[Cite as *State v. Hoffman*, 2001-Ohio-1378]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	**JUDGES:**
STATE OF OHIO	:	**Hon. Julie A. Edwards, P. J.**
	:	**Hon. W. Scott Gwin, J.**
Plaintiff-Appellee	:	**Hon. John W. Wise, J.**
	:	
-vs-	:	
	:	**Case No. 01 CA 22**
JONATHON HOFFMAN	:	
	:	
Defendant-Appellant	:	**O P I N I O N**

CHARACTER OF PROCEEDING:	**Criminal Appeal from the Court of Common Pleas, Case No. 00 CR 492**
JUDGMENT:	**Affirmed**
DATE OF JUDGMENT ENTRY:	**September 21, 2001**

APPEARANCES:

For Plaintiff-Appellee	**For Defendant-Appellant**
JAMES SCHOREN **ASSISTANT PROSECUTOR** **20 South Second Street** **Fourth Floor** **Newark, Ohio 43055**	**ANDREW T. SANDERSON** **LAW OFFICES OF KRISTIN BURKETT** **21 West Church Street** **Suite 201** **Newark, Ohio 43055**

Appellant Jonathon Hoffman appeals the decision of the Court of Common Pleas, Licking County, which denied his motion to suppress evidence. The appellee is the State of Ohio. The relevant facts leading to this appeal are as follows.

On September 7, 2000, Lieutenant James Hanzey of the Buckeye Lake Police Department responded to a call concerning a suspicious vehicle at an apartment complex on Walnut Road. Upon arriving in the general area of the complex, Hanzey observed a gold-colored extended-cab Ford Ranger pickup truck, matching the complaining caller's original description, traveling at what the officer estimated to be a high rate of speed, 25 to 30 mph on a gravel lane near the complex. Hanzey then proceeded into the apartment complex to speak with the complaining witness. The witness told the officer that the male driver of the pickup had been sitting in the parking lot, playing "extremely loud" music. Tr. at 11. The witness also reported that the driver had thrown several beer bottles into an apartment dumpster, and had been forced to abort a turn out of the parking lot when he almost pulled into the path of a vehicle traveling on Route 79. After completing his interview, Hanzey returned to the gravel drive area where he had previously seen the pickup. The pickup passed by him on the gravel lane, going the opposite direction, without incident. At that point, Hanzey effectuated a traffic stop. The officer walked up to the pickup and observed Hoffman in the driver's seat, noticing a strong odor of alcoholic beverage, bloodshot and "glassy eyes," and speech that was slightly slurred. Tr. at 13. The officer also found a six-pack of beer in the vehicle, and recalled that appellant admitted to drinking three or four beers. Tr. at 19.

At that point, Hanzey asked appellant to step from the vehicle. He observed that appellant had to use the door of the pickup to assist his exit, and likewise had to use the vehicle's side to maintain balance. The officer then had appellant move approximately fifteen to twenty feet to a paved area, which appellant negotiated without any apparent difficulty. At that point the officer conducted field sobriety testing of appellant for the purposes of determining if he was under the influence of alcohol. At the conclusion of his testing, the officer placed appellant under arrest and transported him to the police station. At the station, appellant agreed to submit to a chemical test, which revealed a blood alcohol content of .122.

On November 9, 2000 appellant was indicted on one count of misdemeanor driving under suspension and one count of felony OMVI. Appellant initially pled not guilty. On December 27, 2000, appellant filed with the trial court a motion to suppress the evidence obtained following his arrest. After an oral hearing, the trial court issued an entry on January 25, 2001, finding that Hanzey had not administered two of the field sobriety procedures, the "walk and turn" test and "horizontal gaze nystagmus" ("HGN") test, in accordance with National Transportation Safety Board standards. Nonetheless, the court denied the motion to suppress. Appellant thereafter entered pleas of no contest to the charges in the indictment. Appellant was convicted and sentenced to four years in prison on the felony OMVI charge and ninety days in jail on the driving under suspension charge, with the sentences to be served concurrently.

Appellant timely appealed and herein raises the following sole Assignment of Error:

I. THE TRIAL COURT COMMITTED HARMFUL ERROR IN DENYING THE DEFENDANT-APPELLANT'S MOTION TO SUPPRESS EVIDENCE.

I

In his sole Assignment of Error, appellant challenges the trial court's refusal to suppress the results of the chemical test for his blood-alcohol content. There are three methods of challenging, on appeal, a trial court's ruling on a motion to suppress. First, an appellant may challenge the trial court's findings of fact. In reviewing a challenge of this nature, an appellate court must determine whether said findings of fact are against the manifest weight of the evidence. See *State v. Fanning* (1982), 1 Ohio St.3d 19; *State v. Klein* (1991), 73 Ohio App.3d 486; *State v. Guysinger* (1993), 86 Ohio App.3d 592. Second, an appellant may argue the trial court failed to apply the appropriate test or correct law to the findings of fact. In that case, an appellate court can reverse the trial court for committing an error of law. See *State v. Williams* (1993), 86 Ohio App.3d 37. Finally, assuming the trial court's findings of fact are not against the manifest weight of the evidence and it has properly identified the law to be applied, an appellant may argue the trial court has incorrectly decided the ultimate or final issue raised in the motion to suppress. When reviewing this type of claim, an appellate court must independently determine, without deference to the trial court's conclusion, whether the facts meet the appropriate legal standard in any given case. *State v. Curry* (1994), 95 Ohio App .3d 93; *State v. Claytor* (1993), 85 Ohio App.3d 623; *Guysiner*, *supra.*

