

[Cite as *State v. Wardle*, 2017-Ohio-9238.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	
)	
PLAINTIFF-APPELLEE)	
)	CASE NO. 16 MA 0150
VS.)	
)	OPINION
JOHN WARDLE)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Youngstown Municipal Court, Mahoning County, Ohio Case No. 16 TRC 00127Y

JUDGMENT: Affirmed.

APPEARANCES:
For Plaintiff-Appellee Attorney Dana Lantz
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JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: December 11, 2017

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DeGENARO, J.

{¶1} Defendant-Appellant, John Wardle, appeals the decision of the Youngstown Municipal Court denying his motion to suppress. As suppression was properly denied, the judgment of the trial court is affirmed.

{¶2} On January 14, 2016, Wardle was stopped by Sergeant Eric Brown of the Ohio State Highway Patrol and later charged with two counts of operating a vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a) and 4511.19(A)(1)(d), one count of driving under suspension in violation of R.C. 4510.11, and one count of marked lanes, R.C. 4511.33. Wardle filed a motion to suppress evidence.

{¶3} At the suppression hearing the parties stipulated to the admissibility of the dash cam video and limited the scope of the hearing to the initial stop, the expansion of the stop, and probable cause for the OVI arrest. Brown testified that he had been with the highway patrol for twenty years and made approximately 1,000 OVI arrests in his career. Brown was patrolling Midlothian Boulevard at 2:30 a.m. and observed Wardle's vehicle traveling in the left lane, and then drive out of his lane of travel into the right lane approximately two feet for a distance of approximately 75 feet traveled.

{¶4} Brown initiated a traffic stop, exited his cruiser, and saw Wardle was already holding his license out of the window. Brown usually had to ask drivers to produce their license. Brown noted that Wardle would not make eye contact with him; he looked away and down. Further, Wardle denied consuming alcohol and was smoking a cigarette and blowing smoke inside the car, behavior which suggested that he was attempting to mask the smell of alcohol. However, Brown detected the odor of alcohol from inside of the vehicle. Initially, Brown could not ascertain if the odor emanated from Wardle or the passenger.

{¶5} Brown had Wardle exit the vehicle and immediately detected the odor of alcohol on Wardle's breath. Brown requested field sobriety tests and Wardle refused. The dash cam video was played at the suppression hearing, and contrary to Wardle's assertion, the trial court concluded that on that date snow would not have

prevented a driver from staying in his or her lane of travel. Approximately an hour after the stop Brown administered Wardle a breathalyzer test; the result was .101 BAC.

{¶16} The trial court denied the motion to suppress and Wardle subsequently entered a plea of no contest to OVI and failure to reinstate license.

Motion to Suppress Evidence

{¶17} In his sole assignment of error, Wardle asserts:

The Mahoning County trial court erred in denying the Defendant-Appellant's Motion to Suppress Evidence.

{¶18} On appeal a trial court's suppression ruling can challenge the trial court's: findings of fact; application of the law to the findings of fact; and assuming the facts are not against the manifest weight of the evidence and the law was properly applied, that the trial court has incorrectly decided the issues. *State v. Hall*, 2016-Ohio-5787, 70 N.E.3d 1154, ¶ 13 (5th Dist.) We review determinations of reasonable suspicion and probable cause de novo. *Id.*

{¶19} Wardle argues the officer did not have reasonable suspicion that he committed a traffic violation to initiate a traffic stop and to administer field sobriety tests. Wardle further argues there was no probable cause to arrest him for OVI.

{¶110} The Ohio Supreme Court has held that probable cause is not required to make a traffic stop, the standard is reasonable and articulable suspicion. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 23. "[A] law-enforcement officer who witnesses a motorist drift over lane markings in violation of a statute that requires a driver to drive a vehicle entirely within a single lane of traffic has reasonable and articulable suspicion sufficient to warrant a traffic stop, even without further evidence of erratic or unsafe driving." *State v. Ash*, 5th Dist. No. 16-CA-3, 2016-Ohio-4619, ¶ 20 citing *Mays*. As Brown observed Wardle's vehicle drive out of his lane of travel approximately two feet for a distance of about 75 feet traveled, there was reasonable and articulable suspicion for the traffic stop.

{¶11} We turn next to field sobriety tests. "An officer must have reasonable suspicion, based on specific and articulable facts, to believe a person is under the influence of alcohol in order to administer field sobriety tests." *State v. Wilson*, 7th Dist. No. 01 CA 241, 2003–Ohio–1070, ¶ 17. Grounds to believe a person had been driving while under the influence of alcohol include "the person's actions immediately prior to driving the motor vehicle; during the period of time he was driving including, but not limited to, the manner in which he was driving; and immediately after he discontinued driving, including his activities immediately after getting out of the motor vehicle." *State v. Tucker*, 7th Dist. No. 2015-CO-22, 2017-Ohio-1295, ¶ 18 citing *Atwell v. State*, 35 Ohio App.2d 221, 301 N.E.2d 709 (8th Dist.1973), paragraph two of the syllabus. Brown testified to Wardle's erratic driving, an odor of alcohol in the car and on Wardle, Wardle avoiding eye contact and blowing cigarette smoke inside the vehicle as if to mask the smell of alcohol. Further, Wardle was stopped at 2:30 a.m. Given the totality of these circumstances, the trial court did not err in finding reasonable articulable suspicion for the administration of field sobriety tests.

{¶12} Finally, Wardle argues the officer lacked probable cause to arrest him for OVI because he did not drive erratically, pulled over appropriately, was able to respond to all questions and commands, exhibited no balance or motor skill impairment, exhibited no slurred speech, and did not have red, bloodshot, or glassy eyes.

{¶13} "The standard for determining whether there was probable cause to arrest for OVI is whether, at the moment of arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence." *State v. Bish*, 191 Ohio App.3d 661, 674, 2010-Ohio-6604, 947 N.E.2d 257 (7th Dist.) (internal citations omitted) "That determination is based on the totality of the facts and circumstances surrounding the arrest." *Id.*

{¶14} Contrary to Wardle's contention he drove erratically by passing out of his lane of traffic from the left lane into the right lane, and the dash cam

demonstrated that weather conditions did not prohibit him from staying in his lane. There was an odor of alcohol emanating from him and the vehicle. He attempted to mask the odor of alcohol with cigarette smoke, had his license out of the window and avoided eye contact with the officer to avoid detection. Further, his refusal to take the field sobriety tests can be factored into the probable-cause analysis. *State v. Derov*, 7th Dist. No. 08 MA 189, 2009-Ohio-4810, ¶ 17. Thus, there was ample evidence to support Wardle's arrest for OVI.

{¶15} In sum, Wardle's sole assignment of error is meritless, and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.