[Cite as *State v. Hrytsyak*, 2020-Ohio-920.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 108506
v.	:	
SVYATOSLAV HRYTSYAK,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 12, 2020

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-629890-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jeffrey Maver and Nora Bryan, Assistant Prosecuting Attorneys, *for appellee*.

Bret Jordan Co., L.P.A., and Eric Dysert, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant Svyatoslav Hrytsyak ("appellant") brings the instant appeal challenging his convictions and sentence for driving while under the influence (hereinafter "OVI"). Appellant argues that the trial court erred by denying his motion to suppress, his convictions are against the manifest weight of the

evidence, the trial court abused its discretion by denying appellant's request to represent himself, and the trial court erred by imposing a blanket sentence. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} This appeal arose from a traffic stop on June 13, 2018, in Independence, Ohio. Independence Police Officer Shane Bates initiated a traffic stop of appellant's vehicle after observing multiple traffic infractions.

{¶ 3} Upon approaching appellant's vehicle, Officer Bates detected a "faint" odor of alcohol emanating from inside. The odor became stronger when appellant spoke to Officer Bates. In addition to the odor of alcohol, Officer Bates observed that appellant had bloodshot eyes, and was slurring his words. When Officer Bates approached the vehicle, appellant attempted to press the auto lock button on the car door, but he missed the button. (Tr. 30.)

{¶ 4} Appellant was unable to produce a driver's license upon request, and Officer Bates learned that appellant was driving under suspension.[1] When Officer Bates asked appellant if he had been drinking, appellant indicated that he consumed "a couple of beers earlier in the evening." (Tr. 233.)

{¶ 5} Based on his observations of appellant — the odor of alcohol emanating from the vehicle that intensified when appellant spoke, appellant's bloodshot eyes, and his slurred speech — Officer Bates administered field sobriety tests. Officer

[1] Appellant was driving under two OVI suspensions, and a third suspension for failure to reinstate.

Bates administered (1) the Horizontal Gaze Nystagmus test ("HGN test"), (2) the Walk and Turn test ("WAT test"), and (3) the One Leg Stand test ("OLS test"). Appellant performed poorly on the field sobriety tests. During the HGN test, appellant had trouble tracking the light with his eyes. On the WAT and OLS tests, appellant swayed and had trouble maintaining his balance. Appellant's performance on the field sobriety tests was also captured by Officer Bates's dash-camera video.

{¶ 6} Based on his observations of appellant and appellant's performance on the field sobriety tests, Officer Bates placed appellant under arrest for OVI on June 13, 2018. On June 16, 2018, the Cuyahoga County Grand Jury returned a two-count indictment charging appellant with: Count 1 — OVI, a third-degree felony in violation of R.C. 4511.19(A)(2)(a), with a furthermore clause alleging that appellant had a prior OVI conviction on or around August 2016, in Cuyahoga C.P. No. CR-16-603930, that was a felony, and a prior felony OVI specification, pursuant to R.C. 2941.1413(A); and Count 2 — OVI, a third-degree felony in violation of R.C. 4511.19(A)(1)(a), with a furthermore clause alleging that appellant had a prior OVI conviction on or around June 2015, in Cuyahoga C.P. No. CR-14-592194, which was a felony, and a prior felony OVI specification, pursuant to R.C. 2941.1413(A).

{¶ 7} Appellant retained counsel and was arraigned on July 3, 2018. He pled not guilty to the indictment.

{¶ 8} The matter was stayed by the Ohio Supreme Court on September 10, 2018, based on an affidavit to disqualify the trial judge to whom the case had been assigned. The stay was lifted on September 27, 2018.

{¶ 9} At some point, appellant dismissed the attorney he originally retained to represent him. Appellant retained a second attorney to represent him, and the new attorney filed a notice of appearance on October 10, 2018. This second attorney filed a motion to withdraw as counsel on November 28, 2018.

{¶ 10} A hearing was held on November 28, 2018. The state placed the terms of a plea agreement on the record. Appellant rejected the state's proposal. The trial court denied appellant's pro se motion to dismiss filed on November 21, 2018, on the basis that the pro se motion was filed while appellant was represented by counsel. The trial court granted counsel's motion to withdraw, and the court appointed a third attorney to represent appellant.

{¶ 11} On February 27, 2019, appellant filed a motion to suppress. Therein, appellant argued that the traffic stop was illegal because officers lacked probable cause or reasonable suspicion to stop his vehicle, and as a result, all evidence related to and derived from the traffic stop should be suppressed.

{¶ 12} The state filed a brief in opposition on March 12, 2019. Therein, the state argued that (1) the traffic stop was constitutionally valid because it was initiated after Officer Bates observed appellant commit multiple traffic violations, (2) Officer Bates had a reasonable articulable suspicion that appellant was intoxicated, warranting the prolonging of the stop and conducting field sobriety

testing, and (3) the field sobriety tests were properly administered and performed in substantial compliance with the National Highway Traffic Safety Administration ("NHTSA") standards.

{¶ 13} On March 25, 2019, the trial court held a hearing on appellant's motion to suppress. English is not appellant's first language. In order to accommodate appellant, the trial court arranged to have an interpreter present for the suppression hearing and trial. Officer Bates testified during the suppression phase of the hearing. At the close of the suppression phase of the hearing, the trial court denied appellant's motion to suppress. (Tr. 95-96.)

{¶ 14} The matter proceeded to trial on the same day. Appellant elected to try the prior felony OVI specifications to the bench. The state presented the testimony of Officer Bates. At the close of the state's case, defense counsel moved for a Crim.R. 29 motion for a judgment of acquittal. The trial court denied defense counsel's motion. Defense counsel presented the testimony of appellant. The defense rested and renewed the Crim.R. 29 motion that was again denied.

{¶ 15} At the close of trial, the jury found appellant guilty on both counts. The trial court found appellant guilty on the underlying specifications. The trial court ordered a presentence investigation report and set the matter for sentencing.

{¶ 16} The trial court held a sentencing hearing on April 15, 2019. The parties agreed that the DUI counts merged for sentencing purposes. The state elected to sentence appellant on Count 1. The trial court imposed a prison sentence of three and one-half years: a mandatory two-year sentence for the prior felony OVI offense

specification, to be served prior to and consecutively with a sentence of one and one-half years on the OVI offense. The trial court issued a nunc pro tunc sentencing entry on April 19, 2019.

