

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
UNION COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NUMBER 14-2000-20

v.

LARRY A. RICHTER

O P I N I O N

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Municipal Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: November 15, 2000

ATTORNEYS:

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For Appellee.**

SHAW, J. This is an appeal by the defendant-appellant, Larry A. Richter, from his conviction and sentence in the Marysville Municipal Court of Union County.

On March 17, 2000, defendant's vehicle was stopped by Trooper Arbogast of the Ohio State Highway Patrol. The trooper observed defendant's vehicle traveling at a speed exceeding the speed limit that he clocked on radar at 77 miles per hour in a 65 mile-per-hour zone. Upon approaching the vehicle, Trooper Arbogast detected a strong odor of alcohol. Defendant's eyes were glossy. After such observations, the trooper asked the defendant to exit the vehicle so that he could administer several field sobriety tests, which he did. Defendant was arrested by the trooper and cited for speeding in violation of R.C. 4511.21(D)(2), driving while under the influence in violation of R.C. 4511.19(A)(1), and for failing to wear his seat belt.

On April 10, 2000, defendant filed a motion to suppress all of the evidence against him. After a hearing on the motion, the trial court ruled that there was both reasonable cause to stop defendant's vehicle and probable cause to arrest him. The court therefore denied defendant's motion to suppress.

Defendant entered a plea of no contest to driving under the influence, and the trial court found him guilty and imposed sentence. Defendant now appeals and asserts the following two assignments of error:

The lower court erred by not ruling on presented issues and/or sustaining defendant's motion to suppress in violation of the defendant's constitutional rights in that the officer lacked reasonable suspicion to conduct field sobriety tests.

The court erred by not considering the appropriate legal standard at the motion hearing.

In his first assignment of error, defendant argues that his constitutional rights were violated when Trooper Arbogast detained him to conduct the field sobriety tests. Specifically, he contends that the trooper had no reasonable and articulable suspicion to justify the continued detention to conduct the field sobriety tests. Defendant's second assignment of error concerns the fact that the trial court made no ruling on the reasonable suspicion to detain issue.

Reasonable suspicion of criminal activity will support detaining an individual for further investigation, such as administering field sobriety tests. *State v. Gustin* (1993), 87 Ohio App.3d 859, 860; *Columbus v. Anderson* (1991), 74 Ohio App.3d 768, 770. In determining whether reasonable suspicion of criminal activity exists, an officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Gustin*. Therefore, probable cause is not needed before an officer conducts field sobriety tests. *Id.*

In the instant case, defendant's motion to suppress evidence claimed that the police lacked probable cause for the stop and that the police "lacked probable

cause to detain the Defendant further, question the Defendant without reading him his *Miranda* warnings, take the Defendant from his vehicle and conduct sobriety tests." A suppression hearing was held wherein defendant's counsel made two points focusing on the issues of the initial traffic stop and "probable cause" to administer the field sobriety tests. The trial judge, however, stated that the motion to suppress also appears to address the issue of probable cause for the arrest. At the close of that hearing, the trial court issued a ruling denying defendant's motion to suppress based upon its finding that the trooper had reasonable cause to stop the vehicle and probable cause to arrest defendant.

While the trial court did not explicitly rule on the issue of whether defendant's continued detention was proper, the record clearly reflects that the trial court relied on the factors of defendant's strong odor of alcohol and glassy eyes to determine that there was probable cause for the arrest. Those factors supported Trooper Arbogast's continued detention to conduct the field sobriety tests. This court concludes that those factors were sufficient to establish reasonable suspicion of driving under the influence to justify further investigation by conducting field sobriety tests. Although the issue before this court in *City of Galion v. Neef* (Oct. 10, 1991), Crawford App. No. 3-90-41, unreported, at *3, 1991 WL 216903, involved probable cause to arrest, we clearly held that:

When a police officer has lawfully stopped a motorist for a violation, and, upon talking with the driver, detects a moderate

odor of alcohol and observes the driver's bloodshot eyes, the officer may then require the driver to perform several field sobriety tests to determine if there is probable cause to arrest the driver for operating a motor vehicle while under the influence of alcohol. Accord, *State v. Downey* (1987), 37 Ohio App.3d 45 (an officer who detects a strong odor of alcohol about the person of a lawfully detained motorist may conduct further investigations to determine if the suspect was driving while intoxicated).

For the foregoing reasons, both of defendant's assignments of error are overruled, and the judgment of the Marysville Municipal Court is affirmed.

Judgment affirmed.

HADLEY, P.J., and BRYANT, J., concur.

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