

[Cite as *State v. Johnson*, 2004-Ohio-1938.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO
STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19947
vs. : T.C. CASE NO. 0204793AB
JOSEPH JOHNSON : (Criminal Appeal from
Defendant-Appellant : (County Court)

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O P I N I O N

Rendered on the 16th day of April, 2004.

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graGRADY, J.

{¶1} Defendant, Joseph Johnson, appeals from his
conviction and sentence for operating a motor vehicle while
under the influence of alcohol. ("OMVI").

{¶2} Officer Robbie Graham is a twenty-two year veteran
of the Huber Heights police department. He has been trained
in how to detect persons who are driving under the influence
of alcohol, including the use of the horizontal gaze
nystagmus ("HGN") test. Officer Graham has made hundreds of
arrests for OMVI.

{¶3} On November 17, 2002 around 7:00 p.m., Officer Graham was dispatched to Charlesgate and Troy Pike in Huber Heights on report of an accident. Officer Graham was looking for one of the drivers who reportedly fled the scene, but had left his driver's license with the other party involved in the accident.

{¶4} At the scene of the accident Officer Graham spoke with Officer Felts and obtained the name and a physical description of the suspect who left the scene. Officer Graham asked the police dispatcher to call some nearby businesses and ask them to be on the lookout for the suspect.

{¶5} Just fifteen minutes later, an employee at the Lowes store, located about one quarter mile from the accident scene, called police and advised that a person matching the description of the suspect had walked into the store.

{¶6} Officer Graham went to the Lowes store, and upon entering he encountered an employee who indicated that the person Graham was looking for was in the garden center section of the store. Officer Graham walked to that area and spotted the suspect, Defendant Joseph Johnson.

{¶7} Officer Graham approached Defendant, and when he did he smelled a strong odor of alcohol on Defendant's person. Officer Graham spoke to Defendant and noticed that his speech was slurred and not understandable at times.

{¶8} The name Defendant gave Officer Graham matched the name on the driver's license that was left at the scene of the accident. When Officer Graham asked, Defendant admitted that he had been involved in the accident. Officer Graham asked Defendant to come outside with him. Graham noticed that Defendant staggered as he walked.

{¶9} Outside the store Officer Graham advised Defendant of his *Miranda* rights. The odor of alcohol on Defendant's person, plus his slurred speech and bloodshot eyes caused Officer Graham to suspect that Defendant was under the influence. Officer Graham administered a horizontal gaze nystagmus (HGN) test, which he has performed over one hundred times. Based upon Defendant's performance on that test, Officer Graham concluded from his experience that Defendant had failed that test and was under the influence of alcohol.

{¶10} Officer Graham asked Defendant to submit to other field sobriety tests, but Defendant refused. Defendant also refused a breathalyzer test. When Officer Graham asked Defendant if he had been drinking, Defendant admitted that he was drinking earlier. Officer Graham arrested Defendant for OMVI and he was transported to jail.

{¶11} Defendant was cited for OMVI in violation of R.C. 4511.19(A)(1), and failure to control in violation of R.C. 4511.202. Defendant filed a motion to suppress evidence, arguing that police lacked probable cause to arrest him.

{¶12} Following a hearing, the trial court overruled Defendant's motion to suppress. Defendant then entered a plea of no contest to the charges and was found guilty.

{¶13} On the OMVI charge the trial court sentenced Defendant to twenty-nine days in jail, five hundred fifty dollars in fines plus court costs, and a two year driver's license suspension. On the failure to control charge the court fined Defendant five dollars plus court costs. Imposition of sentence was stayed pending Defendant's appeal to this court.

{¶14} Defendant has timely appealed to this court from his conviction and sentence.

ASSIGNMENT OF ERROR

{¶15} "THE ARREST IN THIS CASE VIOLATED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE THE OFFICER MADE THE ARREST WITHOUT PROBABLE CAUSE."

{¶16} Defendant argues that Officer Graham did not have sufficient reasonable suspicion of OMVI to justify the administration of a field sobriety test and, following that, did not have probable cause to arrest him for OMVI. We disagree. On the facts and circumstances present in this case, the detention and arrest of Defendant was lawful.

{¶17} Probable cause to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a reasonably prudent person in

believing that an offense has been committed and that defendant committed it. *Beck v. Ohio* (1964), 379 U.S. 89, 91; *State v. Timson* (1974), 38 Ohio St.2d 122.

{¶18} Prior to administering any field sobriety tests Officer Graham knew that Defendant had been involved in the accident he was investigating, that Defendant had left the scene of that accident, leaving his driver's license behind with the other party involved in the accident, that Defendant had a strong odor of alcohol on his person as well as slurred speech and bloodshot eyes, and that he staggered when he walked. These facts and circumstances clearly give rise to a reasonable suspicion of driving under the influence of alcohol sufficient to justify the administration of field sobriety tests. Defendant's reliance upon two of our previous cases, *State v. Spillers* (Mar. 24, 2000), Darke App. No. 1504; *State v. Dixon* (Dec. 1, 2000), Greene App. No. 2000-Ohio-30, is misplaced because those cases are easily distinguished on their facts.

{¶19} After administering the HGN test to Defendant, Officer Graham concluded, based upon his experience and Defendant's performance, that Defendant failed that test and was under the influence of alcohol. Defendant refused to perform any additional field sobriety tests and also refused a breathalyzer test. When Officer Graham asked, Defendant admitted that he had been drinking earlier.

{¶20} The totality of all these facts and circumstances

was sufficient to give rise to probable cause to arrest Defendant for OMVI. The trial court did not err when it found that the arrest of Defendant was lawful and overruled his motion to suppress the evidence.

{¶21} The assignment of error is overruled. The judgment of the trial court will be affirmed.

Judgment affirmed.

FAIN, P.J., and YOUNG, J., concur.

Copies mailed to:

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Jon Paul Rion, Esq.
Hon. James A. Hensley, Jr.