{¶ 17} On May 1, 2019, appellant filed the instant appeal challenging the trial court's judgment. He assigns four errors for review:

> I. The trial court erred in denying [a]ppellant's [m]otion to [s]uppress.
>
> II. The guilty verdict cannot be upheld because evidence and testimony presented at trial did not establish [a]ppellant's guilty [sic] beyond a reasonable doubt.
>
> III. The trial court abused its discretion in refusing to allow the [a]ppellant to represent himself.
>
> IV. The trial court erred in issuing a blanket sentence upon [a]ppellant.

II. Law and Analysis

A. Motion to Suppress

{¶ 18} In his first assignment of error, appellant argues that the trial court erred in denying his motion to suppress.

{¶ 19} This court reviews a trial court's ruling on a motion to suppress under a mixed standard of review.

> "In a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate witness credibility." *State v. Curry*, 95 Ohio App.3d 93, 96, 641 N.E.2d 1172 (8th Dist.1994). The reviewing court must accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. With respect to the trial court's conclusion of law, the reviewing court applies a de novo standard of review and decides whether the facts satisfy the applicable legal standard. *Id.*, citing *State v. McNamara*, 124 Ohio App.3d 706, 707 N.E.2d 539 (4th Dist.1997).

State v. Miller, 8th Dist. Cuyahoga No. 106946, 2018-Ohio-4898, ¶ 22.

{¶ 20} The Fourth Amendment of the United States Constitution, and Article I, Section 14, of the Ohio Constitution, prohibit unreasonable searches and seizures lacking probable cause. *Cleveland Hts. v. Brisbane*, 2016-Ohio-4564, 70 N.E.3d 52, ¶ 14 (8th Dist.). The prohibition against unreasonable searches and seizures applies to the stopping of motor vehicles and the seizing of its occupants. *Id*., citing *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), paragraph two of the syllabus.

{¶ 21} "A police officer may effect a traffic stop of any motorist *for any traffic infraction*, even if the officer's true motive is to detect more extensive criminal conduct." (Emphasis added.) *State v. Bennett*, 8th Dist. Cuyahoga No. 86962, 2006-Ohio-4274, ¶ 21, citing *United States v. Mesa*, 62 F.3d 159, 162 (6th Cir.1995). Moreover, "[w]hen conducting the stop of a motor vehicle for a traffic violation, an officer may detain the vehicle for a time sufficient to investigate the reason for which the vehicle was initially stopped." *Id*., citing *State v. Bolden*, 12th Dist. Preble No. CA2003-03-007, 2004-Ohio-184, ¶ 17. This time period may include running a computer check of the driver's license, the vehicle's registration, and the license plates. *Bennett* at *id.*, citing *Prouse*.

{¶ 22} In the instant matter, appellant argues that the trial court erred in denying his suppression motion because the traffic stop was unconstitutional and officers did not have probable cause to arrest him for OVI.

1. Traffic Stop

{¶ 23} First, appellant argues that the traffic stop was unconstitutional because he did not commit a traffic violation.

{¶ 24} Officer Bates has spent the majority of his fifteen-year career with the Independence Police Department as a patrol officer. On June 13, 2018, he was monitoring drivers on I-77 near the I-480 merge. Officer Bates encountered appellant around 1:00 a.m. Officer Bates observed appellant commit multiple traffic violations.[2]

{¶ 25} First, appellant improperly changed lanes. Officer Bates explained he saw appellant's van "coming on to the far left side of the road, 77 South to go to the ramp at 480 ultimately east. However, he made a course correction and in one fell swoop, while signaling, went all the way across the lane of travel[,] second lane of travel, and entered 480 West. And so [appellant] went from one direction to the other in one fell swoop." (Tr. 26-27.)

{¶ 26} Officer Bates subsequently confirmed that appellant's illegal lane change — moving all the way from the left lane to the right lane — was a traffic violation: "[y]ou have to move over, excuse me, signal, move over, signal, move over as required by the ordinance. But more importantly, upon seeing my marked unit and slightly passing me over here, he immediately moves, I mean, as quickly as

[2] During oral arguments, the state was unable to identify a specific ordinance or statute governing lane changes that appellant violated. The complaint summary, filed on June 19, 2018, reflects that appellant was cited for a marked lanes violation under R.C. 4511.33.

possible in one fell swoop, as far away from me as possible. And that caused me to wonder why." (Tr. 47.)

{¶ 27} Second, appellant failed to maintain marked lanes. Officer Bates explained that when appellant took the exit ramp from I-77 South to I-480 West, appellant's tires were roughly 200 feet on the left side of the roadway. (Tr. 27.) His right tires were in the proper lane of travel, but his left tires were in the berm.

{¶ 28} Third, when appellant left the city of Independence, and entered the city of Brooklyn Heights, appellant's vehicle was driving in two lanes for approximately 50 feet. (Tr. 27.) Based on his observations of appellant's traffic violations, Officer Bates initiated a traffic stop "for an illegal lane change and also failure to maintain marked lanes." (Tr. 26.)

{¶ 29} Officer Bates's testimony indicates that he initiated the traffic stop based on the following three violations: 1) illegal lane change, 2) failure to maintain marked lines (driving in the berm on the exit ramp), and 3) failure to maintain marked lanes (driving in two lanes at the same time for approximately 50 feet).

{¶ 30} Officer Bates testified that his dash camera was working properly at the time of the traffic stop. The audio from outside the vehicle was not, however, working properly.

{¶ 31} The dash camera activates or begins recording 30 seconds before he activates his overhead lights. Officer Bates observed appellant's traffic infractions approximately 30 seconds before his dash camera activated. Even if his dash camera had been activated at the time appellant committed the traffic violations, Officer

Bates explained that the video would not have recorded the infractions because his police cruiser was facing a direction that would not have captured the infraction. When Officer Bates initially observed the violations, he was sitting at the I-77 South and I-480 merge, facing westbound, and appellant was traveling southbound on I-77.

