

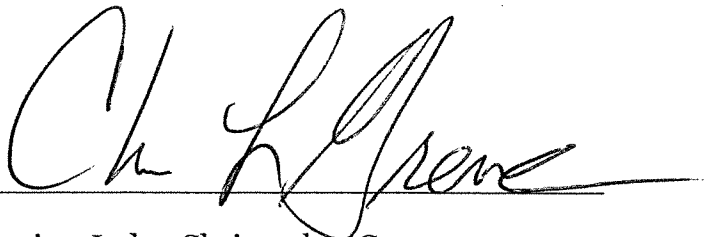
IN THE BERA MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

FILED
BEREA MUNICIPAL COURT
AUG 14 2014
RAYMOND J. WOHL
CLERK OF COURT

CITY OF STRONGSVILLE, : CASE NO.13TRC006668
:
Vs. : ACTING JUDGE GREENE
:
JACOB WISNIESKI, : DECISION AND JOURNAL
:
: ENTRY

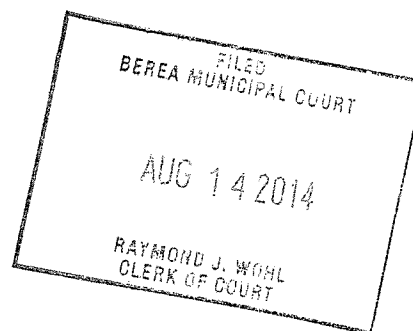
This matter came before the court upon Defendant's Motion to Suppress filed on February 12, 2014. A hearing was held on the merits of the Motion on June 13, 2014. Upon reviewing the testimony, law, facts and arguments of each counsel the Court hereby GRANTS the Defendant's Motion to Suppress Evidence for the reasons set forth in the attached decision.

IT IS SO ORDERED



Acting Judge Christopher Greene

DECISION



I. FACTS

On November 28, 2013 at approximately 4 a.m. Trooper Mollohan stopped the Defendant's vehicle in Strongsville, Cuyahoga County, Ohio. Trooper Mollohan testified that he was finishing up a prior traffic stop, in the southbound lane of Prospect Road, when his attention was diverted to the defendant's vehicle. Mollohan indicated that two southbound vehicles travelled into the northbound lane to safely pass the scene. After passing the scene, the Defendant's vehicle was observed to travel back into the southbound lane. The Defendant's tires then travelled over the double yellow lines into the northbound lane and abruptly jerked back into the southbound lane. The above actions were not captured on the dash cam of the Trooper's car.

Trooper Mollohan immediately followed Defendant's vehicle southbound on Prospect Road. Mollohan testified that the Defendant's vehicle again travelled over the double yellow line into the northbound lane. Mollohan effected a traffic stop on White Bark Road approximately two minutes after the trooper began following the Defendant's vehicle. The Defendant was asked to produce license, registration and insurance. The Defendant did produce a license and insurance card. When asked for registration the Defendant produced another insurance card. The driver had blood shot glassy eyes and a strong odor of alcohol emanated from the vehicle. The Defendant admitted consuming alcohol and that he was returning from a bar.

The defendant was asked to step from the vehicle to perform Field Sobriety Testing (FST's). The defendant was cooperative and performed the HGN test, One Legged Stand test and the Walk and Turn Test. After the FST's, the Defendant admitted to drinking 4-5 Jamisons and two beers that evening. When asked how "buzzed" he felt on a scale of 1 to 10¹, Defendant indicated a 4 or 5. Based upon the results of the testing² Mollohan requested the Defendant take a Portable Breath Test (PBT) with the test result being .183.

The Defendant was arrested, Mirandized and transported to the Brunswick Hills Police Department for further testing. Ultimately, defendant was given a breath test

¹ Mollohan testified that the scale would run from 1(buzzed) to 10(falling down drunk).

² Trooper Mollohan testified that he observed 6 of 6 clues on the HGN test. On the Walk and Turn test, Mollohan observed 6 of 9 possible clues. On the One Legged Stand test, Mollohan observed that the defendant swayed during the test or 1 clue out of 4 possible clues.

One-Leg Stand Test upon the Defendant on the night of the arrest. He further testified as to how he administered the tests, how he instructed the Defendant to perform the tests, and that he asked the Defendant if he understood the instructions prior to Defendant performing the tests. Trooper Mollohan testified that the tests substantially complied with the NHTSA standards. Defendant had the opportunity to cross-examine the trooper, and presented little if any evidence that the standards were not met.

The court has reviewed the 8th District Court of Appeals decision in *Strongsville v. Wood*, 2011-Ohio 115. Based upon the evidence presented and the decision in *Wood*, the court finds that the state has presented competent and credible evidence that the sobriety testing was done in substantial compliance with required testing standards.

Did Trooper Mollohan have reasonable suspicion to effectuate a traffic stop of defendant's vehicle?

