

[Cite as *Strongsville v. Wood*, 2011-Ohio-115.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95074**

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**CITY OF STRONGSVILLE**

PLAINTIFF-APPELLEE

vs.

**STEVEN WOOD**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Berea Municipal Court  
Case No. 09 TRC 01973

**BEFORE:** Jones, J., Blackmon, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 13, 2011

## **FOR APPELLANT**

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## **ATTORNEYS FOR APPELLEE**

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**LARRY A. JONES, J.:**

{¶ 1} Plaintiff-appellant, Steven Wood (“Wood”), appeals his conviction for the misdemeanor charges of R.C. 4511.194, physical control, and R.C. 4511.12, failure to obey a traffic control device. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the judgment of the trial court.

### **STATEMENT OF THE CASE AND FACTS**

{¶ 2} On April 18, 2009, Wood was stopped in Strongsville, Ohio for turning right at a traffic light that was marked with a “No Turn on Red” sign. Ohio State Trooper Beal (“Beal”) initiated a traffic stop. Beal stated that he smelled

alcohol and requested that Wood perform field sobriety tests. Wood was subsequently arrested for OVI under R.C. 4511.19 and was also cited for failing to obey a traffic control device under R.C. 4511.12.

{¶ 3} Wood was arraigned on April 23, 2009 and pled not guilty to the charges. He filed a motion to suppress and a hearing was held on October 30, 2009. The trial court denied Wood's motion. The matter was set for a November 17, 2009 trial. During pretrial interchanges with the court, and prior to the jury being seated, Wood reached a plea agreement with the state.

{¶ 4} Wood pled no contest to an amended charge of physical control, in violation of R.C. 4511.194, and failure to obey a traffic control device, in violation of R.C. 4511.12. The trial court found Wood guilty on both counts, set sentencing for March 26, 2010, and requested a presentencing report from the probation department. Wood's sentence consisted of a six-month license suspension, a 72-hour driving program in lieu of three days in jail, and one year of probation. Wood was further assessed a \$250 fine and held responsible for a portion of the court costs.

### **ASSIGNMENTS OF ERROR**

{¶ 5} Wood assigns three assignments of error on appeal:

{¶ 6} "[1.] The trial court erred denying appellant's motion to suppress all written and video evidence related to field sobriety tests.

{¶ 7} "[2.] The trial court erred and abused its discretion when it did not rule on the appellant's motions to compel discovery and cooperation and findings

of facts request for oral hearing regarding 14<sup>th</sup> Amendment violation.

{¶ 8} “[3.] Appellant’s imposed sentence is contrary to the manifest weight of [the] evidence.”

### **LEGAL ANALYSIS**

{¶ 9} For his first assigned error, Wood contends that the trial court erred by denying his motion to suppress the evidence relating to the field sobriety tests. We disagree.

{¶ 10} Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 154, 2003-Ohio-5372, 797 N.E.2d 71. A reviewing court is bound to accept the trial court’s findings of fact if they are supported by competent, credible evidence. *Id.* at 155. Accepting those facts as true, we must then independently ascertain as a matter of law, without deferring to the lower court’s conclusions, whether the facts comply with the applicable legal standard. *State v. Kobi* (1997), 122 Ohio App.3d 160, 168, 701 N.E.2d 420.

{¶ 11} In his motion to suppress, Wood contended that the field sobriety tests were not properly administered. R.C. 4511.194, governing the charge of physical control, allows the admission of field sobriety tests “if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that

were set by the national highway traffic safety administration [“NHTSA”] \* \* \*.”  
R.C. 4511.194(C)(1).

{¶ 12} Thus, it has been held that field sobriety test “results are admissible in Ohio without expert testimony so long as the proper foundation has been shown both as to the administering officer’s training and ability to administer the test and as to the actual technique used by the officer in administering the test.” *State v. Boczar*, 113 Ohio St.3d 148, 153, 2007-Ohio-1251, 863 N.E.2d 155.

{¶ 13} At the suppression hearing, the arresting officer testified that he had been trained in “an in-depth class for alcohol detection and prosecution, and various updates, also[,]” and that he had made “[s]everal hundred” driving under the influence arrests. The officer testified that he performed three tests on Wood: the Horizontal Gaze Nystagmus Test, the Walk and Turn Test, and the One-Leg Stand Test. He further testified as to how he administered the tests and that the tests substantially complied with the NHTSA standards. Wood had the opportunity to cross-examine the officer, and failed to present any evidence that the standards were not met.

{¶ 14} The trial court found that the officer “did have substantial compliance with the standards on the National Highway Safety field tests.” In light of the above, that finding was supported by competent, credible evidence. Accordingly, the trial court did not err in denying Wood’s motion to suppress and the first assignment of error is overruled.

