

[Cite as *State v. Partin*, 2011-Ohio-794.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-04-040
- vs -	:	<u>OPINION</u> 2/22/2011
JAMES T. PARTIN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM LEBANON MUNICIPAL COURT
Case No. TRC0802437

Matthew J. Graber, 50 South Broadway, Lebanon, Ohio 45036, for plaintiff-appellee
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POWELL, P.J.

{¶1} Defendant-appellant, James Partin, appeals his conviction in the Lebanon Municipal Court for OVI, specific to operating a vehicle under the influence of marijuana and cocaine. We affirm the decision of the trial court.

{¶2} Ohio State Highway Patrol Trooper Jeffery Crook was patrolling a section of Interstate 75 near Turtlecreek Township, when he received a dispatch call regarding a speeding van. Crook testified during a motion to suppress hearing that

his dispatcher informed him that a passenger in the speeding van called 911 because the driver was drunk and driving poorly. Once the van passed Crook, he estimated its speed at 75 m.p.h. in a 65 m.p.h. zone. Crook pulled out of the median, and upon following the van, he noticed the driver drifting left and right, and over the solid white line on the right side of the road. Crook also observed the van follow a car too closely and then change lanes quickly to the left in an unsafe manner in order to pass the car. Crook then initiated the traffic stop.

{¶13} The driver, later identified as Partin, told Crook that he was coming from a pre-season football game in Cincinnati and was on his way home to Dayton because he received word that his home was being broken into. According to Partin, his driving was erratic because he was on the phone with the Dayton Police reporting the burglary while he was trying to drive.

{¶14} Crook, who was positioned at the driver's side-door, observed that Partin's eyes were glassy and bloodshot, and smelled the odor of an alcoholic beverage coming from the van. Crook further testified that Partin's speech was excited and nervous. Partin exited the vehicle upon Crook's request, and Crook noticed a strong odor of an alcoholic beverage coming from Partin's person. Crook then performed several field sobriety tests on Partin including Horizontal Gaze Nystagmus, One-Leg Stand and the Walk and Turn.

{¶15} After administering the tests, Crook returned to the vehicle and addressed Partin's two passengers. Crook testified that he smelled a strong odor of burnt marijuana and noticed small marijuana slivers on the front-seat passenger's lap, who, according to Crook's testimony, was giving him "a little bit of an attitude." After arresting Partin for OVI, Crook asked the passengers to vacate the van so that

it could be towed, and Partin and the passengers sat in the back seat of Crook's cruiser as the investigation continued.

{¶16} Once in Crook's police cruiser, the passengers began to yell and curse at Crook, and were generally uncooperative. Partin also became uncooperative and began to question the way in which Crook performed his OVI investigation. Eventually, Crook cursed and yelled at the passengers as they sat in the back of his cruiser.

{¶17} Crook advised Partin that he was going to take him to the next exit in order to procure a urine sample, and Partin asked that an ambulance come because his knee was hurting. Crook requested the ambulance, and while they were waiting for it to arrive, Crook asked Partin to give him a urine sample. The men walked down the embankment, and Partin filled approximately 10-20% of an evidence-collection tube with urine. Crook added an anti-fermentation substance to the sample, sealed it in a tube, marked the tube with an evidence sticker, and mailed it to the crime lab at the end of his shift.

{¶18} Once the results from the urinalysis came back indicating the presence of cocaine and marijuana, Partin was charged with OVI, specific to operating a vehicle under the influence of narcotics. Partin filed a motion to suppress the results of the field sobriety tests, as well as the urinalysis. After a full hearing, the trial court denied Partin's motion, and the case proceeded to a jury trial. After a two-day trial, the jury returned guilty verdicts and the trial court eventually sentenced Partin to fines and 180 days in jail, with 150 days suspended. Partin now appeals his conviction, asserting the following assignments of error.

{¶19} Assignment of Error No. 1:

{¶10} "THE FIELD SOBRIETY TESTS WERE NOT IN SUBSTANTIAL COMPLIANCE WITH THE TESTING STANDARDS AND THEREFORE THE OFFICER DID NOT HAVE PROBABLE CAUSE TO ARREST."

