

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

State of Ohio/City of Bowling Green

Court of Appeals No. {87}WD-24-067

Appellee

Trial Court No. 24 TRC 001443

v.

Dylan Buetner

DECISION AND JUDGMENT

Appellant

Decided: September 1, 2026

* * * * *

April F. Campbell, for appellant.

* * * * *

SULEK, J.

{¶ 1} Appellant Dylan Buetner appeals the judgment of the Bowling Green Municipal Court, which convicted him following his plea of no contest to one count of operating a vehicle while intoxicated. Buetner argues that the trial court erred when it denied his motion to suppress the results of his field sobriety and breath tests. For the reasons that follow, the trial court’s judgment is affirmed.

I. Factual Background and Procedural History

{¶ 2} As in the trial court, Buetner’s argument on appeal is limited to whether he voluntarily gave consent to perform field sobriety and breath tests. He does not contest

that there was probable cause to initiate a traffic stop or to suspect him of operating a vehicle while intoxicated. He further does not contest the manner in which the field sobriety tests were conducted and whether they complied with administrative regulations. His argument is simply that the tests should have been suppressed because he was coerced into taking them. For that reason, this court will focus only on the facts relevant to the issue of his consent.

{¶ 3} Testimony and evidence taken at the suppression hearing reveal that on February 24, 2024, Buetner was driving in Bowling Green, Ohio, when he was pulled over by Bowling Green Police Officer Mathew Dalton.

{¶ 4} Upon developing reasonable suspicion that Buetner was operating the vehicle while intoxicated, Dalton ordered Buetner out of the car, stating “I’m going to have you step out of the vehicle for me, okay.” Buetner complied with this order. Dalton then directed Buetner to the front of his patrol cruiser, saying “What I’m going to have you do is step up to the front of my car.” Buetner again complied. Another officer conducted a brief pat down of Buetner and told him to “follow [Dalton’s] instructions.” Dalton then began conducting field sobriety tests. He did not ask Buetner if he would take them, nor did he advise Buetner that he could elect not to take them.

{¶ 5} During the tests, Dalton gave instructions and Buetner followed them. The proceedings were calm and orderly. Dalton did not raise his voice. Buetner did not argue, protest, or ask if he had to take the tests.

{¶ 6} Following the field sobriety tests, Dalton placed Buetner under arrest and transported him in the back of his patrol cruiser to the police safety building. As they were traveling, Dalton asked Buetner if he had anyone who was sober who could come pick him up. Dalton informed him,

So, here's the deal. If you're cool with me, I'm cool with you, okay. So we're going to go up to the station. I'm going to offer you a breath test. I'm going to have to do a little bit of paperwork after that. Shouldn't be more than 30-45 minutes, okay. After that, if you're cool with me, I will give you your phone so you can make calls, okay. But I need somebody sober to come pick you up.

At the suppression hearing, Dalton explained that it was department policy to have someone come pick up the person that was arrested for operating a vehicle while intoxicated. He clarified that he was not trying to suggest that Buetner would not get his phone back if he did not comply, stating "I mean at the end of the day it's his phone. Obviously, I'm not going to take that from him."

{¶ 7} Finally, Dalton testified that there was not any time during his interaction with Buetner where his responses or participation were not voluntary.

{¶ 8} On cross-examination, Dalton testified that he could understand how "it would be reasonable for [Buetner] to believe that he didn't have a choice, and he needed to do those tests because he didn't tell [Buetner] that he had a choice." Dalton, however, thought that the encounter was "obviously" voluntary based on how he interacted with Buetner. Dalton noted that he was talking in a "humanly manner," he did not raise his voice, and he "wasn't aggressive with [Buetner] at all." But he also admitted that it is not the tone of his voice that is determinative as to whether someone will comply with his

instructions, rather it is the words that he says. In this case, his words were a continual series of orders or instructions.

{¶ 9} Regarding the conversation about the phone, Dalton testified on cross-examination that Buetner was worried that he was going to have to spend the night in jail, and Dalton was simply reassuring him that he could have someone come pick him up. He acknowledged though that from the time that he ordered Buetner out of the car, he had done nothing but give orders that Buetner complied with. He admitted that he could understand how a person would objectively think that he or she would need to continue to comply with his orders to be able to get his or her phone back.

