

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

STATE OF OHIO,	:	APPEAL NOS. C-240114
		C-240115
Plaintiff-Appellee,	:	TRIAL NOS. C/23/TRC/10202/A/B
		C/23/TRC/10202/C
vs.	:	C/23/CRB/6199/A/B
		C/23/CRB/6199/C/D
NATORIA PARKS,	:	
Defendant-Appellant.	:	<i>OPINION</i>

Criminal Appeals From: Hamilton County Municipal Court

Judgments Appealed From Are: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: January 17, 2025

Connie Pillich, Hamilton County Prosecuting Attorney, and *Sean M. Donovan*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *Sarah E. Nelson*, Assistant Public Defender, for Defendant-Appellant.

KINSLEY, Judge.

{¶1} Defendant-appellant Natoria Parks appeals two separate judgments of the Hamilton County Municipal Court, both entered following a jury trial. In the case numbered C/23/TRC/10202, Parks challenges her convictions for two counts of operating a motor vehicle while impaired (“OVI”). In the case numbered C/23/CRB/6199, Parks challenges her convictions for two counts of child-endangerment. Parks raises four assignments of error. First, she argues that the trial court erred when it denied her motion to suppress evidence from her OVI arrest. Second, Parks argues that her convictions were against the manifest weight of the evidence and were not supported by sufficient evidence. Third, Parks contends that the trial court erred in admitting testimony at trial as to the statistical probability of her blood-alcohol concentration. Fourth, Parks argues that the trial court erred when it failed to merge her two OVI convictions at sentencing.

{¶2} After considering Parks’s arguments and reviewing the record, we sustain Parks’s first assignment of error and reverse the trial court’s denial of Parks’s motion to suppress. But we nonetheless conclude that Parks’s convictions for OVI and child-endangerment were supported by sufficient evidence, meaning that Parks can be retried for these offenses. This disposition renders Parks’s remaining assignments of error moot. We accordingly reverse the trial court’s judgments and remand the cause to the trial court for further proceedings consistent with our opinion.

Factual and Procedural History

{¶3} Parks faced three separate charges in the cases numbered C/23/TRC/10202/A/B/C: operating a vehicle while impaired, a first-degree misdemeanor, in violation of R.C. 4511.19(A)(1)(a); refusal to submit to a chemical

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test, a first-degree misdemeanor, in violation of R.C. 4511.19(A)(2)(b); and a minor-misdemeanor marked-lanes violation.

{¶4} In the cases numbered C/23/CRB/6199/A/B/C/D, Parks faced four charges: two counts of child-endangerment, first-degree misdemeanors, in violation of R.C. 2919.22(C)(1); criminal trespass, a fourth-degree misdemeanor, in violation of R.C. 2911.12; and criminal damaging, a second-degree misdemeanor, in violation of R.C. 2909.06.¹

{¶5} The charges in the cases numbered C/23/TRC/10202/A/B/C and the two child-endangerment counts in the cases numbered C/23/CRB/6199/A/B/C/D arose from an April 18, 2023 traffic stop, in which Springfield Township Police Officer Patrick Kemper arrested Parks on an unrelated charge for which there was an outstanding arrest warrant. After pulling Parks over in her car to serve the arrest warrant, Kemper conducted a battery of roadside field sobriety tests on Parks and ultimately charged her with OVI.

{¶6} Prior to trial, Parks filed a generic motion to suppress evidence of the field sobriety tests. She argued that Kemper failed to substantially comply with the National Highway Traffic Safety Administration (“NHTSA”) testing standards in conducting the field sobriety testing. Parks also contended that, with the field sobriety tests suppressed, there was insufficient evidence to establish probable cause for her OVI arrest.

{¶7} On July 5, 2023, the trial court held an evidentiary hearing on Parks’s motion to suppress. Parks called Kemper as a witness as if on cross-examination. In response to questions by Parks’s attorney, Kemper testified that he was on patrol in

¹ Parks pled no contest to the criminal trespass and criminal damaging charges, and they are not before us in this appeal.

