

[Cite as *State v. Butler*, 2002-Ohio-7187.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	
-vs-	:	
	:	Case No. 02CA37 & 02CA39
TRAVIS A. BUTLER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Mount Vernon Municipal Court, Case Nos. 02TRC3437, 02CRB412

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 19, 2002

APPEARANCES:

For Plaintiff-Appellee

HEIDI A. MALLORY
5 North Gay Street, Ste. 222
Mount Vernon, Ohio 43050

For Defendant-Appellant

JAMES A. GILES
109 East High Street
Mount Vernon, Ohio 43050

{¶1} Defendant-appellant Travis A. Butler appeals the August 20, 2002 Judgment Entry of the Mount Vernon Municipal Court which overruled his appeal of an administrative license suspension; and the July 30, 2002 Judgment Entry which granted in part and overruled in part his motion to suppress. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} On June 3, 2002, at approximately 11:26 p.m., Deputy David Shaffer of the Knox County Sheriff's Office was traveling behind appellant's vehicle. Deputy Shaffer saw the vehicle weave within its lane, and drift past the right edge line several times. As the deputy continued to follow, appellant's vehicle traveled left of center by two to three feet on two occasions. After the second left of center violation, Deputy Shaffer activated his overhead lights and initiated a stop of appellant's vehicle. Appellant did not immediately respond, continuing to drive until he turned right on to Upper Gilcrest Road. As appellant negotiated this right turn, he turned too abruptly, driving off the road and into the dirt.

{¶3} Deputy Shaffer approached the vehicle and asked for appellant's driver's license and registration. However, instead of handing the officer the registration, appellant turned over an envelope full of papers. Deputy Shaffer noticed appellant's eyes were red. Deputy Shaffer asked appellant if he had been drinking or taking any drugs and appellant responded that he had not.

{¶4} Appellant submitted to the horizontal gaze nystagmus test, the walk and turn test and the one leg stand test. Deputy Shaffer observed a number of clues on the horizontal gaze nystagmus test. On the walk and turn test, Deputy Shaffer observed five clues. On the one leg stand test, the Deputy had to discontinue the test because appellant put his foot down three times. Based upon his performance on the field sobriety tests and

appellant's driving infractions, Deputy Shaffer arrested appellant for operating a motor vehicle while under the influence.

{¶5} When Deputy Shaffer conducted an inventory of appellant's impounded vehicle, he found a marijuana pipe with residue and two small envelopes containing screens. Appellant refused the BAC breath test. Thereafter, appellant was placed under an administrative license suspension.

{¶6} On June 24, 2002, appellant filed a motion to suppress, and an appeal of the administrative license suspension. The trial court conducted a combined hearing on these motions on July 30, 2002. In a Judgment Entry of the same date, the trial court suppressed the horizontal gaze nystagmus test, but denied the motion to suppress in all other respects. In an August 20, 2002 Judgment Entry, the trial court overruled appellant's appeal of the administrative license suspension. Appellant plead guilty to a charge of reckless operation, and plead no contest to the charge of possession of drug paraphernalia. The trial court fined appellant \$250, and sentenced him to thirty days in jail. The trial court suspended the jail time upon the condition appellant had no similar offenses for two years, within sixty days appellant obtained a drug and alcohol assessment, and thereafter completed any alcohol or drug treatment recommended. Finally, the trial court suspended appellant's driver's license for 180 days. In an August 26, 2002 Judgment Entry, the trial court stayed the sentence pending a determination of this appeal.

{¶7} Appellant now appeals the July 30, 2002 Judgment Entry granting in part and overruling in part his motion to suppress. That appeal, this case was assigned case number 02CA00037. Appellant also appeals the August 20, 2002 Judgment Entry which overruled his appeal of the administrative license suspension. That appeal was assigned

case number 02CA00039. These appeals have been consolidated for review. In Case Number 02CA00037, appellant assigns the following error:

{¶8} “THE TRIAL COURT ERRED IN UPHOLDING THE ADMINISTRATIVE LICENSE SUSPENSION BECAUSE THERE WAS NO REASONABLE GROUND FOR AN OMVI ARREST BEFORE THE APPELLANT WAS REQUESTED TO SUBMIT TO A BREATH TEST.

{¶9} In Case Number 02CA00039, appellant assigns the following error:

{¶10} “THE TRIAL COURT ERRED IN DENYING THE APPELLANT’S MOTION TO SUPPRESS WHEN IT UPHELD THE WARRANTLESS INVENTORY SEARCH OF THE APPELLANT’S MOTOR VEHICLE SUBSEQUENT TO HIS ARREST FOR OMVI.”

{¶11} This case comes to us on the accelerated calendar. App. R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

{¶12} “(E) Determination and judgment on appeal.

{¶13} “The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court’s decision as to each error to be in brief and conclusionary form.

{¶14} “The decision may be by judgment entry in which case it will not be published in any form.”

{¶15} This appeal shall be considered in accordance with the aforementioned rule.

{¶16} Because appellant’s assignments of error are interrelated, we will address them together.

{¶17} In his first assigned error, appellant maintains the trial court erred in upholding the administrative license suspension because there was no probable cause to

arrest him for OMVI before his breath test. We disagree.

{¶18} We find the initial investigatory stop of appellant's vehicle was reasonable. Deputy Shaffer testified he witnessed appellant's vehicle weave within its lane, reaching the right line twice and crossing left of center two times. When Deputy Shaffer activated his overhead lights, appellant did not immediately stop, failed to properly negotiate a right turn, and ultimately ended up in the dirt, off of the road. Appellant did not turn over his license and registration, but rather handed the deputy an envelope of papers. Deputy Shaffer noted appellant had bloodshot eyes. Further, appellant demonstrated poor performance on both the walk and turn and one leg stand tests.¹ We find these factors gave Deputy Shaffer probable cause to arrest appellant for OMVI. Accordingly, appellant's first assignment of error is overruled.

{¶19} In Case Number 02CA00039, appellant argues the trial court erred in permitting the introduction of drug paraphernalia obtained during the inventory search of his vehicle. Specifically, appellant contends there was no probable cause to arrest him for OMVI, and therefore, any evidence flowing from the illegal arrest should have been suppressed. We disagree. In light of our disposition of appellant's first assignment of error, appellant's second assignment of error is also overruled.

¹ Because the trial court suppressed the results of the horizontal gaze nystagmus test, we do not consider it for the purposes of this analysis.

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{¶20} The July 30, 2002 and August 20, 2002 Judgment Entries of the Mount

Vernon Municipal Court are affirmed.

By: Hoffman, P.J.

Gwin, J. and

Edwards, J. concur

JUDGES

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IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	JUDGMENT ENTRY
-vs-	:	
	:	
TRAVIS A. BUTLER	:	
	:	
Defendant-Appellant	:	CASE NO. 02CA39, 02CA37

For the reasons stated in our accompanying Memorandum-Opinion, the July 30, 2002 and August 20, 2002 Judgment Entries of the Mount Vernon Municipal Court are affirmed. Costs assessed appellant.

JUDGES