In the matter presently before us, we find appellant challenges the trial court's decision concerning the ultimate issue raised in his motion to suppress. Thus, in

analyzing his Assignment of Error, we must independently determine whether the facts meet the appropriate legal standard.

Appellant thus argues that Lieutenant Hanzey did not have probable cause to effectuate the arrest. Probable cause exists to arrest for driving under the influence when "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." *Beck v. Ohio* (1964), 379 U.S. 89, 91; *State v. Timson* (1974), 38 Ohio St.2d 122, 127. An officer has probable cause to arrest if the facts and circumstances within the officer's knowledge are sufficient to cause a prudent person to believe that a suspect has committed the offense. *State v. Heston* (1972), 29 Ohio St.2d 152. An officer does not have to observe poor driving performance in order to effect an arrest for driving under the influence of alcohol if all the facts and circumstances lead to the conclusion that the driver was impaired. See, *e.g.*, *Atwell v. State* (1973), 35 Ohio App.2d 221.

As previously noted, the trial court determined that the "walk and turn" and "HGN" tests were not administered in accordance with NTSB standards, citing *State v. Homan* (2000), 89 Ohio St.3d 421. In regard to the "one-legged stand" test, Hanzey first recalled that he thought appellant "put his foot down a couple of times." Tr. at 17. However, after reviewing his written report, Hanzey conceded that the paperwork did not reflect this occurrence. He further testified at that point that appellant counted to thirty as required and raised his arms between 5.5 and 6.5 inches during

the test. Tr. 32-34. The officer did not recall whether he performed a "finger to nose" test, but the written report did indicate that appellant attempted and failed same. Nonetheless, the trial court concluded that " * had all the field sobriety tests been administered in an improper manner, this Court finds that the officer, based on all of the other factors, still had sufficient probable cause to arrest the defendant for impaired driving and request that the defendant submit to a breath test." Judgment Entry at 7.**

The trial court's aforesaid conclusion follows the Ohio Supreme Court's guidance, in *Homan*, that " * * * the totality of facts and circumstances can support a finding of probable cause to arrest even where no field sobriety tests were administered or where the test results may be excluded for lack of strict compliance ." *Id.* We note that in *Homan*, the trooper " * observed erratic driving on the part of appellee [defendant]." *Id*. at 427. In the case *sub judice*, Lieutenant Hanzey initially observed the Ford Ranger traveling at what he considered a high rate of speed for the gravel lane, "kicking up *** quite an amount of dust." Tr. at 10. Proceeding further into the complex, Hanzey obtained the following information from the complainant:**

> **They also said the vehicle attempted to leave the parking lot once and pulled back out on to 79 and pulled in the path of another on-coming vehicle, stopped, backed up and parked in the parking lot again.**

Tr. at 11.

After resuming a search for the Ford Ranger and making his traffic stop, Hanzey was able to observe appellant's physical indicia of intoxication, *i.e.*, glassy

eyes, slurred speech, and an odor of alcoholic beverage. During the stop, appellant admitted to drinking three or four beers. Thus, upon our examination the "totality" of these facts and circumstances surrounding the arrest, as per *Homan*, we believe the foregoing would lead a reasonably prudent person to conclude that appellant had engaged in impaired or erratic driving via the officer's observations and his recollection of the informant's remarks. See, also, *Maumee v. Weisner* (1999), 87 Ohio St.3d 295, 298, quoting *United States v. Raddatz* (1980), 447 U.S. 667, 679: "At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial." Taken in conjunction with the aforementioned "common indicia" of intoxication, the set of circumstances as a whole gives rise to probable cause to believe that appellant was operating a motor vehicle while under the influence of alcohol.

Upon review, we find no error in the trial court's denial of appellant's motion to suppress. Appellant's sole Assignment of Error is overruled.

For the reasons stated in the foregoing opinion, the decision of the Court of Common Pleas, Licking County, is hereby affirmed.

By: Wise, J.
Edwards, P. J., and
Gwin, J., concur.

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JUDGES

JWW/d 831

[Cite as *State v. Hoffman*, 2001-Ohio-1378]

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
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Plaintiff-Appellee	:	
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-vs-	:	**JUDGMENT ENTRY**
	:	
	:	
JONATHON HOFFMAN	:	
	:	
Defendant-Appellant	:	**CASE NO. 01 CA 22**

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

Costs to appellant.

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JUDGES