

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

STATE OF OHIO,	:	APPEAL NO. C-120372
	:	TRIAL NO. 11TRC-45243A
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
HEATHER CULBERTSON,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist.Loc.R. 11.1.1.

Proceeding under Crim.R. 12(K), plaintiff-appellant State of Ohio appeals the trial court’s judgment suppressing evidence and finding a lack of probable cause to arrest defendant-appellee Heather Culbertson for operating a motor vehicle while under the influence of alcohol (“OVI”). We affirm.

In its single assignment of error, the state argues that the trial court erred in granting Culbertson’s motion to suppress. When considering a motion to suppress, the trial court acts as the trier of fact and is in the best position to evaluate the credibility of witnesses and to weigh the evidence. *State v. Sanders*, 1st Dist. No. C-030846, 2004-Ohio-6842, ¶ 6, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. Although we must accept the trial court’s findings of

fact if they are supported by some competent, credible evidence, we conduct a de novo review of whether the facts meet the applicable legal standard. *Id.*

“The legal standard for determining whether a law enforcement officer had probable cause to arrest an individual for OVI 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.’” *Cincinnati v. Bryant*, 1st Dist. No. C-090546, 2010-Ohio-4474, ¶ 15, quoting *State v. Homan*, 89 Ohio St.3d 421, 427, 732 N.E.2d 952 (2000).

After reviewing the record, which included the testimony of the arresting officer and a digital recording of the stop, we cannot say that the trial court erred in determining that there was a lack of probable cause to arrest Culbertson for OVI. Here, there was no admission of drinking alcohol by Culbertson; there were no signs of impaired driving other than nominal speeding; and, although there was an odor of an alcoholic beverage coming from Culbertson, the arresting officer did not characterize the odor as strong or even moderate. *See State v. Taylor*, 3 Ohio App.3d 197, 444 N.E.2d 481 (1st Dist.1981).

The state argues that the trial court failed to consider the arresting officer’s testimony that Culbertson had glassy and bloodshot eyes at the time of the stop. But the trial court found that the testimony was not credible given that those “signs of impairment” were not included in the arrest report, but were mentioned for the first time several months later at the suppression hearing. We will not second-guess the trier of fact’s decision determining credibility.

Accordingly, the single assignment of error is overruled, and the judgment of the trial court is affirmed.

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A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on April 19, 2013

per order of the court _____.
Presiding Judge