[Cite as *Kirtland Hills v. Medancic*, 2012-Ohio-4333.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

VILLAGE OF KIRTLAND HILLS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NOS. 2011-L-136 and 2011-L-137**
INGRID B. MEDANCIC,	:	
Defendant-Appellant.	:	

Criminal Appeals from the Willoughby Municipal Court, Case Nos. 11 TRC 04989 and 11 CRB 01981.

Judgment: Reversed and remanded.

Joseph P. Szeman, Village of Kirtland Hills Prosecutor, 100 Society National Bank Building, 77 North St. Clair, Suite 100, Painesville, OH 44077 (For Plaintiff-Appellee).

Matthew A. Lallo, Lallo & Feldman Co., L.P.A., Interstate Square Building I, 4230 State Route 306, Suite 240, Willoughby, OH 44094 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Ingrid B. Medancic, appeals the judgment of the Willoughby Municipal Court denying her motion to suppress evidence from an alleged unconstitutional stop. For the reasons that follow, the judgment is reversed, and these matters are remanded for proceedings consistent with this opinion.

{¶2} Appellant was charged in the Willoughby Municipal Court with several offenses in connection with a vehicular traffic stop. Specifically, appellant was charged with OVI, in violation of Kirtland Hills Codified Ordinance ("K.H.C.O.") 333.01(A)(1)(a);

driving with a prohibited breath alcohol content, in violation of K.H.C.O. 333.01(A)(1)(d); speeding, in violation of K.H.C.O. 333.03; and two occupant restraint-related offenses. Appellant was additionally charged with one count of child endangering, in violation of K.H.C.O. 537.07(C)(1). She pled not guilty to all charges and filed a motion to suppress evidence, arguing the police officer did not have reasonable suspicion to extend the stop and administer field sobriety tests.

{¶3} The trial court held a hearing on the motion to suppress and denied the motion in a written opinion. Appellant subsequently changed her plea to no contest and was found guilty of the OVI, speeding, and child endangering charges. Upon application of the village, the trial court entered a nolle prosequi on the remaining charges. Appellant's sentence was stayed pending appeal.

{¶4} Appellant now timely appeals. This court, sua sponte, consolidated appellant's cases for the purpose of this appeal. Appellant asserts one assignment of error for consideration by this court:

{¶5} "The trial court committed prejudicial error in denying the defendant-appellant's, Ingrid Medancic's, motion to suppress based upon its opinion that the officer possessed sufficient reasonable suspicion to extend the traffic stop and request the Appellant to exit her vehicle to perform field sobriety tests."

{¶6} In her sole assignment of error, appellant contends the trial court erred by failing to suppress the results of field sobriety testing because the arresting officer did not have reasonable suspicion to continue detaining her for administration of the tests.

{¶7} An appellate court's review of a decision on a motion to suppress involves issues of both law and fact. *State v. Burnside*, 100 Ohio St. 152, 2003-Ohio-5372, ¶8.

During a suppression hearing, the trial court acts as the trier of fact and sits in the best position to weigh the evidence and evaluate the credibility of the witnesses. *Id*., citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Accordingly, an appellate court is required to uphold the trial court's findings of fact provided they are supported by competent, credible evidence. *Id*., citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). Once an appellate court determines if the trial court's factual findings are supported, the court must then engage in a de novo review of the trial court's application of the law to those facts. *State v. Lett*, 11th Dist. No. 2008-T-0116, 2009-Ohio-2796, ¶13, citing *State v. Djisheff*, 11th Dist. No. 2005-T-0001, 2006-Ohio-6201, ¶19.

