[Cite as *State v. Yourex*, 2015-Ohio-2108.]

COURT OF APPEALS
COLUMBIANA COUNTY, OHIO
SEVENTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CASEY YOUREX

Defendant-Appellant

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Craig R. Baldwin, J.

Sitting by Assignment by the Ohio Supreme Court

Case No. 14CO1

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Columbiana County Municipal Court, Case No. 2013TRC2415

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Dated: May 28, 2015

Hoffman, P.J.

{¶1} Defendant-appellant Casey Yourex appeals her conviction entered by the Columbiana County Municipal Court on one count of Operating a Vehicle while Intoxicated, in violation of R.C. 4511.19(A)(1)(a). Plaintiff-appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 7, 2013, Ohio State Highway Patrol Trooper D.M. Brown was traveling north on State Route 45, and observed a silver automobile traveling southbound with a license plate burned out, an equipment violation. Trooper Brown turned his vehicle around and followed the silver vehicle. The officer observed the silver vehicle weaving within its lane of travel. Trooper Brown then initiated a traffic stop.

{¶3} Upon approaching the vehicle, Trooper Brown noticed an odor of alcohol emanating from the vehicle, and further observed Appellant, the driver, had bloodshot, glassy eyes. The officer observed all of the passengers of the vehicle appeared to be extremely intoxicated.

{¶4} Trooper Brown requested Appellant's driver's license, registration and proof of insurance. Appellant was unable to provide any of these documents to the officer. Trooper Brown then asked Appellant to step out of the vehicle, and to sit in the back of the police cruiser. The trooper noted Appellant had no difficulty getting out of the vehicle or walking to the cruiser. Trooper Brown again noticed a strong odor of alcohol on Appellant's person as she sat in the cruiser. Trooper Brown further noticed Appellant exhibited slow speech and fumbled a piece of paper he handed to her. Based upon the same, the officer subjected Appellant to a battery of field sobriety tests and a breathalyzer test.

{¶5} Appellant was later charged with operating a vehicle while intoxicated, in violation of R.C. 4511.19(A)(1)(a) and a license plate light violation, in violation of R.C. 4513.05.

{¶6} Appellant filed a motion to suppress on August 2, 2013. Via Judgment Entry of November 8, 2013, the trial court denied the motion to suppress.

{¶7} On December 5, 2013, Appellant entered a plea of no contest to OVI, in violation of R.C. 4511.19(A)(1)(a). The trial court found Appellant guilty of the charges, and sentenced Appellant to ninety days in the county jail with eighty-seven suspended, ordering Appellant to complete a driver's intervention program, thirty hours of community service, two years of probation, to pay a monetary fine, and suspended her driver's license.

{¶8} Appellant appeals, assigning as error:

{¶9} "I. THE TRIAL COURT ERRED IN DENYING CASEY YOUREX'S MOTION TO SUPPRESS."

I.

{¶10} There are three methods of challenging on appeal a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether the findings of fact are against the manifest weight of the evidence. See: *State v. Fanning (1982),* 1 Ohio St.3d 19, 437 N.E.2d 583; *State v. Klein (1991),* 73 Ohio App.3d 486, 597 N.E.2d 1141; *State v. Guysinger (1993),* 86 Ohio App.3d 592, 621 N.E.2d 726.

{¶11} Secondly, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. See: *State v. Williams* (1993), 86 Ohio App.3d 37, 619 N.E.2d 1141.

{¶12} Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry (1994),* 95 Ohio App.3d 93, 96, 641 N.E.2d 1172; *State v. Claytor (1993),* 85 Ohio App.3d 623, 627, 620 N.E.2d 906; and *State v. Guysinger (1993),* 86 Ohio App.3d 592, 621 N.E.2d 726. As the United States Supreme Court held in *Ornelas v. U.S. (1996),* 517 U.S. 690, 116 S.Ct. 1657, 134 L.Ed.2d 911, "... as a general matter determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal."

{¶13} In the matter presently before us, we find appellant challenges the trial court's decision concerning the ultimate issue raised in the motion to suppress. Thus, we must independently determine whether the facts meet the appropriate legal standard.

{¶14} Appellant maintains Trooper Brown lacked reasonable articulable suspicion to warrant removing Appellant from the vehicle to conduct the field sobriety tests.

{¶15} Requiring a driver to submit to a field sobriety test constitutes a seizure within the meaning of the Fourth Amendment. Courts have generally held the intrusion

on the driver's liberty resulting from a field sobriety test is minor, and the officer therefore need only have reasonable suspicion the driver is under the influence of alcohol in order to conduct a field sobriety test. *State v. Bright*, 5th Dist. No. 2009 CA 28, 2010-Ohio-1111, citing *State v. Knox*, 2nd Dist. No. 2005 CA 74, 2006-Ohio-3039. In determining whether an officer has reasonable suspicion to justify the administration of field sobriety tests, we must look at the totality of the circumstances and a number of factors. *State v. Evans*, 127 Ohio App.3d 56 (1998).

