

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

State of Ohio

Court of Appeals No. L-11-1307

Appellee

Trial Court No. 10TRC05247

v.

Candice Graff

DECISION AND JUDGMENT

Appellant

Decided: May 31, 2013

* * * * *

Melissa M. Purpura, for appellee.

Edward J. Fischer, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} This matter is before the court pursuant to our June 19, 2012 decision which granted appellant, Candice Graff's, application for reopening, pursuant to App.R. 26(B), based upon a claim of ineffective assistance of appellate counsel on direct appeal.

Because that officer had reasonable suspicion to believe that appellant was intoxicated and request that appellant submit to field sobriety tests, the judgment of the Maumee Municipal Court denying appellant's motion to suppress is affirmed.

{¶ 2} During the evening of August 31, 2010, Waterville Police Department Officer Gabriel Rogers noticed a 2004 Chevy Silverado parked in a local public lot. As both the vehicle and driver were known by the officer from previous incidents, he ran the truck's license plate and discovered the registered owner, Michael Langalies, had a suspended driver's license with no privileges.

{¶ 3} A few hours later at approximately 2:00 a.m., the officer observed the same 2004 Chevy Silverado being driven by a person whom he believed to be the registered owner. The officer attempted to initiate a traffic stop by activating his lightbar, but the driver of the truck failed to respond. Approximately one block later, the officer also triggered his siren. After driving an additional quarter mile, the truck pulled over to the side of the road.

{¶ 4} The officer approached the driver's side of the truck, but was unable to discern the occupants until he was directly next to it. Upon reaching the driver's window, the officer became aware that appellant, Candice Graff, was the driver while the owner of the truck was present as a passenger. Having determined that his prior identification was incorrect, the officer sought to provide a courtesy explanation for the stop, so he initiated a conversation with the occupants of the truck. Immediately upon beginning this conversation, the officer noticed the "strong odor of an alcoholic beverage" on appellant's breath. Upon questioning, appellant admitted to having consumed two alcoholic drinks that night.

{¶ 5} Based on these criteria, the officer had appellant exit the vehicle. The officer then had appellant undergo a battery of field sobriety tests, which she failed. Following the failed tests, appellant's blood alcohol was tested via breathalyzer, which registered a 0.217 BAC. Appellant was then placed under arrest for driving under the influence of alcohol, a violation of R.C. 4511.19(A)(1)(a) and operating a motor vehicle with a prohibited concentration of alcohol, a violation of R.C. 4511.19(A)(1)(h).

{¶ 6} On March 15, 2011, appellant filed a motion to suppress. Following a suppression hearing in Maumee Municipal Court, the motion was denied. Appellant then entered a no contest plea to the charges.

{¶ 7} A direct appeal was filed, however, counsel never filed a brief and the appeal was dismissed for failure to file a brief. Finding that appellant's counsel was ineffective, this court granted appellant's application to reopen her appeal.

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

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

{¶ 9} In her assignment of error, appellant contends that the officer did not have probable cause for either the traffic stop or to request appellant to submit to field sobriety tests.

{¶ 10} An appellate review of a ruling on a motion to suppress evidence presents mixed questions of law and fact. *United States v. Martinez*, 949 F.2d 1117, 1119 (11th Cir.1992); *State v. Long*, 127 Ohio App.3d 328, 332, 713 N.E.2d 1 (4th Dist.1998). During a suppression hearing, the trial court assumes the role of the trier of fact and is,

therefore, in the best position to resolve questions of fact and evaluate witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992); *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996). As a result, an appellate court must accept a trial court's factual findings if they are supported by competent and credible evidence. *State v. Guysinger*, 86 Ohio App.3d 592, 594, 621 N.E.2d 726 (4th Dist.1993). The reviewing court must then review the trial court's application of the law de novo. *State v. Russell*, 127 Ohio App.3d 414, 416, 713 N.E.2d 56 (9th Dist.1998).

{¶ 11} The correct standard for examining an investigative stop is not probable cause. The investigative stop exception to the Fourth Amendment allows “a police officer to stop an individual, provided the officer has the requisite reasonable suspicion, based upon specific and articulable facts, that a crime has occurred or is imminent.” *State v. Molk*, 11th Dist. No. 2001-L-146, 2002-Ohio-6926, ¶ 15, citing *State v. Gedeon*, 81 Ohio App.3d 617, 618, 611 N.E.2d 972 (11th Dist.1992) (additional citation omitted). *See also Maumee v. Weisner*, 87 Ohio St.3d 295, 297, 720 N.E.2d 507 (1999).