{¶11} In Partin's first assignment of error, he argues that the trial court should have suppressed evidence obtained from the field sobriety tests because the tests were not administered in substantial compliance with National Highway Traffic Safety Administration (NHTSA) standards. This argument lacks merit.

{¶12} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. *Id.* Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, Butler App. No. CA2005-03-074, 2005-Ohio-6038. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶12.

{¶13} In order for field sobriety testing evidence to be admissible, the state is not required to show strict compliance with testing standards, but must instead demonstrate that the officer substantially complied with NHTSA standards. *State v. Clark*, Brown App. No. CA2009-10-039, 2010-Ohio-4567.

{¶14} Regarding the Horizontal Gaze Nystagmus test, the NHTSA manual provides that "a police officer should instruct the suspect that [he is] going to check the suspect's eyes, that the suspect should keep [his] head still and follow the

stimulus with [his] eyes, and that the suspect should do so until told to stop. After these initial instructions are provided, the officer is instructed to position the stimulus approximately 12 to 15 inches from the suspect's nose and slightly above eye level. The officer is then told to check the suspect's pupils to determine if they are of equal size, the suspect's ability to track the stimulus, and whether the suspect's tracking is smooth. The officer is then to check the suspect for nystagmus at maximum deviation and for onset of nystagmus prior to 45 degrees." *State v. Henry*, Preble App. No. CA2008-05-008, 2009-Ohio-10, ¶19.

{¶15} The manual instructs the officer to repeat each portion of the Horizontal Gaze Nystagmus test, and further sets forth guidelines for the amount of time each portion of the test should take. "When checking for smooth pursuit, the time to complete the tracking of one eye should take approximately four seconds. When checking for distinct nystagmus at maximum deviation, the examiner must hold the stimulus at maximum deviation for a minimum of four seconds. When checking for the onset of nystagmus prior to 45 degrees, the officer should move the stimulus from the suspect's eye to his shoulder at an approximate speed of four seconds," *Clark*, 2010-Ohio-4567 at ¶23.

{¶16} According to Crook's testimony at the motion to suppress hearing, he advised Partin to hold his head still and to follow the stimulus with his eyes. Crook testified that he checked for resting nystagmus, and equal pupil size. He then went on to state that he positioned the stimulus (his pen) approximately 12-15 inches away from Partin's nose and slightly elevated it above eye level. He then checked for equal tracking for both eyes by moving the stimulus to the right and then to the left. Crook testified that he checked for smooth pursuit by having Partin track the stimulus,

which was positioned 15 inches from Partin's nose and slightly elevated above his eyes. Crook repeated the process and observed a lack of smooth pursuit each time.

{¶17} Crook also testified that when checking for nystagmus and maximum deviation, he had Partin track the stimulus and hold each eye for four seconds. Crook noted distinct and sustained nystagmus in each eye, and noted it again after repeating the process in each eye. Crook also testified that he tracked the angle at which the nystagmus began by placing the stimulus between Partin's eyes even with his nose. Each time Crook moved the stimulus toward Partin's shoulder, he directed Partin to track the stimulus and hold his eyes for four seconds. Crook tested and re-tested the angle, and each time, observed the nystagmus prior to 45 degrees in each eye. Based on the Horizontal Gaze Nystagmus test, Crook testified that six out of a possible six clues were present.

{¶18} On cross-examination, Partin raised several concerns regarding the way in which Crook performed the Horizontal Gaze Nystagmus test. First, Partin asked Crook to further explain how he determined what the maximum deviation was, and Crook stated that "as far as I know, usually there's white left on the outside of the eye." Crook also testified on cross-examination that he was not aware that Partin wore contacts, and was unaware if Partin's contacts were in at the time of the Horizontal Gaze Nystagmus test. Partin also raised the issue of where he was positioned during the test in relation to Crook's police cruiser.