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his marked vehicle when he observed Parks driving down the road. Kemper knew that Parks had an open arrest warrant, and he therefore followed Parks. He observed Parks commit a marked-lanes violation while turning left, which prompted him to initiate a traffic stop.

{¶18} Kemper testified that, after Parks pulled over, he approached her car and asked her for her insurance information. He then noticed that Parks’s eyes were glassy and watery, she seemed lethargic, and a strong odor of alcohol emanated from her vehicle. Kemper described Parks’s speech as slurred, slower, and more mumbled as compared to a phone conversation he had with Parks in the days prior. Kemper asked Parks if she had consumed any alcohol prior to driving, and Parks admitted to drinking a single beer six hours earlier. Kemper also testified that Parks had two children with her in the car.

{¶19} After confirming her open warrant, Kemper arrested Parks. Kemper testified that he ordered Parks to exit from the vehicle, and that Parks complied. Kemper did not notice an alcoholic odor coming from Parks once she exited from the vehicle, nor did she have any difficulty getting out of the vehicle.

{¶10} According to his testimony, Kemper asked Parks if she would be willing to participate in field sobriety testing, and Parks agreed. Kemper explained that he was certified by the NHTSA and that he was experienced in administering field sobriety tests. He testified that he conducted three NHTSA tests on Parks: the horizontal gaze nystagmus test (“HGN”), the one-leg-stand test (“OLS”), and the walk-and-turn test (“WAT”).

{¶11} Kemper explained that prior to each test, he read aloud instructions to Parks from a “cheat sheet,” a document distributed by the Springfield Township Police Department detailing how each field sobriety test would occur. The “cheat sheet,”

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however, was not admitted into evidence. According to Kemper, after he read about each test, he asked if Parks understood the instructions, and she answered yes. He offered no further details about the procedures he follows in conducting each test, other than to describe the placement of a stimulus in the HGN test about 12 inches away from Parks's face.

{¶12} Kemper then explained how field sobriety testing generally works. During each test, he looks for particular "clues." According to Kemper, the presence of more clues indicates a higher statistical likelihood that the driver is impaired.

{¶13} Kemper testified that Parks failed each of the three field sobriety tests. First, Kemper testified about the HGN. He explained that the test focuses upon the involuntary movement of a person's eyes, which becomes more erratic the more intoxicated a person is. Kemper stated that Parks exhibited six of a possible six clues, and that both eyes showed a lack of smooth pursuit and a distinct and sustained nystagmus at maximum deviation, as well as an onset of nystagmus prior to 45 degrees.

{¶14} Next, Kemper testified about the OLS, which required Parks to balance on one foot, with the other being raised off the ground, while counting aloud until directed to stop. Kemper recounted that Parks failed to keep her balance, that her arms swayed throughout the test, and that she lowered her raised foot. Kemper also shared that at one point during the OLS, Parks randomly changed the increments that she was counting by. Kemper testified that Parks exhibited three of the four clues for this test.

{¶15} At one point during the OLS, Kemper stopped the test. This was because Parks's children extended their heads from the vehicle to observe what was happening and distracted Parks. Kemper testified that, as a result, he paused the procedure and

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allowed Parks to settle her children before she reattempted the test. Kemper expressed that he did not draw any negative inferences from the interrupted test and allowed Parks to start the OLS over.

{¶16} Finally, Kemper testified about the WAT. Kemper summarized that the WAT consisted of walking forward nine steps in a heel-to-toe manner, turning, and walking nine steps back to the start. Kemper testified that Parks did not start on his count, failed to walk in a heel-to-toe manner, walked more than nine steps, failed to appropriately turn, and failed to maintain balance. Kemper testified that Parks exhibited five of the eight clues during the WAT.

{¶17} The State admitted into evidence a report Kemper used to score Parks's performance on each test. The trial court also took judicial notice of the NHTSA manual at the State's request.