{¶16} At the October 7, 2013 suppression hearing, Trooper Brown testified,

> A. I was traveling northbound on State Route 45. When I was traveling northbound - - there's not too many vehicles on the roadway in Lisbon. So I was traveling northbound and cars were coming at me. I looked in my mirror; saw the license plate light was out; did a turn; followed the vehicle. I could see the vehicle weaving within it's lane. I turned on my overhead lights and initiated a traffic stop based on the license plate light violation.
>
> * * *
>
> Q. Upon approach to the vehicle, who did you make contact with?
>
> A. I first made contract with the driver of the vehicle, Miss Yourex.
>
> Q. And explain to the Court after you made contact with the driver what you did next.
>
> A. After I make contact with the driver, for me, there's a lot of confusion up at the vehicle upon a stop. I asked the driver for her license, registration, proof of insurance, of which she could not provide any of those three. So from there - - while I was up there talking, I smelled the odor of an alcoholic beverage coming

from within the vehicle. There's one, two, three other people in the vehicle, including Miss Yourex, that'd be four. So from that point I asked Miss Yourex to step out of the vehicle and come back to my patrol car.

Q. Okay. Did you observe any other indicators at that point other than the odor of alcohol?

A. Yes, I observed bloodshot, glassy eyes within the vehicle.

Q. Okay. Of who?

A. On Miss Yourex.

Q. Okay. Did you request that she step out of the vehicle?

A. Yes.

Q. And she consented to stepping out of the vehicle?

A. Yes, she was very respectful with stepping out of the vehicle.

Q. Okay. After she stepped out of the vehicle, what did you do next?

A. After she stepped out of the vehicle my normal routine is to pat somebody down before placing them in the front seat of my car. I ask them, 'Hey, do you mind if I pat you down?' In this circumstance - - I do that pat down for weapons to make sure that I'm safe in my patrol car. In this circumstance I did not pat down Miss Yourex. She was wearing a skirt.

She was coming back - - she informed me she was coming back from the bar. I could see that there was no weapons. I wasn't going to pat her down. I asked her to have a seat in the front seat of my car, which she agreed.

Q. Okay. And did you ask her if she had consumed any alcohol?

A. Yes.

Q. And what was her response?

A. She said that she's Catholic and she doesn't drink.

Q. Okay. Upon placing her in your vehicle, what occurred next?

A. Upon placing her in my vehicle, I continued to smell the odor of an alcoholic beverage. I asked her multiple times if she had been consuming alcohol again and she stated that she had not. While she was in my vehicle, I was talking with her, she had to provide her Social Security Number so I could check the information in the computer to see if she had a bad license, all that stuff. At the conclusion of that, I had to do some tests to make sure she was okay to drive.

Q. And at that point did you observe any other impairment or any other indicators of alcohol consumption as you were speaking with her?

A. As I was speaking with her I continued to smell the odor of an alcoholic beverage. At this time I was - - I was not feeling the greatest, so my sense of smell, it was a little bit off. So - - but I was still able to smell the odor of an alcoholic beverage inside my car.

Q. Okay. What did you do next?

A. I asked her to step out of the vehicle to perform the HGN and BGN.

Tr. at 6; 7-10.

{¶17} Trooper Brown observed Appellant weaving within her lane of travel. Following the traffic stop, Trooper Brown noted bloodshot, glassy eyes and an odor of alcohol emanating from the vehicle. After placing Appellant in his cruiser, Brown observed the odor of alcohol on Appellant's person. Brown noted Appellant fumbled a

piece of paper he handed her and noticed Appellant's slow speech. Brown testified the traffic stop occurred at approximately 2:50am. Appellant admitted she was leaving a bar, but denied consuming alcohol. Based upon the totality of the circumstances, we find the trial court did not err in denying Appellant's motion to suppress.

{¶18} The sole assignment of error is overruled.

{¶19} The judgment of the Columbiana County Municipal Court is affirmed.

By: Hoffman, P.J.

Wise, J. and

Baldwin, J. concur

Sitting by Assignment by the Ohio Supreme Court

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HON. WILLIAM B. HOFFMAN

_____
HON. JOHN W. WISE

_____
HON. CRAIG R. BALDWIN

IN THE COURT OF APPEALS FOR COLUMBIANA COUNTY, OHIO
SEVENTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CASEY YOUREX	:	
	:	
Defendant-Appellant	:	Case No. 14CO1

For the reasons stated in our accompanying Opinion, the judgment of the Columbiana County Municipal Court is affirmed. Costs to Appellant.

Sitting by Assignment by the Ohio Supreme Court

_____
HON. WILLIAM B. HOFFMAN

_____
HON. JOHN W. WISE

_____
HON. CRAIG R. BALDWIN