{¶19} After reviewing the record, we find that Trooper Crook substantially complied with the NHTSA guidelines when conducting the Horizontal Gaze Nystagmus test. Based on Crook's testimony, he complied with the spacing and timing guidelines after properly instructing Partin on how to perform the test. Further,

Partin was not negatively impacted by where he stood while taking the test because Crook testified that he positioned Partin on the side of his cruiser away from the oncoming traffic lights and his cruiser's flashing lights so that neither were in Partin's direct sight-line.

{¶20} We also note that the NHTSA manual does not instruct an officer to ask the suspect if he wears contacts. See *State v. Cox*, Coshocton App. No. 08 CA 0008, 2009-Ohio-1625, ¶39, (affirming trial court's decision to deny motion to suppress results of Horizontal Gaze Nystagmus test where officer did not ask appellant if he wore contacts because "the manual does not make any reference to contact lenses and their possible effect on the test" and where a deputy testified that "contact lenses do not affect the test").

{¶21} Regarding Partin's concern about what constitutes maximum deviation, we note that "maximum deviation occurs when the eye is as far to the side as possible, *generally* when there is no white visible at the edge." *State v. Haneberg*, Medina App. No. 06CA0048-M, 2007-Ohio-2561, ¶8. (Emphasis added.) Although Crook stated that "there's white left on the outside of the eye," his direct testimony demonstrates that he performed the test correctly because he moved the stimulus in each direction to the point that Partin's eyes were as far as they could go. Crook testified that he held each eye as far as it would go for four seconds, and noted distinct and sustained nystagmus each time. As Partin's eyes were in the correct position at the time of the test, Crook substantially complied with the NHTSA guidelines specific to the maximum deviation portion of the Horizontal Gaze Nystagmus test.

{¶22} Regarding the Walk and Turn test, the NHTSA manual requires an officer to direct a suspect to stand heel-to-toe, keep their hands at their side, and listen to instructions for the test. Once the instruction phase is complete, the suspect then takes nine heel-to-toe steps in one direction, and nine back to the starting point. The NHTSA manual lists eight clues an officer should look for as the suspect completes the test: "cannot keep balance while listening to the instructions; starts before the instructions are finished; stops while walking; does not touch heel-to-toe; steps off the line; uses arms to balance; improper turn; and, incorrect number of steps."

{¶23} According to Crook's testimony, he instructed Partin to stand heel-to-toe with his arms at his side until the instructions were over. Crook then told Partin to take nine heel-to-toe steps down and back an imaginary line, and gave instructions regarding counting the steps out loud and not stopping the test once it began. Crook testified that Partin exhibited five out of the eight clues during the test when Partin started the test before the instructions were over, moved his feet from the starting position twice, raised his arms six inches from his body twice, stepped off the line, and turned incorrectly while losing his balance during the turn.

{¶24} Partin argues that the test was not completed in substantial compliance because Crook could not correctly articulate the testing standards during his testimony, and because Crook's testimony at the motion to suppress hearing contradicted his testimony at trial. Partin suggests that Crook lacked the requisite knowledge of testing protocol because he stated that Partin moving his feet from the starting position was a clue of impairment. Partin further contends that Crook's testimony changed from the time of the motion to suppress hearing to testimony

given at trial that Partin performed the nine heel-to-toe steps twice without being instructed to do so.

{¶25} Regardless of the change in testimony, Crook's testimony specific to the administration of the test demonstrates that he administered it in accordance with the NHTSA manual. Assuming arguendo that Crook incorrectly counted Partin moving his feet at the beginning of the test or performing the test twice as a clue, the NHTSA manual states that two clues out of eight indicate impairment. Even without the disputed fifth clue, Crook testified to the existence of four other clues. Moreover, any discrepancies in Crook's testimony go to his credibility as a witness rather than supposed deviations from the testing protocol.

{¶26} Partin also argues that the test was not in substantial compliance because he had nerve damage in his foot after he ran over it with a lawnmower. In support of his argument, Partin stated that the NHTSA manual "states unequivocally [sic] that such people will have problems with the test." However, a review of the manual indicates otherwise. According to Section VIII-11, 4, "the original research indicated that individuals over 65 years of age [with] back, leg, or inner ear problems had difficulty performing this test." However, nowhere in the manual did it state unequivocally that someone with nerve damage in their foot would have problems with the test, or would be unable to perform according to protocol. A review of the record indicates that Trooper Crook performed the Walk and Turn test in substantial compliance with the NHTSA requirements.