{¶ 10} Following Dalton's testimony, the State rested.

{¶ 11} The defense then called Buetner to testify. Buetner stated that he was unaware that he could refuse to do the field sobriety tests. Instead, he felt that he needed to do them because Dalton was ordering him to do so. Similarly, Buetner testified that he took the breath test "[b]ecause I was told I was going to be given my phone back and that I would be able to go home."

{¶ 12} After Buetner's testimony, the defense rested and the parties submitted their closing arguments to the court. Upon hearing the testimony and the arguments, the trial court denied Buetner's motion to suppress. It "[was] not convinced that the evidence presented amounts to coercion. Doesn't believe the defendant was coerced to take either field sobriety tests or the breath test in this matter."

{¶ 13} Buetner ultimately pleaded no contest to the count of operating a vehicle while intoxicated and the trial court found him guilty.

II. Assignment of Error

{¶ 14} Buetner timely appeals his judgment of conviction, presenting one assignment of error for review:¹

Buetner's motion to suppress should have been granted, because Buetner's decision to perform the field tests and the breath test, was coerced rather than voluntary.

III. Analysis

{¶ 15} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 2003-Ohio-5372, ¶ 8. "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." *Id.* "Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.* "Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Id.*

{¶ 16} At issue here is whether Buetner voluntarily consented to the field sobriety and breath tests. "Voluntariness is a question of fact to be determined from all the circumstances, and while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a

¹ The State did not timely file a brief in response.

prerequisite to establishing a voluntary consent.” *State v. Robinette*, 80 Ohio St.3d 234, 243 (1997), quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-249 (1973); *State v. Arce*, 2025-Ohio-1091, ¶ 16 (6th Dist.).

{¶ 17} The State bears the burden to demonstrate “by ‘clear and positive’ evidence that the consent was ‘freely and voluntarily’ given.” *State v. Posey*, 40 Ohio St.3d 420, 427 (1988), quoting *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968); *State v. Seem*, 2022-Ohio-3507, ¶ 19 (6th Dist.). “‘Clear and positive evidence’ is the equivalent of clear and convincing evidence.” *Seem* at ¶ 19, quoting *State v. Jones*, 2010-Ohio-1600, ¶ 50 (6th Dist.). Even though the State’s burden of proof is “clear and positive,” the standard of review of the trial court’s finding of facts is “highly deferential, and the presence of only ‘some competent, credible evidence’ to support the trial court’s finding requires us to affirm it.” *Jones* at ¶ 52, quoting *State v. Schiebel*, 55 Ohio St.3d 71, 74 (1990); *State v. Isaac*, 2018-Ohio-5433, ¶ 34 (4th Dist.).

{¶ 18} Here, there is competent, credible evidence to support the trial court’s finding that Buetner was not coerced into performing the tests. The proceedings were not confrontational. Although Dalton gave directions, he did not raise his voice or threaten or show force. Buetner likewise did not argue, resist, delay, or question whether he had to participate. Further, as to the discussion that if Buetner remained “cool” Dalton would return his phone and Buetner could use it to call someone to come pick him up as opposed to having to spend the night in jail, a reasonable interpretation of “cool” is that

Dalton expected Buetner to generally behave, not that he specifically required Buetner to take the breath test.

{¶ 19} Accordingly, while this court acknowledges that there is also evidence that Buetner performed the tests merely upon the orders of Dalton and not by his own free choice, the trial court's finding of a lack of coercion must be affirmed. Buetner's assignment of error is not well-taken.

IV. Conclusion

{¶ 20} For the foregoing reasons, the judgment of the Bowling Green Municipal Court is affirmed. Buetner 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.

Thomas J. Osowik, P.J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

Christine E. Mayle, J.
CONCURS AND WRITES
SEPARATELY.

JUDGE

MAYLE, J., concurring

{¶ 21} I concur with the majority’s resolution of the assignment of error raised by appellant, Dylan Buetner, but for different reasons.

{¶ 22} Buetner argues in his assignment of error that he did not consent to participating in field sobriety tests or to taking a breathalyzer test. Instead, he contends that he was coerced into taking the tests by Dalton, the arresting officer, because Dalton gave orders but did not ask him if he wanted to participate in field sobriety tests and deprived him of his cellphone until he agreed to take a breathalyzer test. Buetner’s consent is irrelevant, however, because Dalton had the reasonable, articulable suspicion needed to administer field sobriety tests, and Buetner impliedly consented to a chemical test by driving in Ohio and he chose not to revoke that consent after Dalton read him the required BMV Form 2255.

