[Cite as *State v. Tournoux*, 2010-Ohio-2154.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-P-0065**
- vs -	:	
BRIAN R. TOURNOUX,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court, Ravenna Division, Case No. 2009 TRC 2031 R.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

George G. Keith, 135 Portage Trail, P.O. Box 374, Cuyahoga Falls, OH 44223 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Brian R. Tournoux, appeals the Judgment Entry of the Portage County Municipal Court, Ravenna Division, in which the trial court denied his Motion to Suppress; found him guilty of Operation of a Vehicle while Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them (OVI), in violation of R.C. 4511.19(A)(1)(a); and sentenced him to 180 days in jail, 170 days suspended, a

fine in the amount of $1,625, $1,000 suspended, and suspended his driver's license for one year. For the following reasons, we affirm the decision of the trial court.

{¶2} On February 27, 2009, shortly after 9:00 p.m., Sergeant Troy Beaver of the Streetsboro Police Department witnessed Tournoux's vehicle pull out of a parking lot and proceed past his marked police car without headlights illuminated. Sergeant Beaver then initiated a traffic stop.

{¶3} Upon approaching Tournoux's vehicle, Sergeant Beaver noticed Tournoux having difficultly opening the window and eventually, Tournoux opened the car door and indicated that the window was stuck. When Tournoux spoke to Sergeant Beaver, Beaver detected a "moderate to strong" odor of alcoholic beverage on Tournoux's breath. Further, Sergeant Beaver noticed Tournoux's eyes were glossy and bloodshot and his speech was tired and slightly slurred. Sergeant Beaver asked Tournoux if he had been drinking, to which Tournoux replied he had consumed two beers.

{¶4} Sergeant Beaver then asked Tournoux to step out of the vehicle in order to perform field sobriety testing. Sergeant Beaver noted that the odor of alcoholic beverage was still present when Tournoux stepped outside of his vehicle. Sergeant Beaver subsequently conducted three sobriety tests: the horizontal gaze nystagmus (HGN) test; the one-legged stand test; and the walk-and-turn test. Sergeant Beaver detected a clue indicating intoxication on each of the tests. Tournoux was then arrested and charged with one count of OVI.

{¶5} Tournoux later filed a Motion to Suppress, maintaining all the evidence from his arrest should be suppressed. A suppression hearing was held and the court denied Tournoux's motion, finding that "Beaver's continued detention of Defendant was

independently justified, based on *** reasonable, articulable suspicion." Further, the trial court found "probable cause exist[ed] for the arrest of Defendant for operating a vehicle under the influence, based on a totality of circumstances."

{¶6} Tournoux subsequently pled no contest to OVI. The trial court found him guilty and sentenced him to 180 days in jail, a fine in the amount of $1,625, and suspended his driver's license for one year. The court then suspended 170 days in jail and suspended $1,000 of the fine, on certain conditions. Additionally, the trial court stayed the entire sentence pending this appeal.

{¶7} Tournoux timely appeals and raises the following assignment of error:

{¶8} "[1.] The Ravenna Municipal Court erred to the detriment of Mr. Tournoux when it denied Mr. Tournoux's Motion to Suppress."

{¶9} "The trial court acts as trier of fact at a suppression hearing and must weigh the evidence and judge the credibility of the witnesses." *State v. Ferry*, 11th Dist. No. 2007-L-217, 2008-Ohio-2616, at ¶11 (citations omitted). "The trial court is best able to decide facts and evaluate the credibility of witnesses. Its findings of fact are to be accepted if they are supported by competent, credible evidence." *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, at ¶41. "Once the appellate court accepts the trial court's factual determinations, the appellate court conducts a de novo review of the trial court's application of the law to these facts." *Ferry*, 2008-Ohio-2616, at ¶11 (citations omitted); Mayl, 2005-Ohio-4629, at ¶41 ("we are to independently determine whether [the trial court's factual findings] satisfy the applicable legal standard") (citation omitted).

{¶10} Tournoux sets forth two issues for review. He first argues that "the totality of the circumstances does not support [Sergeant Beaver's] request that Mr. Tournoux submit to field sobriety tests."

{¶11} "A police officer may stop an individual if the officer has a reasonable suspicion, based on specific and articulable facts that criminal behavior has occurred or is imminent. *Terry v. Ohio* (1968), 392 U.S. 1, 21 ***. Moreover, detention of a motorist is reasonable when there exists probable cause to believe a crime, including a traffic violation, has been committed. *Whren v. United States* (1996), 517 U.S. 806, 810, 116." *State v. McNulty*, 11th Dist. No. 2008-L-097, 2009-Ohio-1830, at ¶11.

{¶12} At the hearing on the Motion to Suppress, Sergeant Beaver testified that he observed that Tournoux's "vehicle had pulled out of the BW3 parking lot and did not have any lights on when it pulled out and it was well past dark at that time, no parking lights or headlights so the vehicle pulled out, proceeded westbound and continued past me with no headlights on still so I pulled out and initiated a traffic stop." R.C. 4513.03(A)(1) requires lighted lights and illuminated devises on every vehicle from sunset to sunrise.