{¶27} Partin next challenges the way in which the One-Leg Stand was performed and claims that Crook did not administer the test in substantial compliance with NHTSA protocol. According to NHTSA, the suspect is to listen to instructions

while keeping his feet together and arms at his side. The suspect should be instructed to raise one leg (either leg) with the foot approximately six inches off of and parallel to the ground, keeping his legs straight and arms at his side. The suspect should then be instructed to count one thousand and one, one thousand and two, etc. until he reaches 30. The officer is instructed to time the test and to terminate it after 30 seconds. The manual lists four clues, including a suspect swaying while balancing, using arms for balance, hopping, or putting their foot down. According to the manual, the observation of two of four clues suggests impairment.

{¶28} After reviewing the record, Crook performed the test in substantial compliance with NHTSA standards. According to Crook's testimony, he told Partin to stand with his feet together and arms at his side while he instructed him on the test and demonstrated how the test should be performed. During the instructions, Crook told Partin to raise either foot approximately six inches off of the ground, while keeping his arms at his side, and to count out loud one thousand and one, one thousand and two, etc. until he reached 30. After Partin indicated that he understood the instructions, he performed the test. According to Crook's testimony, he observed three clues when Partin swayed during the count, raised his arms for balance, and put his foot down twice.

{¶29} Partin now argues that Crook did not perform the test in substantial compliance because Crook did not time the test for 30 seconds, did not take into account Partin's foot injury, because traffic on I-75 created enough wind power to effect Partin's balance as he tried to perform the test, and because there was gravel and debris on the berm where he was instructed to perform the test.

{¶30} Once again, the issues Partin raises are not specific to deviations from the manual, but rather speak to Crook's credibility as a witness. Crook testified that he had a watch on and independently timed the test by knowing what time Partin started, and what time he should stop the test. When asked on cross-examination whether the test was discontinued after 30 seconds, Crook stated, "I believe it was discontinued." Crook also testified that while traffic was passing at high speeds, he did not notice any wind effect from the passing cars. According to Crook's testimony, there was no debris on the road that he could see that would impact the testing conditions. Crook also testified that Partin told him before the test started that he had nerve damage in his foot, but that after seeing Partin walk around he felt "safe" in administering the test. The trial court, when considering the motion to suppress, was in the best position to determine the credibility of Crook's testimony, and we find no error in its decision that the One-Leg Stand was performed in substantial compliance.

{¶31} Having found that all three field sobriety tests were performed in substantial compliance with NHTSA manual standards, Partin's first assignment of error is overruled.

{¶32} Assignment of Error No. 2:

{¶33} "MR. PARTIN WAS IMPROPERLY CONVICTED OF OVI UNDER DRUG CHARGES."

{¶34} In Partin's second assignment of error, he claims that the test results indicating the presence of marijuana and cocaine should not have been admitted at trial because the urinalysis was conducted improperly. Partin argues that without the drug analysis, the state had no other evidence to convict him of OVI. There is no merit to this argument.

{¶35} According to Ohio Adm.Code 3701-53-05(F), "while not in transit or under examination, all blood and urine specimens shall be refrigerated." This court has previously held that this section "does not require a blood or urine sample to be refrigerated during any period of time in which it is in transit to a laboratory for testing." *State v. Finley*, (Feb. 20, 1996), Warren App. No. CA95-05-041, 9. Absent a showing of prejudice to a defendant, the results of a urine-alcohol test must be administered in substantial compliance with Ohio Adm.Code 3701-53-05. *State v. Plummer* (1986), 22 Ohio St.3d 292, syllabus.

{¶36} Partin claims that the state failed to substantially comply with the code because his urine sample was not refrigerated during the eight days it took to reach the lab for testing. According to Crook's testimony, he collected the sample on the night of August 17, 2008 at approximately 11:00 p.m. and dropped the sample in the mail at the end of his shift. According to testimony from lab personnel, they received the sample on August 25, 2008 at 11:01 a.m. so that the sample spent seven and one-half days in transit.