{¶ 32} Appellant argues that he did not commit a marked lanes violation because "[t]here exists no delineated markings on the roadway." Appellant argues that he did not commit an illegal lane change because when a motorist takes the exit ramp from I-77 South to I-480, there are only two lanes, not three. He also contends that he was merging onto I-480 West, not changing lanes, and therefore, a turn signal was not necessary.

{¶ 33} On cross-examination, Officer Bates testified that there were three lanes of travel on the roadway where appellant made the improper lane change: a far left lane, a middle lane, and then an off ramp that opens up. Three lanes, three directions. (Tr. 51.)

{¶ 34} Defense counsel disputed Officer Bates's position that there were three lanes, suggesting that there are only one and one-half lanes that are not clearly marked. Defense counsel and Officer Bates continued to dispute whether there were three lanes or one and one-half lanes throughout the suppression hearing. (Tr. 83-84.)

{¶ 35} Officer Bates testified on cross-examination that the observations based upon which he initiated the traffic stop occurred before the dash camera was

activated. Officer Bates acknowledged that appellant is not seen crossing the lane line on the video. Officer Bates also agreed that slightly touching the line, rather than crossing over the line, is neither a traffic violation, nor a sufficient basis for pulling someone over.

{¶ 36} Although the traffic violations are not captured in the dash-camera footage, Officer Bates confirmed that approximately 30 to 60 seconds before the video activated, appellant "crossed three lanes, operated in two lanes and operated in the left berm and the right side — right side tires in the lane[.]" (Tr. 60.)

{¶ 37} Officer Bates acknowledged that appellant was not substantially weaving in the dash-camera video. Officer Bates opined, however, that the video shows that appellant was slightly weaving. The dash-camera video supports Officer Bates's testimony that appellant was slightly weaving. Because Officer Bates is in the left lane of travel, and appellant is in the right lane of travel, it is difficult to determine exactly how close appellant is travelling to the fog line[3] on the right side of the road, and whether his tires touch the white fog line. Nevertheless, as soon as the camera activates, appellant appears to be travelling very close to the white fog line on the right side of the road. Appellant appears to correct his position within the right lane of travel. However, right before Officer Bates activates his lights to initiate the traffic stop, appellant appears to drift back towards the fog line.

[3] A "fog line" is the white line on the side of a road. (Tr. 225.)

{¶ 38} The "complaint summary," filed on June 19, 2018, provides, in relevant part, "[v]ehicle was stopped for weaving between lanes while travelling IR 77S to IR 480 West." Officer Bates explained that his observations of appellant's traffic violations — illegal lane change, marked lanes violation for driving in the berm, and marked lanes violation for driving in two lanes at the same time — are consistent with "weaving." Although appellant was not substantially weaving in the video, Officer Bates opined that appellant was slightly weaving in the video. Officer Bates explained that his observations were consistent with weaving because appellant was operating his vehicle outside the lane of travel.

{¶ 39} The trial court asked Officer Bates to clarify the basis upon which he initiated the traffic stop. Officer Bates testified,

> [Appellant] passed me, your Honor. I was facing west, he passed me, went down the hill, didn't signal his first lane change and moved in one fell swoop, one, two, and we argued about what that would mean, but there's essentially three lanes there, [defense counsel] says one and a half. [Appellant] moved all the way over in one fell motion which was not a proper turn and then he was outside of his lanes for about 200 feet going around the curb with the left side of the tires on the berm and the right side correctly in the lane.

(Tr. 81-82.)

{¶ 40} Officer Bates confirmed that he observed two traffic infractions based upon which he initiated the stop: (1) improper lane change and signal, and (2) driving outside of his lane. Officer Bates acknowledged that appellant did signal the first time, when he began the lane change, however, he was required to resignal

each time he was moving over into a different lane, and appellant failed to do so. (Tr. 82-83.)

{¶ 41} The trial court denied appellant's motion to suppress, concluding

> The issue here for me is whether the stop was a valid stop. The officer has testified that the improper lane changes, the nonsignaling, et cetera, was done prior to his camera being activated, because his vehicle was pointed at a different direction than what [appellant] was driving. [Officer Bates] indicated that he was stopped at a juncture where he could see [appellant] coming and that's where he saw that activity.
>
> I find [Officer Bates] credible and I agree with the State of Ohio that some of the other nuances as to whether or not he failed a sobriety test or not, that's something that a jury can certainly looking at and make [a] determination whether [appellant] was drunk or not.
>
> But for me, the real issue here is whether the stop was one that he could have done under the law and I find that he could have made this stop under the law, and therefore, I am going to deny [appellant's] motion to suppress based upon that.

(Tr. 95-96.)

{¶ 42} After reviewing the record, we agree with the trial court's determination that the traffic stop was valid. Based on Officer Bates's testimony, we find that he had a reasonable articulable suspicion that appellant committed a marked lanes violation under R.C. 4511.33, and an illegal lane change under R.C. 4511.39.

{¶ 43} To the extent that appellant argues that his motion to suppress should have been granted because the dash-camera video did not capture any traffic violations, this argument is misplaced.

> [A]ny potential inconsistency between the video evidence and the trooper's testimony goes to the credibility of witnesses. "When the trial

> court rules on a motion to suppress, the credibility of the witness is a matter for the judge acting as the trier of fact." *State v. Fanning*, 1 Ohio St.3d 19, 437 N.E.2d 583 (1982). "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses." *Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶ 8.

Cleveland v. Jones, 8th Dist. Cuyahoga No. 107257, 2019-Ohio-1525, ¶ 19.

{¶ 44} In this case, the trial court reviewed the dash-camera video and found Officer Bates's testimony that he observed appellant's traffic violations 30 to 60 seconds before his camera activated to be credible. We defer to the trial court's factual findings and credibility determination.

{¶ 45} Assuming arguendo that appellant did not clearly commit an illegal lane change or marked lanes violation, appellate courts have recognized that under certain circumstances, "erratic driving that does not amount to a traffic violation may nonetheless support an officer's reasonable suspicion to stop a driver." *Jones* at ¶ 16, citing *State v. Bahen*, 2016-Ohio-7012, 76 N.E.3d 438, ¶ 23 (10th Dist.); *State v. Martin*, 2018-Ohio-740, 107 N.E.3d 809, ¶ 10 (8th Dist.), citing *State v. Hodge*, 147 Ohio App.3d 550, 2002-Ohio-3053, 771 N.E.2d 331, ¶ 27 (7th Dist.), and *Chagrin Falls v. Bloom*, 8th Dist. Cuyahoga No. 101686, 2015-Ohio-2264, ¶ 9 (even if a traffic infraction is not observed, an officer has a duty to investigate erratic driving in order to protect the public and the driver).

