

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CITY OF CINCINNATI,	:	APPEAL NOS. C-060887
		C-060888
Plaintiff-Appellee,	:	C-060889
		TRIAL NOS. 05TRC-39358-A
vs.	:	05TRC-39358-B
		05TRC-39358-C
LAINE LOREY,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Laine Lorey appeals her convictions for operating a vehicle under the influence of alcohol (“OVI”) and driving without a license. We conclude that her four assignments of error do not have merit, and we therefore affirm the judgment of the trial court.

Sergeant Eric Franz was working an off-duty detail at a Kroger grocery store in the Hyde Park area of Cincinnati. According to Franz, around 10:00 p.m., he observed Lorey pulling into the grocery store’s parking lot without her headlights on. Franz testified that Lorey’s car ran up on the curb in front of the store, and that Lorey attempted to park her car in a fire lane. When Franz told her that she was parked in a fire lane, Lorey told him that she was handicapped. Franz then directed her to park her car in a nearby space that was designated for handicap parking. According to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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Franz, Lorey parked the car between two handicap-parking spaces, with the back end of the car jutting out into a lane of traffic. Franz also noticed that the license plates on Lorey's car were expired.

Franz observed Lorey stumbling into the grocery store. He followed her into the store. At the same time, he radioed the police dispatcher to confirm that the license plates were expired. The dispatcher told him that both the plates and Lorey's driver's license were expired. Franz then called for a Cincinnati police cruiser to report to the parking lot.

When Lorey exited from the store, Franz approached her and asked to see her driver's license. Lorey did not provide a license. While he spoke with Lorey, Franz noted that her speech was drawn or slurred and that there was an odor of alcohol about her. Franz also observed several empty beer cans in the back of Lorey's car. Franz refused to allow Lorey to get back into her car.

Officers Rosa Chatman and Melinda Jordan arrived at the parking lot. Chatman observed that Lorey had slurred speech and balance problems. Jordan testified that Lorey had stumbled, had slurred her speech, and had bloodshot eyes. When Chatman attempted to administer field-sobriety tests to Lorey, Lorey refused, saying that "she was not playing [Chatman's] game." But Chatman was able to administer a horizontal-gaze-nystagmus ("HGN") test. Chatman noted six clues that indicated that Lorey was intoxicated. Lorey was arrested on suspicion of OVI.

At the district police station, Chatman administered a breath-alcohol test to Lorey. The test indicated that Lorey had a blood-alcohol content of .244 grams per 210 liters of her breath. Lorey was charged with two counts of OVI² and one count of driving without a license.³

² R.C. 4511.19(A)(1)(a) and (h).

³ R.C. 4510.12.

Lorey filed a motion seeking to suppress the results of the field-sobriety and breath-alcohol tests and any statements made by Lorey to police officers. The trial court denied the motion after a hearing. After a trial to the bench, Lorey was found guilty as charged.

In her first assignment of error, Lorey asserts that the trial court erred in denying her motion to suppress. Lorey argues that the police officers lacked reasonable grounds to detain her and probable cause to arrest her for OVI.

Our review of the trial court's denial of Lorey's motion to suppress involves a mixed question of law and fact.⁴ We must accept the court's findings of fact if they are supported by competent, credible evidence.⁵ But we review the application of the law to the facts de novo.⁶

We conclude that Franz had a reasonable suspicion to detain Lorey based on her expired license plates and driver's license. Once Lorey was detained, the police officers' observations of Lorey's stumbling, her slurred speech, the odor of alcohol about Lorey, the empty beer cans, Lorey's bloodshot eyes, and her performance on the HGN test were sufficient to give the officers probable cause to arrest Lorey. The first assignment of error is overruled.

We consider Lorey's remaining assignments of error together. In the second assignment of error, Lorey asserts that the trial court erred in overruling her Crim.R. 29 motion for an acquittal. In the third, she asserts that her convictions were based on insufficient evidence. And in the fourth assignment of error, Lorey contends that her convictions were against the manifest weight of the evidence.

The standard of review for a sufficiency claim and for the denial of a Crim.R. 29 motion for an acquittal is the same. When an appellant challenges the sufficiency

⁴ *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶8.

⁵ *Id.*, citing *State v. Fanning* (1982), 1 Ohio St.3d 19, 437 N.E.2d 583.

⁶ *Id.*, citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539.

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of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.⁷ On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁸

We conclude that the city presented sufficient evidence of each offense for which Lorey was convicted. Lorey did not challenge the weight of the evidence for the OVI offense based on the breath-alcohol test. Instead, she challenged the credibility of Officers Franz, Chatman, and Jordan with respect to the OVI charge in violation of R.C. 4511.19(A)(1)(a) and the driving-without-a-license offense. The trial court was in the best position to determine the credibility of the officers. We conclude that the trial court did not lose its way when it found Lorey guilty of both OVI offenses and of driving without a license. The second, third, and fourth assignments of error are without merit, and we therefore affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 7, 2007
per order of the Court _____
Presiding Judge

⁷ See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

⁸ See *id.* at 387.