{¶37} While Partin asserts that the state failed to substantially comply with the code, the code does not require a sample to be refrigerated while it is in transit or under examination. The record is clear that Crook sent the sample to the lab in accordance with the code and that it was in transit until the time it reached the laboratory for testing, seven and one-half days later. *Finley*, Warren App. No. CA95-05-041 (finding substantial compliance where sample was taken on the afternoon of September 20, 1994, mailed to the lab at the end of the arresting officer's shift, received by the lab on the morning of September 26, 1994 and refrigerated when not being analyzed).

{¶38} Partin relies on *State v. DeJohn*, Perry App. No. 06-CA-16, 2007-Ohio-163, in which the Fifth District Court of Appeals held that the state failed to substantially comply with the code when the arresting officer did not mail the sample for over 17 hours. However, we find *DeJohn* distinguishable because the officer there waited until after his next shift started before he mailed the sample to the lab. Here, Crook sent the sample at the end of his shift that night and did not create a 17-hour delay in entering the sample into transit. See *State v. Cook* (Aug. 3, 1992), Stark App. No. CA-8708 (finding substantial compliance where officer took sample, and mailed it after his shift ended, and it arrived at the lab after a holiday weekend).

{¶39} Although the state could not control the transit time once the sample was deposited with the post office, Partin nonetheless claims that the state did not substantially comply with the code due to the effects non-refrigeration could have had on the sample. However, Joseph O'Neil Jones, a criminalist with the toxicology unit of the Ohio State Highway Patrol Crime Lab who performed alcohol tests on Partin's sample, testified that the sodium fluoride tablet Crook placed in the tube helped to preserve the urine and that there was no indication that any fermentation had occurred due to the transit time. Deana Nielsen, the interim toxicology director with the Ohio State Highway Patrol Criminal laboratory, later testified that she analyzed Partin's sample for drugs and that the transit time did not have any effect on the sample.¹

1. In his brief, Partin challenges whether Jones and Nielsen were qualified to offer testimony to the effect a seven-day transit time would have on the sample. However, during trial, Partin stipulated to the witnesses' qualifications as experts and cannot now raise an issue that should have been addressed at the trial level. Further, Partin failed to object when the criminologists testified that there would not be any effect on the sample, or in any way raise concerns over the witnesses' qualifications to testify.

{¶40} Partin next argues that he was prevented by the state from independently testing the urine sample, and was thereby denied his due process rights. After Nielsen tested the sample for drugs, no sample remained for independent testing. Partin relies on R.C. 4511.19(D)(3) for the proposition that a suspect is permitted to independently gather and test his sample. However, the last portion of R.C.4511.19(D)(3) expressly states that, "the failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer."

{¶41} Partin argues that the state foreclosed the possibility of testing the sample by using it all. However, the record does not indicate that the state did anything to stop Partin from independently obtaining a sample for analysis. After Crook had Partin's van towed, he dropped Partin and the passengers off at the next exit in order to get a ride home. Partin made no effort to seek independent testing at his own expense, as is permitted under the statute.

{¶42} Moreover, as this court has held in the past, there is no due process violation when the state consumes an entire sample unless the sample possesses an exculpatory value that is apparent before it is destroyed, and the defendant is unable to obtain comparable evidence by other reasonably available means. *State v. Purdon* (1985), 24 Ohio App.3d 217. Purdon was charged with OVI after his urinalysis established the existence of controlled substances in his system. The state consumed the entire urine sample during testing, and Purdon argued that his due process rights were violated because he was not given the opportunity to independently test his sample. We held that it was not readily apparent that the urine

sample possessed an exculpatory value before the evidence was consumed by the testing. Even after assuming *arguendo* that the sample had some sort of exculpatory value, we found that the state did not violate Purdon's due process rights when it consumed his entire urine sample in the testing process because he was able to challenge the accuracy and reliability of the testing procedures utilized by the state, and could have presented evidence of the proper versus improper administration of the test or whether statutory procedures were followed. We also noted that Purdon could have brought forth any other relevant factors that spoke to the weight and probative value of the test results.