{¶ 46} Officer Bates's testimony during the suppression hearing sufficiently established that he had a reasonable suspicion to initiate the traffic stop. Appellant's arguments challenging the merits of the purported traffic violations based upon

which the stop was initiated are misplaced. *See State v. Spellacy*, 2019-Ohio-785, 132 N.E.3d 1244, ¶ 13 (8th Dist.), citing *Westlake v. Kaplysh*, 118 Ohio App.3d 18, 20, 691 N.E.2d 1074 (8th Dist.1997) (an officer is not required to prove that a motorist committed a traffic violation beyond a reasonable doubt or even establish probable cause that the motorist violated the law); *Bowling Green v. Godwin*, 110 Ohio St.3d 58, 2006-Ohio-3563, 850 N.E.2d 698, ¶ 11.

{¶ 47} Even if the facts are insufficient to establish appellant's guilt for an illegal lane change or marked lanes violation, the facts are not insufficient to show that Officer Bates had an objectively reasonable basis to believe that appellant committed an illegal lane change and a marked lanes violation. Officer Bates had at least a reasonable articulable suspicion to initiate the traffic stop. *See State v. Taylor*, 2016-Ohio-1231, 62 N.E.3d 591, ¶ 23 (4th Dist.).

{¶ 48} For all of these reasons, the trial court did not err in concluding that the traffic stop was constitutionally valid.

2. Probable Cause to Arrest

{¶ 49} Second, appellant argues that the trial court "erred in finding sufficient probable cause to arrest [him] for OVI based upon the result of the [field sobriety tests]." Appellant's brief at 7.

> An arrest without a warrant violates the Fourth Amendment unless the arresting officer has probable cause to make the arrest. The test for probable cause to justify an arrest is "whether at that moment the facts and circumstances within [the officer's] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [arrestee] had committed or was committing an offense." *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223, 13

> L.Ed.2d 142 (1964). Stated differently, in determining whether a police officer had probable cause to arrest a motorist for OVI without a warrant, the court must determine "whether, at the moment of arrest, the police had information sufficient to cause a prudent person to believe that the suspect was driving under the influence." [*Parma Hts. v.*] *Dedejczyk*, 8th Dist. Cuyahoga No. 97664, 2012-Ohio-3458, ¶ 57, citing *Beck* at 91. "While the odor of alcohol, glassy eyes, slurred speech, and other indicia of alcohol use by a driver are, in and of themselves, insufficient to constitute probable cause to arrest, they are factors to be considered in determining the existence of probable cause." *Id.*, citing *Kirtland Hills v. Deir*, 11th Dist. Lake No. 2004-L-005, 2005-Ohio-1563, ¶ 16.

Jones, 8th Dist. Cuyahoga No. 107257, 2019-Ohio-7525, at ¶ 26.

{¶ 50} In the instant matter, Officer Bates's observations provided sufficient information based upon which a prudent person would believe that appellant was driving under the influence of alcohol.

{¶ 51} Officer Bates testified about his training and education pertaining to OVI enforcement. He attended an academy at the University of Akron in 1999; in 2006 or 2007, he received training with the Highway Traffic and Safety Institute through the Ohio State Patrol; he has "received numerous awards, praise from nearly every organization for OVI law enforcement." (Tr. 24-25.) He completed standardized training with the Ohio State Highway Patrol ("OSHP") to learn field sobriety testing. OSHP provides an alcohol detection enforcement program. Officer Bates explained that the training course is required, and it provides approximately 40 hours of instruction. After completing the formal course, there are also legal and practical updates and applications. Officer Bates opined that he makes approximately 50 OVI arrests per year.

{¶ 52} Officer Bates testified about the indicators that a person is under the influence: "[a]nything from slurred speech, bloodshot eyes, odor of alcoholic beverage, lack of motor skills for unexplained reason other than obviously impairment." (Tr. 25.)

{¶ 53} After initiating the traffic stop, Officer Bates approached the vehicle, and encountered appellant who was the only occupant inside. Officer Bates testified about his initial observations of appellant. Appellant's eyes were red, there was a "faint" odor of alcoholic beverage that became more pronounced during the encounter. Appellant demonstrated diminished motor skills: he was "attempting to hit the — I'll call it switch — the switch to take down the driver windows, and missed." (Tr. 30.)

{¶ 54} Officer Bates completed an "Ohio Impaired Driver Report," state's exhibit No. 1, in which he listed the following observations:

> [appellant] missed the auto locks, as I explained. He had bloodshot eyes, some minor slurring of speech. He missed one of his fingertips on the finger dexterity return. And then I observed each one of the — each one of the performances that he did, the [HGN test], the [WAT test], and [OLS test].

(Tr. 32.)[4]

{¶ 55} Officer Bates testified that if there is "cause" to remove a driver from a vehicle, he administers field sobriety tests during OVI stops. He acknowledged that the smell of alcohol alone is not cause to remove a driver from the vehicle. He

[4] Referencing the Ohio Impaired Driver Report ("OID report").

also looks for the following factors in determining whether a driver is impaired: whether the driver's speech is slurred, eyes are bloodshot, motor skills, coordination, understanding simple instructions, and "simply observing the driver."

{¶ 56} In this case, Officer Bates encountered appellant's vehicle at approximately 1:00 a.m., appellant committed multiple traffic infractions, Officer Bates observed bloodshot eyes, slurred speech, a faint odor of alcohol emanating from the vehicle that became stronger when appellant spoke, appellant attempted to press, but missed, the button to roll down his window, and appellant admitted to consuming two beers. Based on these observations of appellant, Officer Bates determined that there was cause to administer field sobriety tests.

{¶ 57} Officer Bates performed three field sobriety tests on appellant that are sanctioned by the NHTSA: 1) WAT test, 2) OLS test, and 3) HGN test.

