

[Cite as *State v. Ray Rogers*, 2017-Ohio-357.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF WAYNE        )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.        16AP0014

Appellee

v.

JORDAN A. RAY ROGERS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
WAYNE COUNTY MUNICIPAL COURT  
COUNTY OF WAYNE, OHIO  
CASE No.        2015 TRC 5960

Appellant

DECISION AND JOURNAL ENTRY

Dated: January 31, 2017

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CARR, Presiding Judge.

{¶1} Appellant, Jordan Ray Rogers, appeals the judgment of the Wayne County Municipal Court. This Court affirms.

I.

{¶2} This matter arises out of a car accident that occurred in Wooster, Ohio, on June 13, 2015. The driver of the sole car involved in the accident was Jordan Ray Rogers. Ray Rogers lost control of her vehicle while driving on Friendsville Road and crashed into a telephone pole. Police arrived on the scene and administered field sobriety tests. In light of the police officer’s observations of Ray Rogers, as well as her performance on the field sobriety tests, the police placed Ray Rogers under arrest.

{¶3} Ray Rogers was charged with one count of driving while under the influence of alcohol, one count of driving with a prohibited breath alcohol concentration, and one count of failure to control. She initially pleaded not guilty to the charges at arraignment. Ray Rogers

subsequently filed a motion to suppress wherein she argued that the police did not have probable cause to place her under arrest. After a hearing, the trial court granted the motion to suppress in part with respect to the admission of the horizontal gaze nystagmus test due to the fact that the test was not administered properly. The trial court denied the remainder of the motion and ultimately concluded that the police had probable cause to place Ray Rogers under arrest.

{¶4} Ray Rogers entered a plea of no contest to the count of driving with a prohibited breath alcohol concentration. The trial court found Ray Rogers guilty of the charge. The remaining counts were dismissed. The trial court imposed a three-day jail sentence and ordered that the sentence could be satisfied by a 72-hour alcohol treatment program. The trial court further sentenced Ray Rogers to a one-year term of community control and imposed a \$600 fine.

{¶5} On appeal, Ray Rogers raises one assignment of error.

## II.

### **ASSIGNMENT OF ERROR**

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS.

{¶6} In her sole assignment of error, Ray Rogers contends that the trial court erred in denying her motion to suppress. Specifically, Ray Rogers contends that the trial court's factual findings, which served as the basis for its probable cause determination, were not supported by competent credible evidence. This Court disagrees.

### **Background**

{¶7} Officer Bremenour, the arresting officer in this matter, was the only witness to testify at the suppression hearing. The officer's body camera video and probable cause affidavit were also introduced at the hearing. Officer Bremenour testified that he relied on the six factors when he placed Ray Rogers under arrest. The trial court found that the factors identified by

Officer Bremenour were: “1. Defendant’s admission to drinking previous to the accident; 2. Defendant’s blood shot eyes; 3. The slight odor of alcohol on Defendant’s person; 4. Defendant’s slightly slurred speech; 5. The results of the field sobriety tests; and 6. The poor driving of Defendant, as evidenced by the fact she had run off the road and struck a guide wire[.]” The trial court excluded the results of the horizontal gaze nystagmus test due to the fact that it was not administered in substantial compliance with the NHTSA manual. While the trial court found that the results of the walk-and-turn test and the one-leg stand test were admissible, the trial court accorded Officer Bremenour’s observations relating to those tests “little weight” because the body camera video showed that any cues exhibited by Ray Rogers were “almost imperceptible.” At the hearing, the officer acknowledged that his affidavit contained errors regarding Ray Rogers’ performance on the field sobriety tests and that he should have watched the video prior to preparing the affidavit. Based on Officer Bremenour’s remaining observations, however, the trial court determined that the officer had probable cause to arrest Ray Rogers for operating a vehicle while under the influence of alcohol.

### **Discussion**

{¶8} A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 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.*, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Thus, a reviewing court “must accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *Burnside* at ¶ 8. “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.*, citing *State v.*

*McNamara*, 124 Ohio App.3d 706 (4th Dist.1997). We emphasize, however, that “[t]his Court must only accept the trial court’s findings of fact if they are supported by competent, credible evidence.” *State v. Hendrix*, 9th Dist. Summit Nos. 26648, 26649, 2013-Ohio-2430, ¶ 14, quoting *State v. Figueroa*, 9th Dist. Lorain No. 09CA009612, 2010-Ohio-189, ¶ 20.