{¶ 12} This less stringent requirement was satisfied after Officer Rogers ran the vehicle's plates and identified the registered owner as possessing a suspended license. After making such identification, “reliable evidence that the driver/owner of a vehicle lacks a valid operator's license may create reasonable suspicion of criminal activity to support a traffic stop.” *State v. Mitchell*, 6th Dist. No. L-10-1047, 2010-Ohio-4708, ¶ 15 (internal quotations and citation removed). *Accord State v. Elliott*, 4th Dist. No. 08CA50, 2009-Ohio-6006 (“absent some indication that the registered owner is not driving the

automobile, police may conduct an investigatory stop if they learn that the registered owner has a suspended license”). This is enhanced by the officer’s belief, albeit mistaken, that the owner was the sole occupant of the vehicle prior to the stop. *See State v. Mack*, 9th Dist. No. CIV.A. 24328, 2009-Ohio-1056 (“it is reasonable for police officers to infer that an automobile is being driven by its registered owner”).

{¶ 13} Once the traffic stop is lawfully initiated, the officer must necessarily have the authority to speak to the driver. Under Ohio law, once the officer is on notice that he no longer has reasonable suspicion for the traffic stop, the officer is still permitted to provide a courtesy explanation to the driver. This is subject to the limitation that the officer cannot ask for the driver’s license or otherwise further detain the vehicle. *Ohio v. Chatton*, 11 Ohio St.3d 59, 463 N.E.2d 1237 (1984). *See also State v. Lavalette*, 6th Dist. No. WD-02-025, 2003-Ohio-1997.

{¶ 14} After identifying appellant as the driver of the vehicle instead of the registered owner, Officer Rogers was authorized to explain the reason he had pulled them over even after the reasonable suspicion for that traffic stop had been extinguished. The officer’s mistake of fact does not require him to immediately depart without an explanation. The person stopped and then abandoned by the officer in this fashion would utterly be at a loss regarding whether she is permitted to leave or should remain at the scene awaiting other action by authorities. *See State v. Baumgartner*, 6th Dist. No. L-98-1282, 1999 WL 375519 (June 11, 1999) (“[F]rom a common sense vantage * * * the

officer was allowed to speak with the driver of the vehicle after a good faith stop was made without violating the Fourth Amendment rights of the defendant.”)

{¶ 15} Probable cause is also not needed for an officer to conduct a field sobriety test. When an officer is in the midst of a valid traffic stop, the officer may proceed to investigate the driver for operating a vehicle under the influence if the officer has a reasonable suspicion that the detainee may be intoxicated based on specific and articulable facts, such as when the officer can identify evident indicia that the driver is under the influence. *State v. Appelhans*, 6th Dist. No. WD-10-026, 2011-Ohio-487, citing *State v. Evans*, 127 Ohio App.3d 56, 62-63, 711 N.E.2d 761 (11th Dist.1998). The reasonableness of the officer’s request that a driver perform a field sobriety test is examined under a totality of the circumstances standard, and courts will generally validate that request “only where the officer bases his decision on a number of factors.” *State v. Evans*, 127 Ohio App.3d 56, 63, 711 N.E.2d 761 (11th Dist.1998).

{¶ 16} Conditions that permit an officer to acquire such reasonable, articulable suspicion include, but are not limited to: the time and day of the stop, any indicia of erratic driving before the stop, the odor of alcohol emanating from the interior of the car, the potency of the odor of alcohol, and the driver’s admission to consuming alcohol prior to driving. *Id.* at 62-63.

{¶ 17} In the instant case, Officer Roger executed the traffic stop at approximately 2:00 a.m. after observing the driver fail to yield to the officer’s use of both lights and siren. Upon approaching the driver, the officer was able to discern a “strong odor of

alcohol” on the breath of appellant. When faced with the question, appellant admitted to consuming two alcoholic drinks earlier in the evening. These signals must be viewed collectively with the deference required for the experience and training of the officer. *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981). When examined together, the present *Evans* indicia, along with the necessary deference for the officer’s experience, leads this court to conclude that Officer Rogers had reasonable suspicion to believe that appellant was intoxicated and request appellant to submit to field sobriety tests. Appellant’s assignment of error is found not well-taken.

{¶ 18} On consideration, the denial of appellant’s motion to suppress by the Maumee Municipal Court is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

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, P.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:
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