The Ohio Supreme Court has emphasized that probable cause is not required to make a traffic stop; rather the standard is reasonable and articulable suspicion. *State v. Mays*, 119 Ohio St.3d 406, 2008-Ohio-4358, 894 N.E.2d 1204, Further, neither the United States Supreme Court nor the Ohio Supreme Court considered the severity of the offense as a factor in determining whether the law enforcement official had a reasonable, articulable suspicion to stop a motorist. See, *City of Dayton v. Erickson*, 76 Ohio St.3d 3, 11-12, 665 N.E.2d 1091(1996); *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89(1996). If an officer's decision to stop a motorist for a criminal violation, including a traffic violation, is prompted by a reasonable and articulable suspicion considering all the circumstances, then the stop is constitutionally valid. *Mays at ¶8*.

a) Pre Video testimony

Trooper Mollohan testified that he viewed Defendant's vehicle commit a traffic violation³ prior to his dash cam recording the Defendant's vehicle. Trooper Mollohan stated that he was on a traffic stop in the south bound lane of Prospect Road when he viewed two southbound vehicles pass his position. He indicated that the vehicles lawfully exited the southbound lane into the northbound to safely pass the traffic stop. The second vehicle was driven by the defendant. Trooper Mollohan stated that after safely passing the traffic stop the Defendant's vehicle swerved out of the southbound lane into the northbound lane and abruptly corrected back into the southbound lane. He testified that these actions were not caught by his dash cam due to the camera loading the information of the prior traffic stop. The Trooper testified that his field of vision

³ Travelling outside of the marked lines in violation of R.C. 4511.33

Trooper Mollohan testified that he followed Defendant's vehicle southbound on Prospect Road. Mollohan testified that the Defendant's vehicle again travelled over the double yellow line into the northbound lane⁷. Mollohan stopped the Defendant's vehicle on White Bark Road approximately two minutes after the trooper began following the Defendant's vehicle.

On cross examination the Trooper's dash cam⁸ was introduced. The court, counsel and the Trooper watched approximately the first two minutes of the video recording. The Trooper testified that the Defendant's car did cross the double yellow lines. Trooper Mollohan was asked, on cross, if the video shows the Defendant's vehicle travel over the double yellow lines. The Trooper testified that it is difficult to see, on tape, what he views in his car. Trooper Mollohan testified that the recording is two dimensional and the viewer has a lack of depth. The trooper testified that, except for the lane violation, the defendant violated no other traffic, equipment, or criminal laws and did not exhibit any other signs of erratic driving.

It is difficult to determine if the Defendant's vehicle crossed the double yellow lines by watching the video recording. If one listens carefully to the recording Trooper Mollohan is heard to say that the vehicle travels "on the double yellow lines again". There is no mention in the police report that the defendant's vehicle travelling over the double yellow lines. In his police report Trooper Mollohan indicates:

"... I noticed a vehicle ahead of me traveling South that drove **onto** the painted left line of the roadway..."

In this matter, the court can find no competent and credible evidence that defendant's vehicle travelled over the double yellow lines. It appears that most of the appellate jurisdictions agree that if a vehicle travels outside marked lanes the Ohio Supreme Court decision in *Mays* would control. However, when a vehicle travels upon a marked line, this conduct in and of itself, does not give rise to reasonable suspicion for a traffic stop. *State v. Grioryan* 2010-Ohio-2883 (8th Appellate District); *Wickliffe v. Petway* 2012-Ohio-2439 (11th Appellate District); *State v. Houck* 2011-Ohio-6359 (5th Appellate District); *State v. Palmer* 2013-Ohio -3470 (6th Appellate District); *State v. Baker* 2014-Ohio- 2564 (6th Appellate District). *State v. Shaffer* 2013-Ohio- 3581 (3rd Appellate District).

⁷ A second violation of R.C. 4511.33

⁸ Defendant's Exhibit 1

Since Trooper Mollohan testified that no other violations occurred or erratic driving existed⁹, the fact that the vehicle may have touch the double yellow lines is not sufficient evidence to support a finding of reasonable suspicion. *State v. Gullett*, (1992) 78 Ohio App. 3d 138; *State v. Shaffer* 2013-Ohio- 3581 (3rd Appellate District). The Court finds that post-video version of events, based on a totality of the circumstances, does not support a finding that the State has presented competent and credible evidence that Trooper Mollohan had a reasonable suspicion to stop defendant's vehicle.

Since the court finds that no reasonable suspicion existed to effect a traffic stop of defendant's vehicle, all evidence in this matter is hereby suppressed.¹⁰

⁹ There was testimony that defendant's vehicle did "accelerated hard" from a traffic light up to the posted speed limit, but did not exceed the posted speed limit. This hard acceleration was not described as erratic.

¹⁰ Since the court did not find reasonable suspicion existed, the court did not need to address the issue of probable cause to arrest. Had the court found that reasonable suspicion to stop the vehicle existed, it would have easily found probable cause to arrest based on the violation, officer's observations, defendant's admission of drinking, odor of alcohol, the field sobriety tests and the result of the PBT.