{¶18} Kemper explained that he charged Parks with OVI based on her slurred speech, abnormal eyes, and the observable clues from the field sobriety tests. Kemper added that Parks refused to submit to either a breathalyzer or chemical test once she was transported to the police station after her arrest. He also explained that there was no video recording of his arrest of Parks because the Springfield Township Police Department had not issued cameras to its patrolling officers.

{¶19} Parks elicited further testimony from Kemper specifically to undercut the manner in which he performed each field sobriety test. On cross-examination, Kemper admitted that he could not remember the instructions or steps for administering each test. Instead, Kemper testified that he needed the "cheat sheet" to explain how each test was conducted, a document that he did not have available to him in court. Kemper also testified that he did not screen Parks prior to administering the field sobriety tests, although he admitted that he was trained to identify and ask about

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factors that could compromise the test results. For the HGN, Kemper did not ask whether Parks wore glasses or contacts or whether she had any preexisting medical issues, nor did Kemper check whether Parks's eyes equally tracked before performing the test. For the OLS and the WAT, Kemper did not ask whether Parks had leg, knee, back, or inner-ear issues that would impact her ability to perform the test requirements.

{¶20} Following the suppression hearing, the trial court denied Parks's motion to suppress, finding that Kemper had probable cause to stop Parks. It did not specifically address Kemper's level of compliance with the NHTSA standards in reaching its ruling.

{¶21} On December 11, Parks's jury trial commenced on the OVI charges in the cases numbered C/23/TRC/10202/A/B/C and the child-endangerment charges in the cases numbered C/23/CRB/6199/A/B/C/D. Parks tried her minor-misdemeanor marked-lanes-violation charge to the trial court at the same time, because she did not have a right to be tried by a jury on this count. *See State v. Frye*, 2021-Ohio-589, ¶ 22 (1st Dist.).

{¶22} The State's sole witness was Kemper, who testified similarly to the suppression hearing but added additional details to his explanation of the traffic stop. At trial, Kemper recalled that Parks swerved in her own lane after committing the marked-lanes violation. Kemper also explained with greater specificity how the field sobriety tests complied with NHTSA standards. In specific, Kemper testified to the statistical probability that Parks's blood-alcohol content ("BAC") was greater than .10 based on the clues he observed in the field sobriety tests. For the HGN, Kemper reiterated that Parks exhibited six out of six clues. He explained that, where four of six clues are present, the NHTSA manual provides that there is a 77 percent likelihood

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that the test-taker has a BAC above .10. Next addressing the OLS, Kemper testified that where two of four clues are present there is a 65 percent likelihood that the driver has a BAC above .10. According to Kemper, Parks exhibit three of four clues on the OLS. Finally addressing the WAT, Kemper testified that the presence of two clues translates to a 68 percent likelihood that the driver has a BAC above .10. He reminded the jury that Parks exhibited five of eight clues on the WAT.

{¶23} On December 13, 2023, the jury returned its verdicts. Parks was convicted of OVI, refusing to comply with a chemical test, and both child-endangerment charges. The trial court also separately convicted Parks of the minor-misdemeanor marked-lanes violation.

{¶24} On January 31, 2024, the trial court pronounced its sentences. In the cases numbered C/23/CRB/6199/A/B/C/D, Parks was sentenced to serve 18 days, with credit for 18 days served, on each of the two child-endangerment counts. In the cases numbered C/23/TRC/10202/A/B/C, Parks was sentenced to identical sentences for both OVI charges of 365 days, with 287 days suspended, and with credit for 18 days served. For both OVI charges, the court also imposed a two-year period of community control, a \$1,000 fine with costs remitted, as well as a three-year driving suspension. Despite the marked-lane violation being a minor misdemeanor, Parks was sentenced to serve 18 days, with credit for 18 days served.

{¶25} The trial court stayed Parks's sentences pending this appeal.