{¶8} In evaluating a suppression motion as the trier of fact, the trial court is required to state its essential findings of fact on the record pursuant to Crim.R. 12(F). That rule states, "[w]here factual issues are involved in determining a motion, the court *shall* state its essential findings on the record." (Emphasis added.) The underlying rationale of Crim.R. 12(F) is to allow for effective judicial review. *State v. Marinacci*, 5th Dist. No. 99-CA-37, 1999 Ohio App. LEXIS 5279, *4 (Nov. 3, 1999). Indeed, only with a recitation of the trial court's factual findings is a reviewing court able to properly determine whether the findings are supported by the record and whether the correct law was applied to those facts. Conversely, "[i]f the trial court does not make findings of fact, appellate review of the decision is hampered." *State v. Bailey*, 5th Dist. No. CT2002-0041, 2003 Ohio App. LEXIS 5690, *6 (Nov. 21, 2003). *See also State v. Groce*, 10th Dist. No. 06AP-1094, 2007-Ohio-2874, ¶13 ("[t]his court will not speculate about what factual assumptions the trial court may have made to support its decision").

{¶9} In this case, the trial court stated only one factual finding on the record to conclude there was requisite reasonable suspicion for initiating a field sobriety test: the officer smelled an "extremely strong odor of alcohol" with no "rational explanation." In its application of the law to this singular factual finding, the trial court stated, "only where there are ***no*** articulable facts which give rise to a suspicion of illegal activity does continued detention constitute an illegal seizure." (Emphasis sic.) The trial court then cited to *State v. Robinette*, 80 Ohio St.3d 234 (1997) for this proposition in assessing the validity of a post-traffic stop investigative detention. However, *Robinette* does not establish the proper legal standard for determining whether reasonable grounds exist to allow administration of field sobriety testing. *Robinette* assessed the propriety of a request by an officer to search a vehicle at the conclusion of a traffic stop when he had no articulable suspicion whatsoever of criminal activity.

{¶10} Administration of field sobriety testing is judged under a different standard and requires more than the presence of a single articulable fact. *State v. Evans*, 127 Ohio App.3d 56, 63-64 (11th Dist.1998). "Because this is a greater invasion of an individual's liberty interest than the initial stop, the request to perform these [field sobriety] tests must be separately justified by specific, articulable facts showing a reasonable basis for the request." *Evans* at 62, citing *State v. Yemma*, 11th Dist. No. 95-P-0156, 1996 Ohio App. LEXIS 3361 (Aug. 9, 1996). The trial court cited *Evans* for the proposition that "specific and articulable facts must be considered in light of the totality of the circumstances." However, this court in *Evans* stated: "Cases considering an officer's decision to conduct roadside sobriety tests rely on the totality of relevant circumstances. Courts generally approve them only where the officer bases his

decision on a number of factors." *Id*. at 63. This court then related 11 non-exclusive factors that are generally considered in the assessment of whether to request the performance of field sobriety tests. *Id*.

{¶11} Thus, it appears from the trial court's ruling that it operated under the mistaken belief that only when there are no articulable facts does a continued detention for purposes of conducting field sobriety tests constitute an illegal seizure. With this understanding, the trial court set forth one fact to support its legal conclusion that there was sufficient reasonable suspicion of appellant operating under the influence of alcohol that would permit a request to perform field sobriety tests. Due to its application of an incorrect standard, it is not possible to determine whether this single fact was the trial court's only pertinent fact for establishing reasonable suspicion. Therefore, the case must be remanded to allow the trial court to set forth all additional findings of fact, if any, with an application of the proper legal standard.

{¶12} We note appellant did not file a transcript of the suppression hearing pursuant to App.R. 9. This is normally problematic for an appellant. However, the transcript would have little impact on this reviewing court. It is simply unknown what facts from the hearing, in addition to "the extremely strong odor of alcohol," the trial court may or may not have considered in making its determination.

{¶13} We express no opinion as to whether the officer's suspicion of intoxication and his decision to administer the field sobriety tests were reasonable. As a reviewing court, we are unable to make this determination because the trial court improperly concluded that it need only make one finding of fact on the record to establish reasonable suspicion. The matter is being remanded so the trial court can apply *Evans*,

supra, and render what it considers to be its pertinent and essential factual findings pursuant to App.R. 12(F).