{¶43} Like *Purdon*, exculpatory value was not readily apparent from Partin's sample. However, even assuming that the sample had readily apparent exculpatory value, he was able to challenge the accuracy and reliability of the testing procedures and whether the proper statutory procedures were followed when he challenged the transit time of the sample and whether the state adhered to Ohio Adm.Code 3701-53-05(F). Partin also challenged whether his sample was even tested, and suggested to the jury that Crook had switched the samples. The jury, therefore, was able to determine the weight and probative value of the test results.

{¶44} When evidence is not readily exculpatory, but otherwise potentially useful, the Supreme Court has held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Arizona v. Youngblood* (1988), 488 U.S. 51, 58, 109 S.Ct. 333. The record does not contain any inference that the sample was depleted in bad faith. Instead, Nielsen testified that she had to consume the entire sample in order to conduct her drug analysis. According to Crook's testimony,

the reason the sample was small was because Partin was unable to deposit the majority of his sample in the tube, and most of his urine stream missed the collection tube. Without a showing of bad faith, there is no due process violation.

{¶45} Partin next alleges that the sample tested was not his urine. According to Crook's testimony at the motion to suppress hearing, Partin was able to fill the tube 10-20 percent full. The state then asked why the amount was so little, to which Crook answered, "he was urinating elsewhere." At that point, the state asked, "all right so he was able to fill about ten percent of the tube?" To which Crook responded, "yes sir." During the trial testimony, when asked what happened during the urine collection, Crook testified, that Partin missed the collection tube with most of the urine, but filled the tube "possibly a quarter of the way."

{¶46} Partin now argues that the discrepancy in Crook's testimony demonstrates that the urine tested by the laboratory was not that taken from him on the night of the traffic stop. However, Partin is unable to cite to any gap in the chain of evidence to support his contention that the state did not test the sample taken from him that night. Instead, the record demonstrates that Crook's testimony at the motion to suppress hearing included an estimated collection amount between 10 and 20 percent, and his trial testimony suggested that the tube was "possibly a quarter of the way" full. This inconsistency does not negate the testimony from Crook and the criminologists who testified that the chain of evidence was never broken from the time the sample was taken, marked with an evidence tag, placed in the post office mail box, received at the lab, cataloged and refrigerated, and finally tested. Nothing on the record indicates that the sample tested by the laboratory was anything but Partin's.

{¶47} Having found that the state substantially complied with Ohio Adm.Code 3701-53-05(F), and that Partin has not demonstrated any prejudice, Partin's second assignment of error is overruled.

{¶48} Assignment of Error No. 3:

{¶49} "THE TRIAL COURT ERRED BY PREVENTING PARTIN FROM PRESENTING IMPEACHMENT EVIDENCE AGAINST TROOPER KROK [SIC]."

{¶50} In his final assignment of error, Partin argues that the trial court erred in not allowing him to present evidence that Trooper Crook had been disciplined as a result of his actions during the traffic stop. This argument lacks merit.

{¶51} Before a trial court's decision regarding evidence will be disturbed, the appellant must show that the trial court abused its discretion by deciding to admit or exclude the evidence and that the appellant was materially prejudiced thereby. *State v. Lopez*, 186 Ohio App.3d 328, 2010-Ohio-732, citing *State v. Martin* (1985), 19 Ohio St.3d 122. An abuse of discretion "connotes more than error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, ¶181.

{¶52} According to Partin, the essence of his defense was that the urine tested was not the sample he provided. Instead, Partin suggests that Crook was biased against him and substituted Partin's urine with a sample Crook knew would test positive for drugs. Partin argues that he was denied the opportunity to present evidence that he filed a complaint with the Highway Patrol against Crook for the way in which the traffic stop was conducted, and that Crook was disciplined as a result of the complaint. While the trial court denied Partin the opportunity to cross-examine Crook about the complaint and what result occurred, it allowed him to question Crook

regarding his behavior at the time of the traffic stop and what transpired during the exchange.

