the

¹ *People v Stapels*, unpublished order of the Court of Appeals, entered April 20, 2017 (Docket No. 337933).

preliminary examination, Stapels moved to suppress the breathalyzer test results, asserting that the officer violated the 15-minute observation period requirement of Mich Admin Code, R 325.2655(1)(e), because the officer did paperwork and had his back to Stapels for repeated and significant periods of time. The prosecution, however, asserted that the officer did not violate the requirement because he remained close to Stapels and kept him in his field of vision for almost the entire 15-minute period. The prosecution also argued that even if there was a violation of the rule, suppression of the breathalyzer test results was not appropriate because any error was harmless given that the video recording of the 15-minute waiting period demonstrates that Stapels did not regurgitate, put anything in his mouth, or do anything else to render the test results inaccurate. The trial court disagreed and suppressed the test results.

This appeal follows.

II. MOTION TO SUPPRESS

A. ANALYSIS

The prosecution argues that the trial court erred by suppressing the breathalyzer test results. We review de novo a trial court's decision on a motion to suppress evidence. *People v Galloway*, 259 Mich App 634, 638; 675 NW2d 883 (2003).

B. ANALYSIS

Mich Admin Code, R 325.2655(1)(e) addresses the proper procedure that must be followed before an officer can administer a breath alcohol analysis on an evidential breath alcohol test instrument, such as the DataMaster breathalyzer. It provides as follows:

A person may be administered a breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes by 1 or more appropriate class operators pursuant to R 325.2658(4) before collection of the breath sample, during which period the person shall not have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the test. The observation may be conducted by more than 1 operator working in concert. The operator need not stare continuously at the subject, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator's field of vision. Breaks in the observation lasting only a few seconds do not invalidate the observation if the operator can reasonably determine that the subject did not smoke, regurgitate, or place anything in his or her mouth during the break in the observation. [R 325.2655(1)(e).]

Here, the record reflects that during the 15-minute waiting period, the officer completed booking paperwork, entered information into a computer, and, at times, had his back to Stapels. The trial court found:

The observation period began at approximately 12:51:19 a.m. (all subsequent times are a.m.). The officer began by looking at the Defendant, but he quickly began to work on paperwork at the computer work station across from the Defendant. From 12:51:19 until 12:57:30, the officer basically ignored and did not observe the Defendant. On a few occasions during this period he quickly glanced at the Defendant, but even when the officer walked between the computer work station and other desks, he looked at the floor. From 12:57:30-12:57:46, the officer talked and looked at the Defendant. From 12:57:46 until 12:59:30, the officer ignored and did not observe the Defendant. From 12:59:30-12:59:53, the officer and Defendant conversed and looked at each other. From 12:59:53 until 1:01:11, the officer conversed with another officer, with his back to the Defendant, he opened a door, looked at the wall across from the Defendant, prepared more paperwork, and returned back to the computer work station. From 1:01:11 until 1:01:36, the officer talked to the Defendant. From 1:01:36 to 1:05:49, the officer ignored and did not observe the Defendant, including walking across the room. Afterward, the officer began the DataMaster test.

On appeal, the prosecution argues that no violation of R 325.2655(1)(e) occurred because during the 15-minute period, the officer had Stapels in his peripheral vision, which is part of his “field of vision.” The prosecution correctly notes that the rule allows an officer (a class operator) to “complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator’s field of vision.” R 325.2655(1)(e). The phrase “field of vision” is not defined. The prosecution asks this Court to interpret the phrase “field of vision” to include “peripheral vision.” However, we need not make that determination because, even assuming *arguendo* that a violation of R 325.2655(1)(e) occurred, we conclude that the trial court erred by suppressing the breathalyzer results.

This Court has held that “ [t]here is no bright-line rule of automatic suppression of evidence where an administrative rule has been violated.’ ” *People v Wujkowski*, 230 Mich App 181, 187; 583 NW2d 257 (1998), quoting *People v Rexford*, 228 Mich App 371, 377-378; 579 NW2d 111 (1998). Rather, “suppression of test results is required only when there is a deviation from the administrative rules that call into question the accuracy of the test.” *People v Fosnaugh*, 248 Mich App 444, 450; 639 NW2d 587 (2001). Accordingly, in *Wujkowski*, where there was no evidence or allegation that the “defendant placed anything in his mouth or regurgitated,” this Court concluded that although the officer administering the test had violated R 325.2655(1)(e) suppression of the test results was “not an appropriate remedy . . . because any violation of the administrative rule was harmless.” *Wujkowski*, 230 Mich App at 187. Similarly, in *Rexford*, this Court declined to impose suppression as a remedy for the violation of an administrative rule because there was no indication that the test results were “in any way inaccurate.” *Rexford*, 228 Mich App at 379.

Here, like in *Wujkowski*, there is no evidence that Stapels smoked, regurgitated, or placed anything into his mouth during the 15-minute observation period. See *id.* at 186. Further, the booking-room video demonstrates that Stapels was sitting for the entirety of this period with his hands handcuffed behind his back, so he could not have put anything into his mouth. There is also nothing in the record indicating that Stapels did anything to render the test results

inaccurate, even in the periods in which the officer's attention was diverted. Nor does Staples allege that the test results are inaccurate because he did, in fact, regurgitate or put something in his mouth. Therefore, even if the officer failed to observe Staples during the 15-minute waiting period, the record evidence does not demonstrate that the test's accuracy was compromised. Therefore, any violation of the rule amounted to harmless error under the facts of this case, *id.* at 186-187, so the trial court erred by suppressing the test results.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Michael J. Kelly