{¶ 58} Regarding the location where he administered the test, Officer Bates explained that based on the way appellant pulled his vehicle over, it was difficult, even unsafe, for him to perform a full set of field sobriety tests at that location. Officer Bates had been struck by a drunk driver in 2008 under similar circumstances and wanted to avoid jeopardizing the safety of appellant and himself.

{¶ 59} Officer Bates testified, "I took [appellant] out originally out of the car after observing all the things that I just described and briefly tested him just to see if we were going to proceed [with fully administering field sobriety tests that would require moving appellant and his vehicle for safety purposes]." (Tr. 35.) Officer Bates was unable to get appellant to move his vehicle off of the roadway.

{¶ 60} Regarding the brief testing before administering the full field sobriety tests, Officer Bates testified that he pulled appellant out of the vehicle to briefly test his eyes because he was not comfortable performing all of the field sobriety tests in the location that appellant's car was parked. Officer Bates also performed a finger dexterity test, a pre-exit field sobriety test, while appellant was still in his car. (Tr. 58.) After performing these initial tests, Officer Bates radioed for another unit, and they blocked off the left lane where appellant was parked. At this point, officers were able to safely administer the full set of field sobriety tests.

{¶ 61} Early on in the encounter, Officer Bates recognized that English was not appellant's first language so he provided the necessary accommodations by slowing down everything, explaining things more than once, and using motions and hand signals to communicate with him. Although English was not appellant's first language, Officer Bates testified that he did not have difficulty communicating with appellant, and appellant never explained that he did not understand what he was telling him. (Tr. 41.)

{¶ 62} First, Officer Bates administered the WAT test. He explained that the line he used was approximately four inches wide. NHTSA recommends using a 2.5 inch line, so appellant performed this test under more lenient conditions.

{¶ 63} During the WAT test, Officer Bates observed the following clues of impairment:

> I observed [appellant] gap his steps, put a space between his heel and his toe. I observed him off of the line I believe on the return. I'm indicating [these observations in the video] by my hand motions that I

> can — when I go through the notes and looking at the video, I can recall. I observed him slightly stumble before the start of the test. And I observed his turn not as I instructed him.

(Tr. 39-40.)

{¶ 64} Officer Bates's testimony is supported by the dash-camera video. The video showed appellant's back buckling when he was trying to maintain his balance, and he began to sway. One of the officers stopped appellant from moving because he started to walk before being instructed to do so. On his walk back, appellant is seen moving his arms from his side. Officer Bates marked these observations down in the OID report. Officer Bates makes several hand gestures towards the camera during the WAT test. He explained during the suppression hearing that his hand signals indicate clues of impairment.

{¶ 65} Second, Officer Bates administered the OLS test. (Tr. 41.) During this test, Officer Bates observed the following clues of impairment: "I noticed him lifting his arms away from his body more than three inches. I noticed that he was stumbling, hopping I'll call it. He put his foot down, I believe, twice total. He stabilized on Officer Kroeger on his left one time to prevent him from hitting the cruiser. And generally performed pretty poorly on that test." (Tr. 44.) These observations were recorded in the OID report. Officer Bates testified that appellant indicated he had leg trouble, his right leg, and officers told him to stay on his good leg.

{¶ 66} Officer Bates's testimony is supported by the dash-camera video. During the OLS test, the video shows appellant swaying while trying to maintain his

balance, using his arms to maintain balance, hopping around, and putting his foot down twice. Furthermore, appellant fell backwards into the hood of the police cruiser while attempting the OLS test.

{¶ 67} Third, Officer Bates administered the HGN test. He observed six clues of impairment during this test: Officer Bates noticed a lack of smooth pursuit, direct nystagmus at maximum deviation, and onset of nystagmus prior to 45 degrees. Appellant advised Officer Bates that he had "orbital socket fractures" so he was unable to perform the vertical nystagmus. Based on this advisement, Officer Bates did not administer this portion of the test.

{¶ 68} Based on the totality of the circumstances — Officer Bates's observations of appellant inside the vehicle, his observations of appellant after he exited the vehicle, and appellant's performance on the field sobriety tests — Officer Bates determined that appellant was under the influence of alcohol. Accordingly, he placed appellant under arrest for OVI.

{¶ 69} In this appeal, appellant argues that although Officer Bates initially detected a "faint" odor of alcohol, this description was exacerbated throughout his testimony. This argument is misplaced and unsupported by the record.

{¶ 70} Officer Bates testified that he approached the vehicle and detected a faint odor of alcohol emanating from inside. He explained the odor became stronger when appellant began to speak. The fact that the odor of alcohol became stronger when appellant spoke to Officer Bates provides the context within which the officer reasonably formed his suspicion of impairment — although the odor emanating

from the vehicle was faint, the odor emanating from appellant and his breath was stronger.

{¶ 71} Appellant appears to contend that Officer Bates made several errors in administering the field sobriety tests. He does not identify any specific errors that were purportedly made, nor argue that the tests were not administered in compliance with NHTSA standards. We decline to construct an argument on appellant's behalf.

{¶ 72} Officer Bates acknowledged that it is not preferable to perform the field sobriety tests next to a high speed freeway lane. Nevertheless, to the extent that appellant argues that Officer Bates erred in administering the field sobriety tests next to the highway, we disagree. The location where the test was performed was the fault of appellant, not the fault of Officer Bates. When Officer Bates activated his lights to initiate the traffic stop, appellant pulled over onto the right exit ramp. When Officer Bates used his public address system and ordered appellant to move his car, appellant did not do so. The tests were performed between two cars, and appellant was close to the barricade. Officer Bates waited to perform the tests until the lane was blocked off. To the extent that appellant argues that his performance on the HGN test was affected by passing cars, Officer Bates testified that a car driving by on the freeway would not distract a person during the HGN test.

{¶ 73} Finally, although appellant generally asserts that several errors occurred with respect to the field sobriety tests, he does not claim that Officer Bates failed to provide sufficient instructions or contend that Officer Bates failed to

substantially comply with the NHTSA standards in administering the tests. The record is devoid of any evidence indicating that Officer Bates failed to substantially comply with the applicable testing standards.

