

IN THE ATHENS COUNTY MUNICIPAL COURT
ATHENS, OHIO

State of Ohio,
City of Athens,

FILED
ATHENS COUNTY MUN. COURT

Plaintiff, JUN 26 2013

Case Number 13TRC02538

v.

CLERKS OFFICE
ATHENS COUNTY, OHIO

Nicholas Jacobs,

Defendant

Decision and Journal Entry

This matter came on for hearing this 14th day of June, 2013 on Defendant's Motion to Suppress. Defendant was present with his attorney Douglas Riddell. The State of Ohio was represented by Lisa A. Eliason, Athens Chief City Prosecutor. Upon consideration of testimony, the court finds as follows:

FACTS:

1. Athens Police Department received a telephone call on April 6, 2013 shortly before 4:43 a.m. The caller reported that someone had tried to get into his house on Mill Street and had left in a gold four door sedan towards uptown. APD Patrolmen Magruder and Spear responded in separate cars, seeing the described car coming from Mill Street onto College Street. Patrolman Magruder stopped the vehicle, driven by Defendant, based solely on the telephone call.
2. Neither officer observed any traffic violation or *indicia* of impaired driving.

3. Upon initial contact, Patrolman Spear noted that Defendant took several gulps from a water bottle. Defendant's eyes were watery with large pupils. Defendant was extremely talkative. Patrolman Spear did not notice any odor of an alcoholic beverage on Defendant but Patrolman Magruder later informed Patrolman Spear that Magruder had noticed such an odor.
4. On an HGN test conducted in substantial compliance with NHTSA standards, Defendant scored four of four possible clues on the first two scoring phases. Defendant failed to follow directions for the third phase.
5. On the Walk and Turn and One Leg Stand tests, conducted in substantial compliance with NHTSA standards, Defendant scored three of nine possible clues and two of four possible clues, respectively. There was no portable breath test offered.
6. Patrolman Spear arrested Defendant for OVI based on his appearance, Patrolman Magruder's report of an odor of alcoholic beverage, and the field sobriety tests results. Although Defendant initially agreed to take an evidentiary breath test, he refused after the BMV Form 2255 consequences were read to him.
7. Although Defendant's written motion suggested Defendant may have made an admission of consumption of alcohol, there was no such testimony.


CONCLUSION:

- A. There were reasonable grounds for the stop of the vehicle for the reported alleged attempted burglary.
- B. In considering the totality of the circumstances, this is a close question. On the one hand, Defendant failed the field sobriety tests and, according to hearsay, had an apparent slight odor of an alcoholic beverage. On the other hand, there were no traffic violations, no *indicia* of impaired driving, no testimony regarding admission of consumption, no

portable breath test. On balance, the Court finds the evidence insufficient to support probable cause for an OVI arrest.

DECISION:

Defendant's Motion to Suppress is granted. The Administrative License Suspension will be set aside by separate entry. This matter is set for pretrial hearing July 3, 2013 at 8:00 a.m.



William A. Grim, Judge

xc:

Lisa A. Eliason
Douglas Riddell