

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

STATE OF OHIO,	:	APPEAL NOS. C-07 0464
		C-070465
Plaintiff-Appellant,	:	C-070466
		TRIAL NO. 06TRC-44989
vs.	:	
		<i>JUDGMENT ENTRY.</i>
FRED STONE,	:	
Defendant-Appellee.	:	

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

Defendant-appellee, Fred Stone, was arrested and charged with driving under the influence of alcohol or a drug of abuse,² driving with a prohibited level of a drug or drug metabolite in his urine,³ and driving with a prohibited level of alcohol in his urine.⁴ The trial court granted Stone's motion to suppress, finding that the police had lacked probable cause to arrest him. The state has appealed under R.C. 2945.67 and Crim.R. 12(K), and we reverse the trial court's judgment.

The record shows that Stone was involved in an accident for which he was not at fault. The driver of another vehicle had hit Stone's car as he was pulling out of a driveway. Officer Michael Roetting of the Cincinnati Police Department investigated the accident. He interviewed Stone, who admitted to operating his vehicle at the time of the accident.

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

² R.C. 4511.19(A)(1)(a).

³ R.C. 4511.19(A)(1)(j).

⁴ R.C. 4511.19(A)(1)(e).

As he talked to Stone, Roetting noticed that “his balance was a little off.” His eyes were also half-closed and watery, and Roetting could smell alcohol on his breath. Every time Roetting got closer to him, Stone backed away and tried to avoid contact. Stone’s speech was also slow and he mumbled, and according to Roetting, he seemed lethargic. When Roetting asked him to provide his license and proof of insurance, Stone seemed confused. He went to his car three times and never produced any documents. He admitted to Roetting that he had consumed two beers.

Roetting had Stone perform field sobriety tests, some of which, in Roetting’s opinion, he failed. Roetting arrested him for driving under the influence of alcohol or drugs and took him to the police station. At the station, Stone began to sweat profusely and shake uncontrollably. The veins in his arms and face became distended, and police officers became concerned for his safety. They asked if he had ingested any contraband and offered to take him to the hospital. Stone denied ingesting anything and refused medical attention. The officers gave him a urine test, which revealed the presence of a substantial amount of cocaine.

In its sole assignment of error, the state contends that the trial court erred in finding that the police did not have probable cause to arrest Stone. It argues that even though the trial court found that Roetting had not conducted the field sobriety tests in substantial compliance with standardized testing procedures,⁵ he still had probable cause to arrest Stone. We agree.

In reviewing the trial court’s decision on a motion to suppress, we must accept the trial court’s findings of fact if competent, credible evidence supports

⁵ See R.C. 4511.19(D)(4)(b); *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155; *State v. Gangloff*, 1st Dist. Nos. C-060481 and C-060536, 2007-Ohio-4463.

them.⁶ But we must independently determine, as a matter of law, whether the facts meet the appropriate legal standards.⁷

Courts determine probable cause according to the facts and circumstances of each case.⁸ In determining whether probable cause to arrest existed, a court must ascertain whether, at the time of the arrest, the police officer had sufficient facts and circumstances within his knowledge to warrant a prudent person in believing that the defendant was committing or had committed an offense.⁹ The totality of the facts and circumstances can support a finding of probable cause to arrest for driving under the influence of alcohol or drugs even where police officers did not administer field sobriety tests.¹⁰

In finding that probable cause did not exist in this case, the trial court ruled that evidence of the field sobriety tests was inadmissible. But even if we do not consider the evidence relating to the field sobriety tests, we hold that the facts and circumstances supported a finding that Roetting had probable cause to arrest Stone. Stone relies upon *State v. Taylor*,¹¹ in which we held that an odor of alcohol, together with a minor traffic violation, was insufficient to establish probable cause. While the parties agree that Stone had not committed a traffic violation, the evidence showed more than just an odor of alcohol.

Stone not only smelled of alcohol, but he also admitted consuming two beers and tried to avoid contact with the Officer Roetting. His eyes were half-closed and

⁶ *State v. Sheppard* (2001), 144 Ohio App.3d 135, 759 N.E.2d 823.

⁷ *State v. Curry* (1994), 95 Ohio App.3d 93, 641 N.E.2d 1172; *State v. Neu* (Mar. 3, 2000), 1st Dist. No. C-990552.

⁸ *In re V.S.*, 6th Dist. No. 22632, 2005-Ohio-6324; *State v. McWilliams* (Mar. 1, 1995), 1st Dist. Nos. C-940378 and C-940379.

⁹ *State v. Heston* (1972), 29 Ohio St.2d 152, 280 N.E.2d 376; *Cincinnati v. Wolfe*, 1st Dist. Nos. C-010303 and C-010304, 2001-Ohio-3916.

¹⁰ *State v. Homan*, 89 Ohio St.3d 421, 2000-Ohio-212, 732 N.E.2d 952; *State v. Kiefer*, 1st Dist. No. C-030205, 2004-Ohio-5054.

¹¹ (1981), 3 Ohio App.3d 197, 444 N.E.2d 481.

watery. His speech was slow and he mumbled. He appeared confused and could not produce his license and proof of insurance, despite being asked to do so three times. These observations would have given a prudent person sufficient facts to believe that Stone had operated a vehicle under the influence of alcohol or drugs.¹² Whether the officer subjectively believed that he had probable cause was immaterial since the standard is an objective one.¹³

Consequently, we hold that the trial court erred in granting Stone's motion to suppress. We sustain the state's assignment of error, reverse the trial court's judgment, and remand the case for further proceedings consistent with this judgment entry.

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

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

To the Clerk:

Enter upon the Journal of the Court on March 5, 2008
per order of the Court _____.
Presiding Judge

¹² See *Kiefer*, supra; *State v. Lopez*, 1st Dist. Nos. C-020516 and C-020517, 2003-Ohio-2072; *Cincinnati v. Jacobs*, 1st Dist. Nos. C-010279, C-010280, and C-010281, 2001-Ohio-4031; *Cincinnati v. Sims* (Oct. 26, 2001), 1st Dist. Nos. C-010178 and C-010179.

¹³ *Dayton v. Erickson*, 76 Ohio St.3d 3, 1996-Ohio-431, 665 N.E.2d 1091; *State v. Abrams*, 12th Dist. No. CA2007-03-040, 2008-Ohio-94.