{¶ 15} Wood argues in his second assignment of error that the trial court

erred and abused its discretion when it did not rule on his motions to compel discovery and cooperation and findings of facts request for oral hearing regarding a 14<sup>th</sup> Amendment violation.

{¶ 16} The term “abuse of discretion” connotes more than an error of law or judgment. It implies that a court’s attitude is unreasonable, arbitrary or unconscionable. “\* \* \*. The term “discretion” itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an “abuse” in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. \* \* \*” *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 482 N.E.2d 1248, quoting *State v. Jenks* (1984), 15 Ohio St.3d 164, 222, 473 N. E.2d. 264.

{¶ 17} Wood argues that his rights were violated because the trial court never ruled on his motion to compel. However, the state did ultimately comply with the discovery request. Moreover, Wood ended up *pleading guilty* to physical control on the day of trial.

{¶ 18} In a related case, the Eleventh District held:

“On March 24, 1995, this case was remanded to the trial court because no ruling upon appellant’s motion to compel discovery was evidenced in the record. On March 30, 1995, the trial court entered an order denying appellant’s motion for the reason that appellee *had already complied with the request and provided full discovery*. Our review of the record indicates that appellee’s response to appellant’s motion for discovery fully complied with the requirements of Crim.R.

16. Thus, the trial court did not err in denying appellant's motion to compel discovery. Appellant's first assignment of error is meritless.

In appellant's second assignment of error, it is argued that the trial court erred in failing to rule on appellant's motion to compel discovery until after the trial. We agree that Traf.R. 11(E) requires pre-trial motions to be ruled upon prior to trial. *However, in light of the fact that appellee had provided full discovery prior to trial, the trial court's failure to rule on appellant's motion to compel discovery prior to trial constitutes harmless error.*"

See, *Willoughby v. Davis* (June 23, 1995), Lake App. No. 94-L-076.

{¶ 19} A review of the record in the case at bar demonstrates that the state ultimately complied with the discovery request prior to Wood's guilty plea.

{¶ 20} Accordingly, Wood's second assignment of error is overruled.

{¶ 21} Wood argues in his third assignment of error that his sentence is contrary to the manifest weight of the evidence. When reviewing a judgment under a manifest-weight standard of review, "[t]he court reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [fact-finder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which evidence weighs heavily against the conviction." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 387, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 22} R.C. 4511.194, Physical control of vehicle while under the influence;

testimony and evidence regarding field sobriety test, provides the following:

“(B) No person shall be in physical control of a vehicle, streetcar, or trackless trolley if, at the time of the physical control, any of the following apply:

“(1) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

“(2) The person’s whole blood, blood serum or plasma, breath, or urine contains at least the concentration of alcohol specified in division (A)(1)(b), (c), (d), or (e) of section 4511.19 of the Revised Code.

“(3) Except as provided in division (E) of this section, the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person’s whole blood, blood serum or plasma, or urine that equals or exceeds the concentration specified in division (A)(1)(j) of section 4511.19 of the Revised Code.”

{¶ 23} R.C. 2929.21 provides a framework for the court to follow when sentencing a defendant with a misdemeanor crime.

“(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender’s behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.”

{¶ 24} Wood argues that his sentence is contrary to the manifest weight of the evidence. However, review of the record demonstrates that the court allowed defendant to plead from an OVI charge to a reduced physical control and



then sentenced Wood to only a \$250 fine, a 72-hour driving program in lieu of three days in jail, a six month license suspension and one year of probation.

“There is ‘not a manifest injustice when [a] Defendant holds [a] mistaken belief that [their] sentence would be significantly lighter, nor when [their] attorney says a particular sentence probably will result.’ [State v.] Neeley [, Clinton App. No. CA2008-08-034, 2009-Ohio-2337,] ¶10, citing [State v.] McComb [, Montgomery App. Nos. 22570 and 22571, 2009-Ohio-295,] ¶9.”

*State v. Hernandez*, Warren App. No. CA2009-09-123, 2010-Ohio-2056.

{¶ 25} The actual penalty Wood received could have been much worse. Physical control is classified as a first-degree misdemeanor. Accordingly, Wood could have received up to six months in jail and a \$1,000.00 fine. Instead Wood received zero days in jail and a \$250 fine. We find nothing in the record to indicate that the trial court’s sentence was against the manifest weight of the evidence.

{¶ 26} Accordingly, Wood’s third assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.

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LARRY A. JONES, JUDGE

PATRICIA A. B. ACKMON, P.J., and  
MARY J. BOYLE, J., CONCUR