Analysis

{¶26} On appeal, Parks raises four assignments of error. The first assignment of error takes issue with the trial court's denial of the motion to suppress. The second assignment of error challenges the weight and sufficiency of the evidence presented at trial. The third assignment of error attacks the admissibility of Kemper's testimony as

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to the statistical probability that Parks’s BAC was above .10. The fourth assignment of error argues that Parks’s two OVI convictions—for intoxication and refusing a breathalyzer after arrest—should have merged at sentencing.

{¶27} Before reaching Parks’s arguments, we pause to address a jurisdictional concern raised by the State. The State argues that we cannot review Parks’s appeal because one of the judge’s sheets—the one in the case numbered C/23/TRC/10202/C—erroneously indicates that Parks *pled* guilty in addition to being *found* guilty by the jury. The State admits that this is an obvious clerical error, and it does not dispute that Parks was convicted following a jury trial. However, the State argues that this court is nonetheless barred from considering Parks’s appeal as to that charge.

{¶28} The trial court’s accidental inclusion of a guilty plea notation alongside the finding of guilt by a jury does not bar our jurisdiction to hear this appeal. As we noted in *State v. Stewart*, 2024-Ohio-2150, ¶ 6 (1st Dist.), errors arising from the judge’s sheet are “predictable and understandable,” given the high volume of cases processed by municipal courts. Confronted with a similar problem in *State v. McLanahan*, 2024-Ohio-1288, ¶ 19-20 (1st Dist.), we held that clear clerical errors of “oversight or omission may be corrected by [the trial court] at any time” pursuant to Crim.R. 36. We also addressed the merits of the defendant’s appeal in *McLanahan* despite the presence of a clerical error in the trial court’s judge’s sheet reflecting that he had pleaded guilty. *Id.* at ¶ 1, 20.

{¶29} The record before us contains an accurate finding the jury’s verdict was guilty. We have jurisdiction to review that determination under the authority of *McLanahan*. The trial court’s clerical error in additionally recording a guilty plea in the case numbered C/23/TRC/10202/C may be corrected at any time under Crim.R.

36, including on remand from this court. We therefore consider Parks’s assignments of error.

A. Motion to Suppress

{¶30} In her first assignment of error, Parks argues that the trial court erred when it denied her motion to suppress evidence of the field sobriety tests, because Kemper failed to substantially comply with the NHTSA guidelines when administering the tests.

{¶31} This court reviews a motion to suppress under a blended standard of review. *See State v. Keese*, 2024-Ohio-5075, ¶ 26 (1st Dist.). For findings of fact, we accept the trial court’s findings so long as they are supported by competent and credible evidence. *Id.* However, we review the trial court’s application of facts to the applicable legal standard on a de novo basis. *Id.*

{¶32} Parks contends that the State had the burden of demonstrating Kemper’s substantial compliance with NHTSA standards for field sobriety testing and that Kemper’s testimony at the suppression hearing failed to satisfy that burden.

{¶33} The burden that shifts to the State when the defendant files a motion to suppress the results of field sobriety testing varies depending on whether the motion is specific or “shotgun.” *State v. Richards*, 2016-Ohio-3518, ¶ 8, 10 (1st Dist.). A “shotgun” motion generally regurgitates the field sobriety testing standards without identifying any particular guideline with which the officer failed to comply. *Id.* at ¶ 8. For a shotgun motion, the burden on the State is “general and slight” to show that the officer complied with the relevant standards. *Id.* “The accused, however, may shift the burden from general to specific by identifying facts that support [the] allegations on cross-examination.” *Id.* at ¶ 10. Where that shift occurs, the State must establish

by clear and convincing evidence that field sobriety testing was performed in substantial compliance with NHTSA standards. *Id.* at ¶ 16.