{¶13} Sergeant Beaver's stop of Tournoux was valid. "It is well established that an officer may stop a motorist upon his or her observation that the vehicle in question violated a traffic law." *McNulty*, 2009-Ohio-1830, at ¶13 (citations omitted). "Moreover, this court has repeatedly held that when a police officer witnesses a minor traffic violation, he or she is warranted in making a stop to issue a citation." Id.; *State v. Yemma*, 11th Dist. No. 95-P-0156, 1996 Ohio App. LEXIS 3361, at *6-*7 ("this court has repeatedly held that a minor violation of a traffic regulation, ***, that is witnessed by

a police officer is, standing alone, sufficient justification to warrant a limited stop for the issuance of a citation").

{¶14} Sergeant Beaver testified that as he approached Tournoux's vehicle, "it appeared he was trying to roll his window down and was having some difficulty doing that." Further, Sergeant Beaver testified when he spoke to Tournoux, "I smelled the odor of alcoholic beverage on his breath. I noticed his eyes were glossy and bloodshot, his speech was tired and slightly slurred *** and he told me [he] had had two beers."

{¶15} "Probable cause is not needed before an officer conducts field sobriety tests. Reasonable suspicion of criminal activity is all that is required to support further investigation." *McNulty*, 2009-Ohio-1830, at ¶15, citing *Columbus v. Anderson* (1991), 74 Ohio App.3d 768, 770, citing *State v. Bobo* (1988), 37 Ohio St.3d 177, 178; *State v. Penix*, 11th Dist. No. 2007-P-0086, 2008 Ohio 4050, at ¶20 (reasonable suspicion was necessary to detain appellant further after the initial stop to conduct field sobriety tests). A reviewing court must examine the totality of the circumstances surrounding the stop as "viewed through the eyes of the reasonable and prudent police officer on the scene who must react to events as they unfold." *State v. Andrews* (1991), 57 Ohio St.3d 86, 87-88. "The court reviewing the officer's actions must give due deference to the officer's experience and training, and view the evidence as it would be understood by those in law enforcement." *State v. Teter*, 11th Dist. No. 99-A-0073, 2000 Ohio App. LEXIS 4656, at *8 (citations omitted).

{¶16} In the present case, the officer's conduct was proper. The odor of alcoholic beverage, Tournoux's glassy and bloodshot eyes, slurred speech, and difficulty when opening his window provided sufficient grounds for the officer to have a

reasonable suspicion which warranted further investigation. See *State v. Mapes*, 6th Dist. No. F-04-031, 2005-Ohio-3359, at ¶42 (finding sufficient reasonable suspicion to conduct sobriety tests when the officer "noticed an odor of alcohol in the vehicle as well as appellant's glassy and bloodshot eyes *** [and] appellant's speech was 'somewhat slurred'").

{¶17} Tournoux next contends that, "[a]t the moment of *** Tournoux's arrest, there was not sufficient information to cause a prudent person to believe that *** Tournoux was driving under the influence." Specifically, Tournoux contends that "[t]here was no lack of balance. There was no belligerence. There was no difficulty walking or standing. *** There was no erratic driving, no swerving, no speeding, no unusual breaking; no indicia of impairment."

{¶18} In determining whether the police had probable cause to arrest an individual for OVI, we consider whether, at the moment of arrest, the police had adequate information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence. *Beck v. Ohio* (1964), 379 U.S. 89, 91; *State v. Timson* (1974), 38 Ohio St.2d 122, 127.

{¶19} Moreover, "probable cause to arrest does not necessarily have to be based, in whole or in part, upon a suspect's poor performance on one or more of [the field sobriety] tests. The totality of the facts and circumstances can support a finding of probable cause to arrest even where no field sobriety tests were administered or where, as here, the test results must be excluded." *McNulty*, 2009-Ohio-1830, at ¶20 (citation omitted). This court has consistently held that a police officer's observations of a strong

odor of alcohol, bloodshot and glassy eyes, and slurred speech can form the basis of a police officer's probable cause to arrest for OVI.

{¶20} Furthermore, "[a]n admission by a driver that he has consumed alcoholic beverages is a factor to be considered in a probable cause determination for a [driving under the influence] arrest." *State v. Slocum*, 11th Dist. No. 2007-A-0081, 2008-Ohio-4157, at ¶50 (citations omitted). Tournoux admitted to consuming two beers.

{¶21} Moreover, Sergeant Beaver testified that he "received a clue in each eye" on the smooth pursuit portion of the HGN test and the total number of clues on the HGN test was six. On the walk-and-turn test, Sergeant Beaver observed one clue, Tournoux took "several steps [where] there was an inch and an inch and a half space between his heel and toe." Lastly, the officer observed Tournoux "swayed during the [one-legged stand] test."

{¶22} The totality of the circumstances presented in this case support the trial court's finding that there was probable cause to arrest Tournoux for OVI.

{¶23} Tournoux's sole assignment of error is without merit.

{¶24} For the foregoing reasons, the Judgment Entry of the Portage County Municipal Court, Ravenna Division, denying Tournoux's Motion to Suppress, is affirmed. Costs to be taxed against appellant.

COLLEEN MARY O'TOOLE, J.,

TIMOTHY P. CANNON, J.,

concur.