{¶ 74} Based on the totality of the circumstances and Officer Bates's testimony about his observations of appellant and appellant's performance on field sobriety tests, we find the existence of sufficient information based upon which a prudent person would believe that appellant was, in fact, driving under the influence of alcohol. Accordingly, Officer Bates had probable cause to arrest appellant for OVI.

{¶ 75} For all of the foregoing reasons, the trial court did not err in denying appellant's motion to suppress. Officer Bates had a reasonable articulable suspicion that appellant committed multiple traffic violations, and as a result, the traffic stop was constitutionally valid. *See State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4539, 894 N.E.2d 1204, ¶ 8. Officer Bates had probable cause to arrest appellant for OVI. Appellant's first assignment of error is overruled.

B. Manifest Weight

{¶ 76} In his second assignment of error, appellant argues that his convictions are against the manifest weight of the evidence.

{¶ 77} A manifest weight challenge questions whether the state met its burden of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. A reviewing court "'weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts

in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A conviction should be reversed as against the manifest weight of the evidence only in the most "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

{¶ 78} In the instant matter, we initially note that appellant reiterates several of his suppression arguments in support of his manifest weight challenge. For instance, appellant asserts that Officer Bates's only indication that appellant may be intoxicated was a faint or very faint odor of alcohol; Officer Bates exceeded the scope of the traffic stop without reasonable articulable suspicion or probable cause to do so; and even if it was possible to commit a traffic violation, there was no violation captured on the dash-camera video. These arguments are not properly raised in the context of the manifest weight of the evidence. Furthermore, we have already addressed these arguments in our resolution of appellant's first assignment of error.

{¶ 79} In support of his manifest weight challenge, appellant contends that Officer Bates's trial testimony was not credible. Appellant emphasizes that during the suppression hearing, Officer Bates testified that the odor of alcohol emanating from appellant's vehicle was faint and his eyes were red; however, at trial, Officer Bates testified that the odor of alcohol was very faint and faint, and that appellant's eyes were bloodshot. Appellant contends that Officer Bates's conclusion of appellant's guilt was predetermined.

{¶ 80} Regarding the field sobriety tests administered to appellant, appellant argues that Officer Bates erred in administering the tests and in documenting the results. Finally, appellant challenges the credibility of the field sobriety tests results, maintaining that his performance on the tests was impacted by the windy weather conditions and the fact that the tests were administered next to a highway, rather than impacted by intoxication.

{¶ 81} Officer Bates testified at trial that he has received extensive training in determining whether an individual is under the influence of alcohol. He initiated a traffic stop around 1:00 a.m. after observing appellant commit multiple traffic violations.

{¶ 82} When Officer Bates approached the vehicle and conversed with appellant, he noticed that appellant's eyes were red and bloodshot, and he detected a "faint odor" of alcohol. As appellant spoke, the odor of alcohol became stronger and more pronounced. Appellant was unable to follow very simple instructions. Officer Bates noticed "a slight slurring of [appellant's] speech." (Tr. 232-233.) Appellant advised him that he had "a couple of beers earlier in the evening." (Tr. 233.) Based on these observations, he began to suspect that appellant may be impaired.

{¶ 83} As noted above, when Officer Bates initiated the traffic stop, appellant stopped his vehicle in the roadway of travel. Officer Bates asked appellant to move his vehicle multiple times, but appellant failed to do so. Officer Bates explained that the location where appellant stopped his vehicle presented a risk of danger to him

and appellant. Although appellant was parked in a dangerous position, Officer Bates did not want appellant to operate the vehicle after he began to suspect that appellant was impaired.

{¶ 84} As noted above, Officer Bates acknowledged during the suppression hearing that it was not ideal to administer field sobriety tests next to a highway. Officer Bates called for backup and waited until another unit arrived on scene before administering the full set of field sobriety tests. When the second unit arrived, the officer blocked off the lane of travel in which appellant stopped his vehicle, enabling them to safely administer field sobriety tests. Officer Bates also testified about the conditions under which the field sobriety tests were administered. The weather at the time he administered the tests was mild, with "slight wind." (Tr. 224.)

{¶ 85} Although the location of the testing was not ideal, Officer Bates testified at trial that he took steps to reduce the possibility that the location where the tests were administered would produce false clues of impairment. Officer Bates requested backup, and one of the officers that responded to the scene positioned his police cruiser in a way that effectively blocked off the closest lane of travel.

{¶ 86} Officer Bates administered the WAT, OLS, and HGN field sobriety tests. Of the six possible clues of impairment on the HGN test, Officer Bates observed six clues of impairment in both of appellant's eyes. According to the NHTSA, a person exhibiting four of the six clues is likely to have a blood alcohol content greater than .10. (Tr. 241-242.)

{¶ 87} Officer Bates acknowledged that appellant advised him that he previously broke his orbital socket. As a result, he did not administer the vertical nystagmus portion of the test. Officer Bates opined that a prior orbital socket injury would only affect an individual's performance on the vertical nystagmus test, not the HGN test.

{¶ 88} Appellant also exhibited multiple clues of impairment during both the WAT and OLS tests. Officer Bates acknowledged at trial that he erred in documenting one of the clues of impairment on the WAT test. Appellant exhibited a clue of impairment during the instructional phase of this test when he used his arms to maintain balance. Although Officer Bates documented this clue, he failed to indicate that it occurred during the instructional phase of the test.

{¶ 89} After administering the field sobriety tests, and based upon his observations of appellant throughout the course of their interaction, Officer Bates believed that appellant was intoxicated. As a result, he placed appellant under arrest for OVI.

{¶ 90} Officer Bates testified that appellant refused to submit to a Breathalyzer test. In establishing that an individual's ability to drive was impaired due to intoxication, the state may present evidence that an individual refused to submit to a chemical test to determine alcohol consumption, and establish intoxication through lay-witness testimony. *Maumee v. Anistik*, 69 Ohio St.3d 339, 344, 632 N.E.2d 497 (1994); *see Westerville v. Cunningham*, 15 Ohio St.2d 121, 239 N.E.2d 40 (1968), paragraph one of the syllabus ("The refusal of one accused of

intoxication to take a reasonably reliable chemical test for intoxication may have probative value on the question as to whether he was intoxicated at the time of such refusal.").