{¶34} The amount of specificity necessary to shift the State’s burden from “general and slight” to specific is the subject of some dispute. Some cases have held that detailed cross-examination of the NHTSA standards is sufficient. *See, e.g., State v. Clark*, 2010-Ohio-4567, ¶ 14 (12th Dist.) (holding defendant shifted the burden to specific by asking questions as to how the officer administered each field sobriety test). But others require the defendant to provide his own factual basis for suggesting that an officer did not comply with the NHTSA guidelines to elevate the State’s burden. *See, e.g., State v. Fink*, 2009-Ohio-3538, ¶ 25 (12th Dist.) (requiring defendant to present “some factual basis” on cross-examination “to support his claim that the applicable standards were not followed” in order to shift the burden from general to strict).

{¶35} We considered the burden-shifting question in *State v. Richards*, 2016-Ohio-3518 (1st Dist.). There the defendant filed a “shotgun” suppression motion that only generically took issue with the officer’s compliance with the NHTSA standards. *Id.* at ¶ 9. The State’s burden at the suppression hearing to demonstrate that the field sobriety tests complied with the NHTSA manual was therefore only slight and generic. *Id.* But on cross-examination, defense counsel exposed several specific areas where the officer had not implemented the NHTSA standards in administering the HGN test. *Id.* at ¶ 10. These questions required the State to then present evidence that the officer substantially complied with the NHTSA manual in performing that test. *Id.* at ¶ 16. We noted, however, that the State only had the obligation to demonstrate substantial compliance as to the specific issues raised by the defendant. *Id.* at ¶ 10 (“Richards raised several factual matters on cross-examination that required the state to respond

specifically and particularly to demonstrate substantial compliance *as to those issues.*” (Emphasis added.)).

{¶36} We read *Richards* to require a synergy between the level of specificity raised by the defendant, either in the motion to suppress or in cross-examination at the suppression hearing, and the State’s burden to demonstrate NHTSA compliance. *Id.* The same burden does not automatically apply to each field sobriety test. Rather, the defendant must present a specific question of compliance as to each test in order to elevate the State’s burden to substantial compliance.

{¶37} Unsurprisingly, given this backdrop, the parties dispute the level of the State’s burden that applied at the suppression hearing. For her part, Parks argues that she shifted the burden from slight to specific by establishing that Kemper relied on the “cheat sheet” and that he could not recall the specific NHTSA requirements for each test without that document. Parks also argues that Kemper’s failure to check Parks’s eyes before administering the HGN test or to ask any screening questions before performing the other two tests shifted the burden from general to specific. For its part, the State contends that Parks’s “shotgun” motion absolved it of the need to offer anything more than generalized evidence that Kemper was trained in and applied NHTSA standards in administering the field sobriety tests to Parks.

{¶38} The State is correct that Parks’s suppression motion was of the “shotgun” variety. But that does not fully resolve the question of the State’s burden, as Parks could shift the burden on cross-examination by identifying specific areas of noncompliance. We hold that she did so here.

{¶39} Parks asked specific questions about Kemper’s training, experience, and actions during the field sobriety testing that exposed his failure to follow the NHTSA manual. As an initial matter, Parks elicited testimony from Kemper that he had not

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been trained on the NHTSA standards currently in effect and had received no NHTSA training over the past 14 years. To that end, the following exchange took place between defense counsel and Kemper early in Kemper's testimony:

Q: Have you received any updates in training on the NHTSA manual or OVI detection since 2009?

A: Not that I can recall.

Q: Okay. Have you read or been trained on the 2023 NHTSA manual?

A: I have not.

Q: And so did you read or were you trained on the 2018 NHTSA manual?

A: No.

Q: Okay. So you're not familiar with the updates that may have been made to those standards since 2009 or 2018?

A: Correct.

{¶40} To further elucidate Kemper's lack of familiarity with the NHTSA standards, Parks's counsel asked Kemper about the four initial clues that an officer would look for under the NHTSA guidelines. Kemper responded with, "I don't know."