{¶14} Accordingly, we sustain appellant's assignment of error in part. The judgment of the Willoughby Municipal Court overruling the motion to suppress is reversed. These cases are remanded to the trial court with instructions to place on the record any and all pertinent and essential factual findings it has determined from the suppression hearing and apply those to the applicable law as set forth in this opinion.

THOMAS R. WRIGHT, J. concurs,

MARY JANE TRAPP, J., dissents with Dissenting Opinion.

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{¶15} While I agree that the trial court's citation to *State v. Robinette*, 80 Ohio St.3d 234 (1997) is in error, I find that it is not fatal, inasmuch as the court continued on in its decision to cite the correct legal standard found in *Evans*. Further, the trial court made adequate findings of fact regarding *Evans* factors to allow for appellate review and, ultimately, to support the denial of the suppression motion. Thus, I must respectfully dissent.

{¶16} Although the judgment entry is not replete with detailed findings of fact, it does contain three distinct *Evans* factors, which is sufficient to uphold the field sobriety tests in this instance. Further, Ms. Medancic has failed to file a transcript in this matter; in the absence of such a record, "[a]n appellate court reviewing a lower court's judgment

indulges in a presumption of regularity of the proceedings below." *Hartt v. Munobe*, 67 Ohio St.3d 3, 7 (1993). *See also Knapp*, *supra*, at 199.

{¶17} Ms. Medancic challenges the reasonableness of the officer's suspicion of intoxication and decision to administer field sobriety tests. The majority is of the opinion that "[a]s a reviewing court, we are unable to make this determination because the trial court improperly concluded that it need only make one finding of fact on the record to establish reasonable suspicion." This is an incorrect assessment of the judgment entry, however, because, despite the initial incorrect statement that "only where there are no articulable facts which gives rise to a suspicion of illegality * * *," the trial court did make three distinct findings of fact using the correct *Evans* factors.

{¶18} In *Evans*, this court outlined a *non-exclusive* list of factors to consider in determining whether a police officer had reasonable suspicion to justify administration of field sobriety tests. The factors to be considered include, *but are not limited to*, the following: "(1) The time and day of the stop (Friday or Saturday night as opposed to, e.g., Tuesday morning); (2) the location of the stop (whether near establishments selling alcohol); (3) any indicia of erratic driving before the stop that may indicate a lack of coordination (speeding, weaving, unusual braking, etc.); (4) whether there is a cognizable report that the driver may be intoxicated; (5) the condition of the suspect's eyes (bloodshot, glassy, glazed, etc.); (6) impairments of the suspect's ability to speak (slurred speech, overly deliberate speech, etc.); (7) the odor of alcohol coming from the interior of the car, or, more significantly, on the suspect's person or breath; (8) the intensity of that odor, as described by the officer ('very strong,' 'strong,' 'moderate,' 'slight,' etc.); (9) the suspect's demeanor (belligerent, uncooperative, etc.); (10) any

actions by the suspect after the stop that might indicate a lack of coordination (dropping keys, falling over, fumbling for a wallet, etc.); and (11) the suspect's admission of alcohol consumption, the number of drinks had, and the amount of time in which they were consumed, if given. All of these factors, together with the officer's previous experience in dealing with drunken drivers, may be taken into account by a reviewing court in determining whether the officer acted reasonably. No single factor is determinative." *Evans* at 63, fn. 2. "Courts generally defer to the law enforcement officer's judgment in deciding to conduct field sobriety tests when the officer's decision was based on a number of factors." *State v. Trimble*, 11th Dist. No. 2010-P-0078, 2011-Ohio-4473, ¶14, citing *Evans.*

{¶19} Some Ohio courts have upheld determinations that the mere presence of a moderate to strong odor of alcohol, coupled with a proper initial stop, is sufficient to justify the administration of field sobriety tests. *See*, *e.g.*, *State v. Tackett*, 2d Dist. No. 2011-CA-15, 2011-Ohio-6711 ("[t]his court has, however, repeatedly held that a strong odor of alcohol alone is sufficient to provide an officer with reasonable suspicion of criminal behavior"). *See also State v. Schott*, 2d Dist. No. 1415, 1997 Ohio App. LEXIS 2061 (May 16, 1997); *State v. Haucke*, 2d Dist. No. 99 CA 77, 2000 Ohio App. LEXIS 1049 (Mar. 17, 2000); *State v. Turner*, 4th Dist. No. 812, 1993 Ohio App. LEXIS 40 (Jan. 11, 1993).

