IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-140620 C-140621
Plaintiff-Appellee,	:	C-140622 C-140623
vs.	:	C-140624
MELVIN PIPERSKI,	:	TRIAL NOS. C-14TRC-1212A C-14TRC-1212B C-14TRC-1212C
Defendant-Appellant.	:	C-14TRC-1212D C-14TRC-1212E

JUDGMENT ENTRY.

We consider these consolidated appeals 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.

Defendant-appellant Melvin Piperski appeals from his convictions and the imposition of court costs arising out of his operation of a motor vehicle on New Year's Eve 2013. We affirm the judgment of the trial court in the cases numbered C-140620, C-140621, and C-140624. In the cases numbered C-140622 and C-140623, Piperski appeals from the order of the court imposing court costs for charges of speeding and driving with a license under suspension. Because no sentence of incarceration or fine was imposed for those violations, there are no convictions. Thus, there are no final appealable orders and these appeals must be dismissed. *See State v. Bennett*, 1st Dist. Hamilton Nos. C-140507 and C-140508, 2015-Ohio-3246, ¶ 5-6.

On New Year's Eve at approximately 9:30 p.m., a trooper of the Ohio State Highway Patrol initiated a traffic stop after he observed Piperski speed and commit a marked-lanes violation while driving with one functioning headlight. After the trooper turned on his overhead lights, Piperski proceeded to drive a short distance before pulling over in a hotel parking lot. As the trooper approached Piperski, he noticed an "odor of an alcoholic beverage" coming from him. Piperski denied drinking that evening, but admitted that he had "a drink, yesterday."

After asking several preliminary questions, the trooper performed the horizontal-gaze-nystagmus ("HGN") test on Piperski while Piperski remained in his vehicle. The trooper instructed Piperski more than once to keep his head still throughout the test. After the HGN test was completed, Piperski was not able to produce his driver's license and proof of insurance. After confirming Piperski's identity with a social security number, the trooper found that Piperski was driving under a suspended license.

The trooper then administered the walk-and-turn ("WAT") test to Piperski. The trooper's instructions were brief, and the trooper did not provide the full WAT demonstration. The trooper did not administer the one-leg-stand test. The trooper placed Piperski under arrest, and took him to the Sharonville Police Department. A breathalyzer demonstrated that Piperski had a blood-alcohol content of .169.

Piperski was charged with two counts of OVI in violation of R.C. 4511.19(A)(1)(a) and 4511.19(A)(1)(b), speeding, driving under suspension, and failing to wear a seat belt.

Piperski filed a motion to suppress the evidence obtained after the initial stop, including but not limited to the field-sobriety-tests and breathalyzer results. At the hearing on Piperski's motion to suppress, the trooper admitted that the HGN test

was a quick test and not performed in full compliance with the NHTSA guidelines. With respect to the WAT test, the trooper testified that Piperski side-stepped a couple of times before beginning the WAT test. The trooper testified that "during the test [Piperski] kept [shifting] to try to keep his balance," and that Piperski raised his arms about six inches to "catch himself." The trooper also testified that Piperski failed to heel-toe the last steps while walking forward, and then proceeded to walk the last nine steps backwards.

The trooper further testified that he made the decision to place Piperski under arrest based on the initial traffic stop for speeding and a moving violation, the odor of alcohol, the slightly slurred speech, clues from the field-sobriety tests, and his observations of lack of balance.

The trial court, after hearing testimony from the trooper, watching the cruiser video of the traffic stop, and reviewing the proper excerpts of the National Highway Transportation Safety Administration ("NHTSA") manual, made a determination that the trooper had not substantially complied with the NHTSA manual and suppressed the HGN and the WAT tests. However, the trial court found that the trooper had probable cause to arrest Piperski, and allowed the results of the breathalyzer.

Thereafter, Piperski pleaded no contest and was found guilty of all charges. On the OVI convictions, the trial court sentenced him to 180 days incarceration (with 177 days suspended), imposed one year of community control, suspended his license for six months, and ordered him to pay a $375 fine and court costs. Piperski was fined and ordered to pay court costs for failing to wear a seat belt. On the other two charges, the trial court ordered that Piperski pay court costs, but did not impose a fine or sentence.

Piperski asserts one assignment of error, alleging that the trial court erred by denying his motion to suppress, as the trooper did not have probable cause to arrest him. Piperski argues that the trooper did not have probable cause to arrest him for OVI as "the trooper failed to articulate any reasonable facts or inferences that Mr. Piperski was impaired" and relied solely on the field-sobriety tests to determine that there was probable cause to arrest.

The trial court did not place any findings of fact on the record. Therefore, we "directly examine" the record to determine if there is sufficient evidence to demonstrate that "the trial court's decision was supported by the record and is legally justified." *See State v. Pate*, 1st Dist. Hamilton Nos. C-130490 and C-130492, 2014-Ohio-2029, ¶ 11.

In making a probable cause determination, the reviewing court looks to the totality of the circumstances. *Cincinnati v. Bryant*, 1st Dist. Hamilton No. C-090546, 2010-Ohio-4474, ¶ 16. The standard to determine 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." *Id.* at ¶ 15, quoting *State v. Homan*, 89 Ohio St.3d 421, 427, 732 N.E.2d 952 (2000), *superseded by statute on other grounds as recognized in State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, 863 N.E.2d 155. This is an objective standard. *Id.*

A minor traffic violation coupled with an odor of alcohol is not enough to establish probable cause; however, if coupled with "some reasonable indicia" that the person operated the vehicle under the influence, then that is sufficient to establish

probable cause. *Id.* at ¶ 25; *State v. Taylor*, 3 Ohio App.3d 197, 444 N.E.2d 481 (1st Dist.1981).

Looking at the totality of the circumstances, there was probable cause to arrest Piperski. Here, Piperski made several questionable decisions while driving. Piperski was speeding, committed a marked-lanes violation when he drifted into the left lane and then swerved back into the right lane, and continued driving after the trooper turned on his overhead lights. In addition, Piperski failed to follow some of the trooper's instructions throughout the duration of the cruiser video. Moreover, Piperski provided several odd responses during his conversation with the trooper prior to the arrest. Finally, Piperski smelled of alcohol, lacked balance before the WAT test, and had slightly slurred speech.

Given that there were sufficient indicia to cause a prudent person to believe that Piperski was driving while under the influence, there was probable cause to arrest Piperski for OVI. Piperski's sole assignment of error is overruled. We affirm the trial court's judgment in the cases numbered C-140620 and C-140621. Piperski presented no assignment of error or argument regarding his appeal of the seat-belt violation. Therefore, the appeal numbered C-140624 is dismissed. Finally, the appeals in the cases numbered C-140622 and C-140623 are dismissed because there are no final appealable orders in those cases.

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

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on September 30, 2015
per order of the court _____.

Presiding Judge