{¶41} Defense counsel also asked specific questions about each test and how Kemper administered it. With regard the HGN, Parks's attorney asked Kemper to identify the ten required steps for administering the HGN test in compliance with NHTSA standards. In response, Kemper indicated, "So I don't have them memorized." He explained that he would need to look at the "cheat sheet" to describe how he administered the HGN test. But he did not have the "cheat sheet" with him in court, so he could offer no further detail in answering defense counsel's question. He also

admitted that his report did not contain any information about the ten HGN steps, nor did it indicate that the HGN test complied with the NHTSA standards generally.

{¶42} Defense counsel went on to ask pointed questions about each of the steps. In response, Kemper admitted that he did not know if Parks wore contacts, one of the initial screening steps in NHTSA. He also said, “I don’t remember checking for that,” with regard to Parks’s pupil size, also another requirement in the NHTSA manual for the HGN test. Kemper further admitted failing to check for vertical nystagmus as required by the NHTSA standards. He did not know whether environmental factors like dust, wind, or flashing lights could impact the test, responding, “I don’t know,” and “Unsure,” even though the NHTSA manual indicates these conditions are factors in the examination.

{¶43} Similar lines of questioning occurred with regard to the OLS and WAT tests. In specific, defense counsel inquired as to whether Kemper screened Parks for leg, back, or inner-ear issues as required by the NHTSA manual. Kemper admitted he did not. He also indicated that he did not know the instructions for either test.

{¶44} These specific questions and the responses they elicited from Kemper were sufficient to shift the State’s burden from general and slight to substantial compliance as to all three field sobriety tests. Through cross-examination, Parks demonstrated that Kemper was unaware of the NHTSA standards and performed each test out of compliance with those standards in various ways. The State was therefore required to demonstrate that Kemper administered the HGN, OLS, and WAT tests in substantial compliance with the NHTSA manual.

{¶45} The State failed to meet this burden. The State did establish, in a general way, that Kemper had some familiarity and training in the area of field sobriety testing. In that context, the evidence demonstrated that Kemper became NHTSA-

certified in 2009, that he had conducted between 50 and 100 field sobriety tests, that he knew of each test’s clues, and that he conducted Parks’s tests like all others he had in the past. But beyond that, there was no evidence to establish that Kemper substantially complied with the NHTSA manual in administering field sobriety testing to Parks. In the absence of the “cheat sheet,” Kemper could not recall the instructions he gave Parks for any of the tests. And neither Kemper’s testimony nor his arrest report contained any details about how any of the tests were administered. Nor was there any video to show first-hand what occurred during the HGN, OLS, and WAT tests.

{¶46} Courts facing similar facts have concluded that the State failed to establish substantial compliance. For example, in *State v. Holzappel*, 2014-Ohio-4251, ¶ 15-17 (2d Dist.), the Second District held the evidence of substantial compliance lacking where the arresting officer testified only to the clues he looks for in the HGN test and offered no testimony as to what is required by the NHTSA manual when the test is performed. The Seventh District reached a similar conclusion where the State failed to introduce the NHTSA manual as an exhibit and failed to elicit testimony from the arresting officer on the NHTSA requirements for the HGN, the procedures of the HGN, or the number of clues considered for the HGN. *See State v. Jendrusik*, 2022-Ohio-3525, ¶ 28 (7th Dist.).

{¶47} Because the State failed to demonstrate that Kemper substantially complied with the NHTSA manual in administering field sobriety tests to Parks, the trial court erred in denying Parks’s motion to suppress. We accordingly sustain Parks’s first assignment of error and remand the cause to the trial court. While the results of the field sobriety tests are inadmissible at any subsequent retrial, Kemper may testify to his observations of Parks’s behavior and demeanor during field sobriety

testing. *See State v. Watterson*, 2024-Ohio-5456, ¶ 35 (1st Dist.) (holding an officer’s field sobriety test observations are admissible, even if the results of the field sobriety tests must be suppressed).