{¶153} During cross-examination, Crook admitted that things did not go smoothly that night, and that he would do things differently had he been provided the opportunity to do so. The jury watched the video of the stop, as recorded by a video camera on Crook's police cruiser that showed Crook yelling and cursing at Partin and his passengers in the back of the police cruiser when they were being uncooperative. The jury also heard testimony from Crook that Partin told him that his actions were "probably why officers get killed in the line of duty" and that Partin added in a "very sarcastic tone" that "I would hate to see anything happen to you, I would be absolutely upset if something happened to you, hope you have a very safe night and [no one] shoots you dead in the face." Based on the video recording and Crook's testimony, the jury was well-aware of the tension between Crook and Partin, and could weigh what effect that tension had or could have had on Crook and whether he was biased during his investigation.

{¶154} The trial court also permitted Partin to cross-examine Crook regarding the way in which he collected the sample and that Crook was the only officer to control the sample after it was collected. At one point during cross-examination, Partin asked Crook, "you're essentially asking the jury to believe your story, correct, that you didn't switch the urine?" Later in re-direct, the state asked Crook to address the accusation that he had switched the samples, to which Crook responded, "the sample the lab received was Mr. Partin's urine sample. It was sealed with a seal that I sealed at the scene and then opened at the crime lab, and they analyzed it." The state then specifically asked Crook whether he had switched the samples to which

Crook responded, "no." The jury was therefore given ample opportunity to learn of the tensions between Crook and Partin, knew of Partin's theory that Crook switched the samples, and heard direct testimony from Crook so that it could assess his credibility.

{¶55} We also note that evidence regarding the complaint and result were inadmissible because they were not probative in the least. Partin filed the complaint the day after the stop was made, and any discipline that was handed out occurred after the complaint was filed. However, the record is clear that the urine sample was already in transit via the post office by the time that Partin filed his complaint. Evidence of the complaint and result, therefore, would not be probative to determine if Crook switched the samples or was biased against him during the traffic stop. The trial court did not abuse its discretion in holding evidence of the complaint inadmissible.

{¶56} Partin next argues that the trial court erred by allowing the trial to begin without defense counsel having the entire transcript from the motion to suppress hearing. The trial court denied Partin's request to continue the trial until his counsel could procure a complete transcript. The decision to grant or deny a continuance is in "the broad discretion of the trial court." *State v. Franklin*, 97 Ohio St.3d 1, 2002-Ohio-5304, ¶18. The court should take into consideration several factors including the "length of the requested delay, whether other continuances have been requested and received, the inconveniences likely to result, the reasons for the delay, and whether the defendant contributed to the circumstances giving rise to the need for delay." *Id.*

{¶57} The trial court did not abuse its discretion in denying Partin's request for a continuance so that his counsel could obtain a full transcript. Partin's counsel requested an indefinite continuance on April 5, 2010 when trial was scheduled for April 13-14, 2010.

{¶58} Regarding the factors, the trial court had continued the case several times at Partin's request so that he could change counsel and permit counsel to become acquainted with the case. The trial was to begin within eight days of the request for a continuance, and had been on the court's docket since Partin's arrest in 2008. The reasons giving rise to the need for the delay were of Partin's own making. The record indicates that Partin's trial had been continued multiple times so that he could get new counsel after he could not get along with his attorneys. We also note that the motion to suppress hearing occurred on dates in September/October 2009, and his trial did not start until April 2010. Partin had several months to obtain the complete transcript, and failed to do so.

{¶59} Partin next argues that without the complete transcript, he was denied his Sixth Amendment right to confront Crook. According to Partin, the missing transcripts for the motion to suppress hearing contained information regarding the field sobriety tests, and how Crook administered them. However, the record is clear that Partin actively cross-examined Crook about the way in which the tests were performed and raised issues regarding Crook's credibility throughout trial. Partin was, therefore, not denied his right to confront Crook.

{¶60} Having found that the trial court did not abuse its discretion in denying admission of impeachment evidence against Crook, Partin's third assignment of error is overruled.

{¶61} Judgment affirmed.

BRESSLER and HENDRICKSON, JJ., concur.