{¶ 23} “An officer's request that a driver participate in field sobriety testing qualifies as a seizure subject to Fourth Amendment protection and must be separately justified by specific, articulable facts showing a reasonable basis for the request.” (Internal quotation omitted.) *State v. Dye*, 2021-Ohio-3513, ¶ 64 (6th Dist.). Although a warrantless seizure is presumptively unreasonable, an exception to the warrant rule allows an officer to stop and detain a person when the officer has a reasonable suspicion based upon specific, articulable facts that criminal activity has just occurred or is about to take place. *State v. Garber*, 2011-Ohio-5459, ¶ 33, 35 (5th Dist.), citing *Katz v. United States*, 389 U.S. 347, 357 (1967), and *Terry v. Ohio*, 392 U.S. 1 (1968). After making a

valid investigatory stop, an officer who has reasonable and articulable suspicion that a driver is intoxicated may conduct field sobriety tests. *State v. Bailey*, 2023-Ohio-1594, ¶ 32 (6th Dist.). This is true whether or not the person under investigation affirmatively consents to taking the tests. *See Garber* at ¶ 37-38.

{¶ 24} Here, Buetner does not dispute that Dalton had the reasonable, articulable suspicion necessary to administer field sobriety tests. Consequently, the issue of his consent to the tests is irrelevant. Because that is the case, the trial court did not err by refusing to suppress evidence related to the field sobriety tests.

{¶ 25} Regarding the breathalyzer test, “[a]s part of obtaining the privilege to drive in Ohio, a driver implicitly consents to a search, through means of a chemical test, to determine the amount of intoxicating substances in the driver’s body upon the driver’s arrest for DUI.” *State v. Hoover*, 2009-Ohio-4993, ¶ 14; R.C. 4511.191(A)(2). Beyond a person’s consent to a chemical test being implied, “[o]ne accused of intoxication has no constitutional right to refuse to take a reasonably reliable chemical test for intoxication.” *Id.* at ¶ 19, quoting *Westerville v. Cunningham*, 15 Ohio St.2d 121 (1968), paragraph two of the syllabus.

{¶ 26} Before requesting that a person submit to a chemical test, the arresting officer must inform the person of the information in R.C. 4511.192(B). R.C. 4511.192(A). That information is found in BMV Form 2255. *State v. Hamrick*, 2017-Ohio-4211, ¶ 7 (9th Dist.). The officer complies with R.C. 4511.192(B) by reading the top portion of BMV Form 2255 verbatim to the arrestee. *Bryan v. Hudson*, 77 Ohio St.3d

376, 380 (1997). Importantly, “upon arrest, an improper or incomplete recitation of BMV Form 2255, or otherwise improper or incomplete advice given to a defendant concerning his or her rights under the implied consent statute, is not of constitutional significance, and would not support the application of the exclusionary rule to suppress the evidence obtained.” *State v. Rawnsley*, 2011-Ohio-5696, ¶ 16 (2d Dist.). That is, for the exclusionary rule to apply, Buetner would have to demonstrate that his constitutional rights—not his statutory rights—were violated. *State v. Calo-Jimenez*, 2023-Ohio-2562, ¶ 33 (1st Dist.), citing *State v. Campbell*, 2022-Ohio-3626, ¶ 22.

{¶ 27} In this case, Dalton’s body camera video shows that he read the top portion of Form 2255 to Buetner verbatim. After hearing that information, Buetner agreed to take the breathalyzer test. As this is all that is required, Dalton’s earlier comments about Buetner’s cellphone did not affect Buetner’s consent. *See, e.g., Columbus v. Dixon*, 2008-Ohio-2018, ¶ 7 (10th Dist.) (officer telling defendant that she could go home if she took breathalyzer test but would be held in custody for 12 to 24 hours if she refused did not coerce her into taking the test). Additionally, Buetner has not proven any violations of his constitutional rights based on Dalton’s comments about his phone, so he is not entitled to have the results of his breath test suppressed. *Rawnsley* at ¶ 16.

{¶ 28} Because the majority reaches the same conclusion, I concur.

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