

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-606
Phillip W. Liddell,	:	(M.C. No. 13TRC 186355)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 12, 2015

Richard C. Pfeiffer, City Attorney, *Lara N. Baker*, City Prosecutor, and *Melanie R. Tobias*, for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling*, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶ 1} Phillip W. Liddell is appealing from his convictions for operating a motor vehicle while under the influence and for an illegal U-turn. The former is a violation of Columbus City Code 2133.01(A) and the latter is a violation of Columbus City Code 2131.12(A). Three errors are assigned on his behalf:

First Assignment of Error: THE TRIAL COURT ERRED WHEN IT HELD THAT THE ARRESTING OFFICER HAD REASONABLE AND ARTICULABLE SUSPICIONS TO TAKE THE DEFENDANT'S KEYS, SEIZE HIM, DO A FRISK AND SEARCH OF HIS PERSON, LOCK HIM INSIDE A CRUISER, AND TRANSPORT HIM BLOCKS AWAY FROM THE SCENE TO CONDUCT FIELD SOBRIETY TESTS BASED ONLY UPON AN ODOR OF ALCOHOL, ADMISSION OF DRINKING, AND BLOODSHOT EYES WHEN THERE WAS NO ERRATIC DRIVING OR ANY PHYSICAL SIGNS OF

IMPAIRMENT SUCH AS SLURRED SPEECH, DIFFICULTIES WITH MOVEMENT OR LACK OF COORDINATION INDICATIVE OF IMPAIRED DRIVING OBSERVED AT THE SCENE.

Second Assignment of Error: THE TRIAL COURT ERRED WHEN IT HELD THAT THE ACTIONS OF THE OFFICER IN SEIZING THE DEFENDANT'S KEYS, SEIZING THE DEFENDANT AND DOING A BODY SEARCH OF HIS PERSON, PLACING THE DEFENDANT INSIDE A LOCKED POLICE CRUISER, AND TRANSPORTING HIM BLOCKS AWAY FROM THE SCENE FOR FIELD SOBRIETY TESTING WERE INTRUSIONS THAT DID NOT HAVE TO BE JUSTIFIED BY PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT WAS IMPAIRED.

Third Assignment of Error: THE TRIAL COURT ERRED WHEN IT ENTERED A JUDGMENT OF CONVICTION FOR A VIOLATION OF THE U-TURN ORDINANCE UNDER SECTION 2131.12 OF THE COLUMBUS CITY CODE WHEN THE ORDINANCE CANNOT BE ENFORCED BECAUSE IT IS IN VIOLATION OF STATE LAW REQUIRING TRAFFIC LAWS TO BE UNIFORM THROUGHOUT THE STATE AND IS IN VIOLATION OF THE HOME RULE AMENDMENT OF SECTION 3, ARTICLE XVIII OF THE OHIO CONSTITUTION BECAUSE IT IS IN DIRECT CONFLICT WITH THE REQUIREMENT THAT TRAFFIC LAWS BE UNIFORM THROUGHOUT THE STATE.

{¶ 2} Liddell was operating his Ford truck on North High Street in the area a little north of the Ohio State University campus around 2:00 a.m. when he made a U-turn. The U-turn was seen by two officers of the Columbus Police Division who then pulled Liddell's truck over. U-turns are generally prohibited in the city of Columbus by Columbus City Code 2131.12(A).

{¶ 3} The officers pulled Liddell over because of the U-turn. Liddell admitted he had been drinking. An odor of an alcoholic beverage was detected on his breath. His eyes were bloodshot and glassy.

{¶ 4} The officers decided to administer field sobriety tests, but chose to administer the tests at a nearby gas station where the tests could be administered out of the rain. The officers placed Liddell in the back of their cruiser, after having him secure

his truck. Liddell was frisked before getting into the cruiser. Liddell did not register any complaints about being transported to a dry location for field sobriety testing.

{¶ 5} Once they arrived at the gas station, field sobriety tests were administered and the officers concluded that Liddell's blood alcohol content was above the legal limit and that he was impaired.

{¶ 6} Liddell subsequently was transported to a location where blood alcohol testing could be conducted. He tested as having a blood alcohol content of .137 which is well above the .08 content threshold in the state of Ohio. As a result, he was charged both with driving while impaired and driving with a prohibited blood alcohol content. He was also charged with making the illegal U-turn.