{¶ 91} As noted above, appellant advised Officer Bates during the traffic stop that he consumed "a couple of beers earlier in the evening." (Tr. 233.) Appellant testified at trial that he consumed "a bottle and a half, multiple hours before [the traffic stop]." (Tr. 372.)

{¶ 92} To the extent that appellant argues that the jury should not have given much weight to Officer Bates's testimony about his performance on the field sobriety tests because any poor performance can be attributed to a medical condition, his prior orbital socket injury, or the location the tests were performed, this argument is misplaced. Field sobriety tests are not a necessary factor in order to prove that an individual's ability to drive was impaired for purposes of obtaining an OVI conviction. *Parma v. Benedict*, 8th Dist. Cuyahoga No. 101480, 2015-Ohio-3340, ¶ 43, citing *Solon v. Hrivnak*, 8th Dist. Cuyahoga No. 100411, 2014-Ohio-3135, ¶ 21; *State v. Strebler*, 9th Dist. Summit No. 23003, 2006-Ohio-5711, ¶ 17; *State v. Stephenson*, 4th Dist. Lawrence No. 05CA30, 2006-Ohio-2563, ¶ 19; *State v. Rouse*, 7th Dist. Belmont No. 04 BE 53, 2005-Ohio-6328. In addition to field sobriety and coordination tests, the state may establish an individual's ability to drive is impaired through '"physiological factors such as slurred speech, bloodshot eyes, and the odor of alcohol.'" *Id.*, quoting *Hrivnak* at ¶ 18; *State v. Clark*, 8th Dist. Cuyahoga No. 88731, 2007-Ohio-3777, ¶ 13; *State v. Simms*, 9th Dist. Summit No. 23957, 2008-

Ohio-4848, ¶ 6; *State v. Holland*, 11th Dist. Portage No. 98-P-0066, 1999 Ohio App. LEXIS 6143 (Dec. 17, 1999).

{¶ 93} In this case, the state presented evidence of both appellant's physiological characteristics and the results of the field sobriety tests. Officer Bates testified that he observed appellant driving in the berm and operating in two lanes of travel. Although appellant disputes whether it was even possible to commit an improper lane change or marked lanes violation, he has offered nothing to refute Officer Bates's testimony regarding the physiological factors Officer Bates observed during the traffic stop — that his eyes were red and bloodshot, the faint odor of alcohol emanating from the vehicle became stronger when appellant spoke, and appellant's speech was slurred.

{¶ 94} The jury, as the trier of fact, was free to give more weight to Officer Bates's testimony, while rejecting appellant's assertion that his previous eye injury and the location where the tests were administered accounted for the indications of impairment observed by Officer Bates during the field sobriety tests.

{¶ 95} After reviewing the record, and drawing the reasonable inferences based on the evidence presented at trial, we find no basis upon which to conclude that the jury lost its way and created such a manifest miscarriage of justice that a new trial should be ordered. This is not an exceptional case in which the jury clearly lost its way in finding appellant guilty or that the evidence weighs heavily against appellant's convictions. The state's theory was that appellant was, in fact, driving under the influence of alcohol. The defense's theory was that appellant was not

driving under the influence of alcohol, Officer Bates erred in administering the field sobriety tests, and appellant's performance on the tests was affected by Officer Bates's errors and the conditions under which the tests were administered — windy weather and performing tests next to a highway where several cars drove by during testing at a high rate of speed — his performance was not affected by intoxication.

{¶ 96} Appellant's convictions are not against the manifest weight of the evidence merely because the jury found the state's version of the events to be more believable than appellant's theory of the case. "'[A] conviction is not against the manifest weight of the evidence simply because the jury rejected the defendant's version of the facts and believed the testimony presented by the state.'" *State v. Jallah*, 8th Dist. Cuyahoga No. 101773, 2015-Ohio-1950, ¶ 71, quoting *State v. Hall*, 4th Dist. Ross No. 13CA3391, 2014-Ohio-2959, ¶ 28. The jury did not lose its way in resolving the conflicting theories based on the evidence presented at trial.

{¶ 97} Finally, to the extent that appellant argues that his convictions were not supported by sufficient evidence, this argument is misplaced and unsupported by the record. "The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541, at paragraph two of the syllabus. Furthermore, appellant does not raise a separate assignment of error challenging the sufficiency of the evidence, as required by App.R. 16(A)(7). *See Cleveland v. Hall*, 8th Dist. Cuyahoga No. 101820, 2015-Ohio-2698, ¶ 14.

{¶ 98} Appellant argues that the state's evidence "did not establish that [he] was operating a motor vehicle while under the influence beyond a reasonable doubt." He does not specify whether he is challenging his OVI conviction on Count 1, a violation of R.C. 4511.19(A)(2)(a), or his OVI conviction on Count 2, a violation of R.C. 4511.19(A)(1)(a).

{¶ 99} Nevertheless, Officer Bates's testimony, if believed, is sufficient evidence to prove beyond a reasonable doubt that appellant was impaired on the evening of June 13, 2018. Officer Bates testified about the multiple traffic violations that appellant committed based upon which he initiated the traffic stop. The dash-camera footage supports Officer Bates's testimony about the dangerous location appellant stopped his vehicle, and appellant's failure to comply with his commands to move his vehicle away from the lane of travel.

{¶ 100} The testimony of Officer Bates regarding appellant's physiological factors and performance on the field sobriety tests, if believed, was sufficient to support appellant's OVI conviction. Officer Bates's testimony regarding appellant's performance on the field sobriety tests was supported by the dash-camera footage.

{¶ 101} For all of the foregoing reasons, appellant's second assignment of error is overruled. Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence.

C. Self-Representation

{¶ 102} In his third assignment of error, appellant argues that his Sixth Amendment right to counsel was violated when the trial court denied his mid-trial request to fire assigned counsel and proceed pro se.

