

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-14-058

Appellee

Trial Court No. 14TRC00569-A

v.

Aaron W. Sadler

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2015

* * * * *

Matthew L. Reger, Bowling Green Prosecutor, for appellee.

Mollie B. Hojnicky, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Aaron Sadler, appeals the judgment of the Bowling Green Municipal Court, denying his motion to suppress. For the reasons that follow, we affirm.

{¶ 2} Appellant sets forth the following assignment of error:

The trial court erred by denying appellant's motion to suppress evidence.

{¶ 3} On February 3, 2014, at approximately 7:00 p.m., Patrolman Michael Clingenpeel with the Bowling Green Police Department was traveling eastbound on East Napoleon Road in a marked patrol cruiser when he observed a truck in the alley by Checkers bar which did not have a front license plate. The officer then noticed that the truck pulled out of the alley and was going to turn right to go east on East Napoleon Road, so the officer turned the cruiser around and waited for the truck. When the truck drove by, with appellant behind the wheel, the officer ran the truck's temporary tag through LEADS which showed the tag expired on December 19, 2013. The officer pulled over the truck.

{¶ 4} When the officer approached the truck, the officer observed through the window that appellant had a flushed face, glassy and bloodshot eyes, and dilated pupils. The truck's window would not roll down, so the officer had appellant open the door, at which time the officer smelled a strong odor of an alcoholic beverage emitting from the truck. The officer also detected some of appellant's speech was slow and slurred "in a mush mouth manner." The officer told appellant why he stopped him and requested appellant's license, registration and insurance. The officer perceived that appellant was fumbling through his paperwork and took a long time to produce his documentation. Appellant admitted to the officer he had consumed one beer. The officer asked appellant to step out of the truck. As appellant exited the vehicle, it appeared to the officer that appellant was trying to use the door for balance. The officer also smelled a strong odor of alcohol on appellant's breath. The officer conducted several field sobriety tests,

including the Horizontal Gaze Nystagmus (HGN) and Romberg tests, and had appellant recite the alphabet and count backwards. While appellant performed quite well on the alphabet, counting and Romberg tests, on the HGN test, the officer observed appellant had six out of a possible six clues of intoxication.

{¶ 5} Due to the snow and ice as well as the cold weather, the officer offered appellant the choice of continuing with more tests outside or going to the police station for more testing inside. Following a two and one-half minute verbal exchange between the officer and appellant wherein appellant did not make a choice, the officer arrested appellant. At the station, the officer administered a breathalyzer and appellant's blood alcohol concentration was over the legal limit. Appellant was charged with operating a vehicle under the influence of alcohol ("OVI"), in violation of R.C. 4511.19(A)(1)(a) and (d), and having an expired registration, in violation of R.C. 4503.11. Appellant pled not guilty.

{¶ 6} On June 24, 2014, appellant filed a motion to suppress claiming the HGN test was not properly administered, the officer lacked reasonable articulable suspicion to conduct field sobriety tests, and based on the totality of the circumstances, the officer lacked probable cause to detain and arrest appellant. A suppression hearing was held wherein the parties stipulated that the only issue was probable cause for arrest. Testimony and evidence was offered after which the motion to suppress was denied. Appellant then changed his plea to no contest, was convicted of OVI and was sentenced. This appeal followed.

{¶ 7} Appellate review of a motion to suppress presents mixed questions of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. When the trial court decides a motion to suppress, it assumes the role of trier of fact and is in the best position to resolve questions of fact and to assess witness credibility. *Id.* A reviewing court is bound to accept the trial court's findings of fact if those findings are supported by competent, credible evidence. *Id.* An appellate court must then independently decide as a matter of law whether the trial court's conclusions satisfy the appropriate legal standard. *Id.*

{¶ 8} In order to determine whether the police had probable cause to arrest a person for driving under the influence, a reviewing court must consider whether, at the time of the arrest, "the police had sufficient 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." (Citation omitted.) *State v. Homan*, 89 Ohio St.3d 421, 427, 732 N.E.2d 952 (2000), *superseded by statute on other grounds*. Thus, the court must review the totality of the circumstances surrounding the arrest. *Id.*

{¶ 9} In *State v. Lambrecht*, 6th Dist. Wood No. WD-04-097, 2005-Ohio-5882, ¶ 16, this court determined the police officer had a sufficient basis for believing probable cause existed to arrest the motorist for OVI based upon the motorist running a red light, admitting he was coming from a bar, "the slight odor of alcohol on appellant's breath and his bloodshot and glassy eyes, and appellant's performance on the HGN test."

{¶ 10} Then, in *State v. Swanson*, 6th Dist. Wood No. WD-05-065, 2006-Ohio-4798, ¶ 17, this court observed that “[a] strong odor of an alcoholic beverage, bloodshot and glassy eyes and slurred speech are classic observations indicative of insobriety.” This court concluded these factors, accompanied by poor performance on the HGN test, constituted probable cause to arrest for OVI. *Id.*

{¶ 11} Here, the record supports the trial court’s denial of the motion to suppress. At the hearing, Officer Clingenpeel testified that he stopped appellant’s truck because the temporary tag had expired. Upon appellant opening the truck’s door, the officer detected the odor of alcohol. When asked if he had been drinking, appellant admitted he had one beer at the bar. The officer noted the appearance of appellant’s eyes, appellant’s “mush mouth” speech and appellant fumbling with his documents. After appellant exited the truck, the officer smelled a strong odor of alcohol on appellant’s breath. Appellant then took field sobriety tests and performed poorly on the HGN test. All of these facts were sufficient to give the officer the requisite probable cause to arrest appellant for OVI. Based on the foregoing, appellant’s assignment of error is not well-taken.

{¶ 12} The judgment of the Bowling Green Municipal Court is affirmed. Pursuant to App.R. 24, appellant is hereby ordered to pay the costs incurred on appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.