{¶ 7} Counsel for Liddell filed a variety of motions on his behalf, including motions to suppress the evidence obtained during his encounter with the Columbus police officers. The record before us does not contain a motion attacking the Columbus City Code section barring U-turns generally within the city of Columbus.

{¶ 8} The trial court judge assigned to the case conducted a full evidentiary hearing on the motions to suppress and later issued a written decision overruling the motions. Liddell then entered "no contest" pleas to the charges against him.

{¶ 9} Following the pleas, the trial court judge allowed the city of Columbus to elect whether Liddell would be convicted of driving while impaired or convicted of driving with a prohibited blood alcohol content. The city chose to proceed on the driving while impaired charge.

{¶ 10} The trial court judge then entered guilty findings as to that charge and as to the U-turn charge. This appeal ensued.

{¶ 11} Addressing the third assignment of error first, a full record was not developed below as to the attack on Columbus City Code 2131.12(A). For that reason alone, we should overrule this assignment of error. However, we also note that Ohio is a home rule state and cities are allowed to enact their own ordinances as to safety matters. The city of Columbus has enacted Columbus City Code 2131.12(A) and has posted signs at various places within the city informing motorists that U-turns are prohibited citywide. Had a full evidentiary record been developed following the filing of an appropriate motion, such facts would in all likelihood have been shown. Without an evidentiary

record, we will not overturn our earlier decision of *Columbus v. Knoff*, 10th Dist. No. 86AP-285 (Sept. 25, 1986).

{¶ 12} Based upon the foregoing, the third assignment of error is overruled.

{¶ 13} We choose to address the first two assignments of error together since they heavily overlap.

{¶ 14} Liddell made an illegal U-turn on the main street through the Ohio State University campus. He made the U-turn within sight of a police cruiser, which might imply he was impaired or was not paying close attention to his driving and surroundings.

{¶ 15} Upon being pulled over, Liddell first claimed he had only one drink. Then he acknowledged two drinks.

{¶ 16} Liddell is approximately 190 pounds in weight. Two drinks consumed over a period of hours should have resulted in a blood alcohol of less than .04. Liddell tested .137, over three times that amount. The officers were right to doubt his credibility about his only having two drinks.

{¶ 17} Liddell had blood shot and glassy eyes. He had a noticeable odor of an alcoholic beverage on his breath. These facts also are consistent with a man who has had significantly more than two drinks.

{¶ 18} The officers were well-within their rights to conduct field sobriety tests. After he performed poorly on the field sobriety tests, the officers were right to require Liddell to take a breath test.

{¶ 19} The first assignment of error is overruled.

{¶ 20} The second assignment of error centers on the fact that Liddell, with his apparent consent, was placed in the back of a police cruiser and transported to a gas station with an overhang to expedite the conducting of the field sobriety tests out of the presence of the pouring rain.

{¶ 21} First, Liddell's apparent consent and the request for his consent strongly imply that the officers were not treating Liddell like someone who was already under arrest. Further, he was allowed into the back of the cruiser with no handcuffing. The officers had the right to be sure that they were not placing a man with weapons in the back of their cruiser, so a frisk was not unreasonable.

{¶ 22} Police cruisers are used to transport persons far more dangerous than Liddell, so the backseat doors lock automatically. Again, Liddell apparently had consented to the short drive and never asked to be let out of the cruiser. Placing him in the cruiser did not deprive him of his liberty in this case.

{¶ 23} As noted by the trial court judge, *State v. Darrah*, 64 Ohio St.2d 22 (1980), sets forth the criteria for determining an arrest has taken place. One of the factors to be considered is the intent of the police officers. The trial court judge found, based upon the evidence adduced at the hearing, that it was clear the officers did not intend to arrest Liddell at the time of the brief transport. Only after he failed the field sobriety tests did the intent change.

{¶ 24} In short, the evidence before the trial court did not demonstrate any police misconduct which would have justified suppression of the evidence.

{¶ 25} The second assignment of error is overruled.

{¶ 26} All three assignments of error having been overruled, the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

LUPER SCHUSTER and HORTON, JJ., concur.