> After a trial has commenced, the decision about whether to grant a defendant's request to represent himself is within the discretion of the trial court. *State v. Kendrick*, 8th Dist. Cuyahoga No. 59381, 1991 Ohio App. LEXIS 5604, 3 (Nov. 21, 1981), citing *Robards v. Rees*, 789 F.2d 379, 384 (6th Cir.1986). An abuse of discretion suggests the trial court's decision is unreasonable, arbitrary, or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). However, "[w]hen the defendant properly invokes the constitutional right, a trial court's denial of the right to self-representation is per se, reversible error." *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, 772 N.E.2d 81, ¶ 32, citing *State v. Reed*, 74 Ohio St.3d 534, 660 N.E.2d 456 (1996), citing *McKaskle v. Wiggins*, 465 U.S. 168, 177, 104 S.Ct. 944, 79 L.Ed.2d 122 (1984).
>
> A criminal defendant's right to self-representation is rooted in the Sixth Amendment to the United States Constitution, which provides: "In all criminal prosecutions, the accused shall * * * have the Assistance of Counsel for his defense." The Ohio Constitution provides that "[i]n any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel." Article I, Section 10, Ohio Constitution. However, the right of self-representation is not absolute. *Indiana v. Edwards*, 554 U.S. 164, 128 S.Ct. 2379, 171 L.Ed.2d 345 (2008). "To be properly invoked, a pro se request must be unequivocal and timely; otherwise, the trial court may, in its discretion, deny the request." *State v. Halder*, 8th Dist. Cuyahoga No. 87974, 2007-Ohio-5940, ¶ 50. Thus, "[a] trial court may deny a defendant's request for self-representation if it is untimely made." *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, 12 N.E.3d 1112, ¶ 76.

State v. Lavette, 8th Dist. Cuyahoga No. 106169, 2019-Ohio-145, ¶ 30-31.

{¶ 103} In *Lavette*, the defendant-appellant verbally requested to represent himself in the middle of trial. The defendant did previously raise a concern about defense counsel's performance; however, he never requested to proceed pro se. On appeal, this court held that the trial court did not abuse its discretion in denying

defendant's request to represent himself because it was not raised in a timely manner. *Id*. at ¶ 34. The Ohio Supreme Court has held that the request of a defendant to represent himself three days before trial was scheduled to commence was untimely. *Cassano* at ¶ 40.

{¶ 104} In the instant matter, like *Lavette*, appellant's request to discharge appointed counsel and proceed pro se was made in the middle of trial, after the state rested, and before appellant intended to testify on his own behalf. Unlike *Lavette*, appellant had not previously raised a concern about counsel's performance.[5]

{¶ 105} The attorney appellant sought to discharge had been representing appellant since November 2018. Counsel filed the motion to suppress on appellant's behalf, and advocated on appellant's behalf during the suppression hearing. Counsel represented appellant during the majority of the jury trial that commenced on March 25, 2019.

{¶ 106} The record reflects that the trial court inquired about appellant's concerns with defense counsel's performance. Appellant indicated that he wanted to represent himself because defense counsel failed to subpoena the two attorneys that previously represented him in the matter. Appellant alleged that these two attorneys would have proved his innocence and demonstrated that Officer Bates's testimony regarding the dash-camera video was not truthful. Appellant also

[5] The record reflects that appellant had previously retained and dismissed two separate attorneys in this case. The attorney at issue in the third assignment of error was appointed to represent appellant by the trial court.

asserted that his attorney was "playing a role of second prosecutor right now." (Tr. 339.)

{¶ 107} Accordingly, the record reflects that the trial court made a sufficient inquiry into appellant's request to waive counsel and represent himself. The trial court concluded, however, that appellant's request was untimely, and that his argument that the police purportedly withheld the dash-camera footage from defense counsel was misplaced. Defense counsel confirmed that he received the video from the police on January 24, 2019. The prosecutor also confirmed that defense counsel received the video that appellant alleged had been withheld more than two months before trial.

{¶ 108} For all of these reasons, we find no basis upon which to conclude that the trial court's decision to deny appellant's request to represent himself was unreasonable, arbitrary, or unconscionable. Appellant's third assignment of error is overruled.

D. Blanket Sentence

{¶ 109} In his fourth assignment of error, appellant argues that the trial court erred in imposing a blanket sentence on the two OVI counts. Appellant recognizes that the trial court merged Counts 1 and 2. However, he appears to argue that the trial court was still obligated to announce a sentence on the merged OVI offense on Count 2, and that the failure to do so resulted in a blanket sentence.

{¶ 110} In support of his argument, appellant directs this court to *State v. Dumas*, 8th Dist. Cuyahoga No. 95760, 2011-Ohio-2926. In *Dumas*, the defendant-

appellant was convicted of one count of felonious assault and one count of DUI. Although the defendant had two convictions, the trial court imposed a single term of community control. On appeal, this court dismissed the appeal, concluding that the trial court's sentencing order did not constitute a final appealable order. *Id*. at ¶ 15. This court explained, "[t]he trial court in this case not only imposed a single term of community control for both of Dumas's convictions, but indicated no potential sanction for either offense should she fail to comply with community control requirements." *Id*.

{¶ 111} In this case, appellant's reliance on *Dumas* is misplaced. Although appellant was convicted of two OVI offenses, Counts 1 and 2, the parties agreed that the counts merged as allied offenses for sentencing purposes. The state elected to sentence appellant on Count 1, and as a result, a sentence was not imposed on Count 2. Because a sentence was not imposed on Count 2, there was no sentence on this count that the trial court was obligated to announce.

{¶ 112} Although appellant does not otherwise challenge the trial court's sentence, the record reflects that the trial court imposed a one and one-half year sentence on the OVI offense in Count 1, and a mandatory two-year sentence on the prior felony OVI specification. The trial court ordered appellant to serve the two-year sentence on the specification prior to and consecutively with the one and one-half year sentence on the OVI count, for a total prison sentence of three and one-half years. The trial court announced appellant's sentence in open court and in the sentencing journal entry.

{¶ 113} For all of the foregoing reasons, appellant's fourth assignment of error is overruled. The trial court did not impose a blanket sentence.

III. Conclusion

{¶ 114} After thoroughly reviewing the record, we affirm the trial court's judgment. The trial court did not err in denying appellant's motion to suppress. Appellant's convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not abuse its discretion in denying appellant's untimely request to represent himself. The trial court did not impose an impermissible blanket sentence.

{¶ 115} Judgment affirmed.

It is ordered that appellee recover from 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 convictions having been affirmed, any bail pending 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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FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
RAYMOND C. HEADEN, J., CONCUR