

[Cite as *State v. Lytle*, 2004-Ohio-4964.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 04CA0016-M

Appellee

v.

RICHARD E. LYTLE

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
WADSWORTH MUNICIPAL
COURT
COUNTY OF MEDINA, OHIO
CASE No. 03 TRC 04800

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

SLABY, Judge.

{¶1} Defendant, Richard E. Lytle, appeals from the decision of the Wadsworth Municipal Court which found him guilty of driving under the influence and driving left of center. We affirm.

{¶2} On August 2, 2003, Defendant was charged with one count of driving left of center in violation of R.C. 4511.25(C), and one count of driving under the influence, in violation of R.C. 4511.19(A)(1)(a). Defendant pleaded not guilty, and the matter was set for trial. On November 3, 2003, the court permitted defense counsel to question the arresting officer in order to determine the

admissibility of field sobriety tests performed on Defendant. Defendant objected to the admissibility of this evidence because the officer had not strictly complied with the National Highway Safety Administration Manual for the horizontal gaze nystagmus (HGN) and Walk-and-Turn tests. The trial court found that the arresting officer had substantially complied with the requirements for each test, and admitted testimony of the officer's observations during the field sobriety tests during the January 2004 trial.

{¶3} The court found Defendant guilty of driving left of center and driving under the influence, his third conviction for that offense. The court sentenced him to 180 days in jail (with 150 days suspended), two years of probation, and a \$550.00 fine. In addition, the court ordered suspension of his driver's license for two years and forfeiture of Defendant's vehicle. Defendant timely appealed, raising two assignments of error for our review. For ease of discussion, we will address both assignments of error together.

ASSIGNMENT OF ERROR I

"The trial court erred as a matter of law in finding that the appropriate standard for the admissibility of the field sobriety tests is for substantial compliance with the standardized procedures set forth in the National Highway Traffic Safety Administration Manual and not strict compliance with the standardized procedures in the National Highway Traffic Safety Administration Manual."

ASSIGNMENT OF ERROR II

"The trial court erred in allowing the introduction of two field sobriety tests despite the State of Ohio's failure to show by clear and convincing evidence the field sobriety tests were administered 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.”

{¶4} In his first assignment of error, Defendant asserts that the trial court erred by finding that substantial compliance with standardized procedures was enough for the field sobriety tests to be admissible. Defendant contends that evidence related to those tests is inadmissible when an arresting officer fails to strictly comply with standardized procedures. Defendant opines that R.C. 4511.19, which requires only substantial compliance, is an unconstitutional usurpation of the power of the Ohio Supreme Court to dictate procedural rules and in conflict with Evid.R. 702. In his second assignment of error, Defendant asserts that, even if only substantial compliance is required to introduce evidence regarding the field sobriety tests, the State failed to meet that standard in this case. We find Defendant’s assertions meritless.

{¶5} In 2000, The Ohio Supreme Court held that:

“In order for the *results* of a field sobriety test to serve as evidence of probable cause to arrest, the police must have administered the test in strict compliance with standardized testing procedures.” (Emphasis added.) *State v. Homan* (2000), 89 Ohio St.3d 421, paragraph one of the syllabus.

Following the Court’s decision in *Homan*, the legislature substantially revised R.C. 4511.19, requiring only substantial compliance for admissibility of the results of field sobriety tests. R.C. 4511.19(D)(4)(b). While Defendant insists that the question before us today is whether the mandate of strict compliance laid down by

the Supreme Court in *Homan* renders the legislative provision demanding only substantial compliance unconstitutional under Section 5(B), Article IV of the Constitution of Ohio¹ and Evid.R. 702, the issue is actually quite different. The question is whether an officer may testify at trial regarding his observations of a defendant during field sobriety tests, regardless of whether he has met a certain level of compliance, when a violation of R.C. 4511.19(A)(1)(a) is alleged.

{¶6} R.C. 4511.19(A)(1)(a) does not necessitate any finding of a certain blood alcohol content to support a conviction, but rather only requires evidence that a defendant was operating a motor vehicle while impaired by alcohol. “[V]irtually any lay witness, including a peace officer, may testify as to whether an individual appears to be intoxicated.” *State v. Schmitt*, 101 Ohio St.3d 79, 2004-Ohio-37, at ¶12. Courts may rely upon other evidence, such as slurred speech, bloodshot eyes, the odor of alcohol, and observations of a defendant during field sobriety tests, in order to prove that an individual’s ability to drive is impaired. *Id.*

{¶7} While an officer needs to meet a certain level of compliance to testify about the results of field sobriety tests, he need not do so in order to testify regarding his general observations of a defendant during the tests. *Id.* at syllabus. Testimony regarding an officer’s observations of field sobriety tests, as opposed to

¹ Section 5, Article IV of the Constitution of Ohio renders without effect all laws in conflict with rules of court practice and procedure laid down by the Ohio Supreme Court.

the results of those tests indicating a certain blood alcohol content, is lay opinion testimony. *Id.* at ¶15. As such observations are lay testimony, admissible under Evid.R. 701, Evid.R. 702 concerning expert testimony is inapplicable. *Schmitt* at ¶15.

{¶8} The officer in this case testified at trial as to his observations of Defendant during the field sobriety testing. Because he did not testify about the results of those tests, neither Evid.R. 702 nor R.C. 4511.19(D)(4)(b) apply. *Schmitt* permits the officer to testify as to his observations regardless of any form of compliance with test procedures. *Schmitt* at ¶15. No possible constitutional problem, therefore, exists. Accordingly, Defendant's assignments of error are overruled.

{¶9} We overrule Defendant's assignments of error and affirm the judgment of the Wadsworth Municipal Court.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wadsworth Municipal Court, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of

Appeals at which time the period for review shall begin to run. App.R. 22(E).

The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

LYNN C. SLABY
FOR THE COURT

BOYLE, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

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