{¶20} Other districts have required the presence of additional *Evans* factors in order to uphold testing. *See*, *e.g.*, *State v. Appelhans*, 6th Dist. No. WD-10-026, 2011-Ohio-487 (affirming denial of a suppression motion based upon glassy eyes, slurred speech, odor of alcohol, and refusal to blow into a portable breathalyzer device); *State*

v. Koogler, 12th Dist. No. CA2010-04-006, 2010-Ohio-5531 (reversal of suppression based on odor of alcohol, glassy eyes, and passenger's possession of an open container); *City of Cincinnati v. Bryant*, 1st Dist. No. CA-090546, 2010-Ohio-4474 (reversal of suppression based on erratic driving, moderate odor of alcohol, slurred speech, watery and glazed eyes, confusion and clumsiness while retrieving insurance card and exiting vehicle, and admission of alcohol consumption); *State v. Burwell*, 3d Dist. No. 12-09-06, 2010-Ohio-1087 (affirming denial of a suppression motion based on the early morning hour on a Saturday, erratic driving, odor of alcohol, glassy and bloodshot eyes, and admission of alcohol consumption); *State v. Foster*, 5th Dist. No. 2009AP020007, 2009-Ohio-4764 (reversal of suppression based on odor of alcohol, early morning hour, guarded and nervous demeanor, driving on a flat tire, and admission of alcohol consumption); *State v. Hill*, 7th Dist. No. 07-CO-12, 2008-Ohio-3249 (affirming denial of a suppression motion based on erratic driving, moderate odor of alcohol, bloodshot and glassy eyes, and slurred speech); *City of Strongsville v. Troutman*, 8th Dist. No. 88218, 2007-Ohio-1310 (affirming denial of a suppression motion based on early morning hour, glassy eyes, slurred speech, moderate odor of alcohol, presence of beer in the back seat, and admission that defendant was coming from a bar).

{¶21} This court has consistently reiterated that no single *Evans* factor will be determinative, and the factors do not constitute a checklist which must be completed in order to properly continue detention. *See*, *e.g.*, *State v. Wiesenbach*, 11th Dist. No. 2010-P-0029, 2011-Ohio-402, ¶23 ("While the *Evans* factors are relevant, not all must be present for an officer to have reasonable suspicion. We must look at the totality of

the circumstances through the eyes of [the officer], giving due deference to his training and experience, to determine whether reasonable suspicion existed.").

{¶22} From the evidence before this court, I find that the arresting officer's administration of the field sobriety test was reasonable and permissible, under the circumstances. While the record is devoid of a transcript, we are able to glean certain factual findings from the trial court's judgment entry.

{¶23} The trial court initially found that Ms. Medancic was speeding. Next, the trial court found that the officer had observed an "extremely strong odor" of alcohol emanating from Ms. Medancic. Further, the trial court specifically found that "[a]bsent any *rational* explanation for the odor, the officer's reasonable suspicions were aroused to detain the driver as well as justify his further investigation." (Emphasis added.) This finding in the judgment entry suggests that Ms. Medancic did not simply sit silently during the officer's investigation; rather, it implies that the officer inquired as to the odor but was not provided with a rational explanation.

{¶24} In sum, the trial court came to the proper conclusion as to field sobriety testing when it utilized the legal standard established in *Evans*, and stated its finding of three *Evans* factors on the record.

{¶25} These three *Evans* factors of speed, an "extremely strong" odor of alcohol, and a lack of rational explanation for the odor support a holding that the officer's suspicion of intoxication was reasonable and his decision to administer the field sobriety tests was as well. I do not believe the trial court erred in failing to suppress the findings of the field sobriety tests; therefore, I respectfully dissent.