B. Sufficiency of the Evidence

{¶48} Parks’s second assignment of error argues that her convictions were not supported by sufficient evidence. Parks contends that the evidence presented at trial failed to sufficiently establish that she was impaired while driving. She also argues that her child-endangerment convictions were supported by insufficient evidence, because they relied upon her intoxication to establish that she presented a risk to her children’s safety and well-being.

{¶49} The standard of review when facing a sufficiency challenge is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the necessary elements were proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *State v. Curry*, 2020-Ohio-1230, ¶ 11 (1st Dist.).

{¶50} The trier of fact is free to accept or reject evidence offered by the parties and make determinations regarding the witnesses’ credibility. *State v. Grasper*, 2023-Ohio-1500, ¶ 75 (1st Dist.), citing *State v. Fether*, 2012-Ohio-892, ¶ 44 (5th Dist.); *see State v. Carson*, 2019-Ohio-4550, ¶ 16 (1st Dist.) (“the trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence presented”). In considering a sufficiency challenge, the court of appeals reviews all of the evidence admitted at trial, even if it was improperly admitted. *State v. Brewer*, 2009-Ohio-593, ¶ 17-20.

{¶51} Parks was convicted of OVI, in violation of R.C. 4511.19(A)(1)(a), which provides that “[n]o person shall operate any vehicle . . . if, at the time of the operation,

. . . [t]he person is under the influence of alcohol” To sustain a conviction for OVI, the State must have established: (1) that Parks consumed alcohol, and (2) that the alcohol impaired her driving. *See State v. Dale*, 2024-Ohio-2001, ¶ 16 (1st Dist.). Similar to being impaired, this court has determined that an individual is “under the influence” where:

the condition in which a person finds [herself] after having consumed some intoxicating beverage, whether mild or potent, and in such quantity, whether small or great, that its effect on the person adversely affects [her] actions, reactions, conduct, movements or mental processes or impairs [her] reactions to an appreciable degree, under the circumstances then existing so as to deprive [her] of that clearness of the intellect and control of [herself] which [s]he would otherwise possess.

Id., quoting *State v. Maynard*, 2023-Ohio-4619, ¶ 38 (1st Dist.).

{¶52} Considering both the properly and improperly admitted evidence presented at trial, there is sufficient evidence to establish that Parks committed the offense of OVI. She admitted to drinking alcohol in the time leading up to her arrest. Kemper testified that her eyes were glassy and watery, that she was lethargic, that her speech was slurred and mumbled, and that there was a strong odor of alcohol emanating from her vehicle. Kemper also explained that she performed poorly on three field sobriety tests and that the results of those tests indicated that she was intoxicated. This evidence was sufficient to support the jury’s verdict convicting Parks of OVI. *See Dale*, 2024-Ohio-2001, at ¶ 17 (1st Dist.).

{¶53} We therefore overrule Park’s second assignment of error challenging the sufficiency of the evidence supporting her convictions.

C. Remaining Arguments

{¶54} Under Parks’s remaining assignments of error, she argues that her convictions were against the manifest weight of the evidence, that the trial court erred in admitting statistical testimony as to Parks’s BAC, and that the trial court erred in failing to merge Parks’s OVI convictions. Our disposition of Parks’s first assignment of error renders these arguments moot, and we decline to address them.

Conclusion

{¶55} The State failed to demonstrate that field sobriety testing performed on Parks during the traffic stop was conducted in substantial compliance with NHTSA standards. The trial court therefore erred in denying Parks’s motion to suppress. We accordingly sustain Parks’s first assignment of error, reverse the trial court’s judgments and remand the cause for a new trial. We overrule the portion of Parks’s second assignment of error challenging the sufficiency of the evidence supporting her convictions. Our holding as to Parks’s first assignment of error renders moot the remainder of Parks’s assignments of error.

Judgment accordingly.

BOCK, P.J., concurs.
ZAYAS, J., dissents.

Please note:

The court has recorded its entry on the date of the release of this opinion.