

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
OTTAWA COUNTY

State of Ohio

Court of Appeals No. OT-11-017

Appellee

Trial Court No. TRC 1003523 A

v.

James C. Davidson

**DECISION AND JUDGMENT**

Appellant

Decided: January 20, 2012

\* \* \* \* \*

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and  
David R. Boldt, Assistant Prosecuting Attorney, for appellee.

Konrad Kuczak, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Ottawa County Municipal Court which denied appellant's motion to suppress. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, James C. Davidson, sets forth the following two assignments of error:

{¶ 3} NO. 1: THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY OVERRULING APPELLANT'S MOTION TO SUPPRESS THE RESULTS OF THE BAC DATAMASTER TEST.

{¶ 4} NO. 2: THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO SUPPRESS THE EVIDENCE OBTAINED AS THE RESULT OF THE ARREST OF THE APPELLANT.

{¶ 5} The following undisputed facts are relevant to the issues raised on appeal. On the evening of September 11, 2010, the Catawba Island Township Police Department received a telephone call from a concerned citizen reporting a potentially intoxicated driver on Sand Road driving a black Jeep.

{¶ 6} In response to this report, the police responded to the vicinity identified by the caller. Shortly thereafter, Sergeant Stewart of the Catawba Island Township Police Department observed a black Jeep driving towards him. The officer noticed that the Jeep had drifted partially over the yellow centerline of the roadway. The officer turned his cruiser around to follow the vehicle. The black Jeep was consistent with the description and location furnished by the caller. Upon approaching the Jeep, he noted that the vehicle was now traveling substantially left of the centerline of the roadway.

{¶ 7} Based upon these observations consistent with the call that had prompted the investigation, the officer stopped appellant's vehicle. During subsequent

communications with appellant, the officer noticed the odor of alcohol on appellant's person. When inquiring of appellant whether he had been consuming alcohol prior to driving that evening, appellant evasively responded, saying something to the effect of "not much."

{¶ 8} Appellant argues that he actually responded, "not really." We note that this discrepancy is not relevant. Appellant equivocated and did not deny consuming alcohol when questioned by the officer. In conjunction with this, upon exiting the vehicle, the officer observed clearly a visible wet spot on the front of appellant's pants. The officer found this to be consistent with a person in such a scenario possibly having urinated on himself. Based upon various incriminating, discernible factors, appellant was placed under arrest for driving under the influence of alcohol. Appellant subsequently failed the B.A.C. test with a reading of .183, more than twice the legal limit.

{¶ 9} Although appellant's brief states that a motion to suppress in this matter was heard on January 26, 2008, for clarity we note that the record reflects that the motion to suppress was filed on November 19, 2010. On January 26, 2011, the trial court hearing on the motion to suppress was conducted. The trial court concluded that, "Sgt. Stewart certainly possessed a reasonable and articulable suspicion to stop defendant's vehicle." The trial court further found probable cause existed to arrest appellant and that all test results were admissible. On April 13, 2011, appellant filed objections to the motion to suppress decision. In its decision on the objections, the trial court found the initial HGN

results inadmissible but denied all other objections, including the requested suppression of the unlawful B.A.C. test results.

{¶ 10} On May 11, 2011, appellant pled no contest to operating a motor vehicle under the influence. Appellant was sentenced to a period of 20 days of incarceration. Seventeen of the 20 days were suspended. The requisite fine and driver's license suspension were also ordered. Timely notice of appeal was filed.

{¶ 11} In the first assignment of error, appellant asserts that the trial court improperly denied suppression of the B.A.C. test results. In support of the first assignment, appellant maintains that appellee failed to offer proof of substantial compliance with requisite B.A.C regulations. Specifically, appellant questions the validity of the testing batch solution used regarding whether it was used during the proper timeframe. Appellant next claims that the machine used must have been shown to be plugged into a multiple outlet power surge protector. Appellant also asserts that evidence was lacking showing an instrument performance check on the B.A.C. machine within 192 hours of appellant's test. Lastly, appellant asserts insufficient evidence of log book recordations of the instrument check.

{¶ 12} Contrary to above assertions, the record of the suppression hearing reflects that appellee submitted into evidence necessary B.A.C. instrumentation and calibration records reflecting substantial compliance so as not to compromise the test. The record of evidence shows that appellant's test took place within the proper one year life of the solution used. With respect to the electrical line used, we note that appellant's argument

is based upon preferences, not mandates, set forth in the guidelines. As pertains to appellant's remaining post hoc challenges to the validity of the B.A.C. records, we note that the record of evidence clearly reflects that counsel for appellant stipulated to the admission of the now challenged B.A.C. records.

{¶ 13} We have carefully reviewed and considered the record of evidence, with particular attention to the portions pertaining to the motion to suppress. We find that the trial court properly concluded, "Based upon the stipulations presented, clearly the DataMaster machine's set up is not in accordance with the preferred manufacturer's instructions. Also clear to the court, however, is that these preferences are not mandated by either the Ohio Administrative Code or Department of Health." In conjunction with this, the court likewise concluded that objections based upon the batch solution were equally misplaced. The trial court concluded the relevant test batch solution was, "Well within the three (3) month/1 year requirement of the Ohio Department of Health."

{¶ 14} We have carefully reviewed and considered the record of evidence in this matter. Consistent with the trial court's conclusions, we find that appellee furnished ample documentation demonstrating substantial compliance with relevant B.A.C. regulations. We find appellant's first assignment of error not well-taken.

{¶ 15} In appellant's second assignment of error, he argues that the trial court lacked probable cause for appellant's arrest. Based upon our review and consideration of the record, we are not persuaded by appellant's position.

{¶ 16} As delineated in *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964), adequate probable cause to arrest someone for operating a motor vehicle under the influence of alcohol requires a conclusion that at the time of arrest the police had sufficient information to cause a reasonably prudent person to believe the suspect was driving under the influence of alcohol.

{¶ 17} In applying this controlling standard to the instant case, we note that the record reflects that the police received information from a concerned caller about a potentially intoxicated driver and a black Jeep on Sand Road. Shortly thereafter, the police observed a black Jeep in that vicinity driving substantially in the wrong lane of travel, stopped the vehicle, detected an odor of alcohol about the driver of the vehicle, engaged in discourse with the driver in which he furnished an equivocating response to being questioned about his consumption of alcohol that could reasonably be construed as an admission of consumption, and observed visible signs of potential urination on the driver. The record encompasses ample evidence of sufficient information to cause a reasonably prudent person to believe that appellant had been driving under the influence of alcohol. Although the initial portable test results were ultimately suppressed, the subsequent B.A.C. results reflected a reading of .183, more than twice the legal limit. The record contains ample collective evidence demonstrative of probable cause in support of the arrest of appellant. We find appellant's second assignment of error not well-taken.

{¶ 18} On consideration whereof, the judgment of the Ottawa County Municipal Court is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, P.J.

\_\_\_\_\_  
JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.