{¶9} The appropriate legal standard for probable cause to arrest for driving while under the influence of alcohol is whether “at the moment of the arrest, the police had sufficient information, derived from a reasonably trustworthy source of facts and circumstances, sufficient to cause a prudent person to believe that the suspect was driving under the influence.” *State v. Saylor*, 9th Dist. Medina No. 15CA0094-M, 2016-Ohio-7083, ¶ 12, quoting *State v. Homan*, 89 Ohio St.3d 421, 427 (2000). This inquiry requires consideration of the totality of the circumstances known to the officer at the time of arrest. *Id.* In cases where courts are faced with the question of whether a police officer has probable cause to arrest an individual for operating under the influence, the totality of the circumstances can support a finding of probable cause to arrest even where no field sobriety tests were administered or where the test results must be excluded. *State v. Washington*, 9th Dist. Lorain No. 11CA010042, 2012-Ohio-1391, ¶ 9, citing *Homan*, 89 Ohio St.3d at 427.

{¶10} Ray Rogers argues that the trial court’s factual findings were not supported by competent, credible evidence. Ray Rogers’ argument focuses on the trial court’s reliance on Officer Bremenour’s testimony, which she suggests is wholly unreliable given the contents of the body camera video. Ray Rogers also questions the foundation for the trial court’s observation that Ray Rogers may not have been truthful in stating that she drank only one beer. Finally, Ray Rogers asserts that even putting all credibility and evidentiary issues aside, the totality of the circumstances did not support the trial court’s probable cause determination.

{¶11} A careful review of the evidence presented at the suppression hearing reveals that the trial court did not err in determining that Officer Bremenour had probable cause to place Ray Rogers under arrest. Ray Rogers' challenge to the factual findings is largely predicated on the notion that the body camera video contradicted segments of Officer Bremenour's testimony. The trial court was acutely aware of the details of the video and acknowledged that it afforded little weight to the officer's observations of Ray Rogers as she performed the field sobriety tests. The body camera video further showed that any slurred speech by Ray Rogers was so infinitesimal that it was not discernable. With respect to Officer Bremenour's remaining observations that suggested Ray Rogers may have been impaired, however, we are mindful that the trial court is in the best position to resolve credibility issues and this Court will not substitute our own judgment for that of the trial court regarding the weight given to Officer Bremenour's testimony. *See State v. Thayer*, 9th Dist. Medina No. 11CA0045-M, 2012-Ohio-3301, ¶ 41. Given the evidence presented at the suppression hearing, it was both reasonable and within the discretion of the trial court to find certain portions of Officer Bremenour's testimony credible while according little weight to other observations made by the officer.

{¶12} Moreover, while Ray Rogers also takes issue with the trial court's comment that she may not have been truthful in stating that she only consumed one beer, this Court reads the trial court's remark not as a definitive finding but as a recognition that there was other evidence of impaired driving beyond the results of the field sobriety tests. Thus, even setting aside Officer Bremenour's observations pertaining to Ray Roger's speech and her performance on the field sobriety tests, the officer's observations regarding Ray Rogers' admission that she had been drinking, the odor of alcohol coming from her person, and her bloodshot eyes remained as indicators that Ray Rogers may have been driving while impaired. *Akron v. Smith*, 9th Dist.

Summit No. 21519, 2003-Ohio-5773, ¶ 13. Under the totality of the circumstances, these observations coupled with the crucial fact that Ray Rogers lost control of her vehicle and was involved in a single-car accident formulated the probable cause necessary to place Ray Rogers under arrest for driving while under the influence of alcohol. It follows that the trial court did not err in denying the motion to suppress.

{¶13} Ray Rogers' assignment of error is overruled.

### III.

{¶14} Ray Rogers' assignment of error is overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal court, County of Wayne, 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(C). 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.

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DONNA J. CARR  
FOR THE COURT

WHITMORE, J.  
SCHAFFER, J.  
CONCUR.

APPEARANCES:

DAVID C. KNOWLTON, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and NATHAN R. SHAKER, Assistant Prosecuting Attorney, for Appellee.