

State v. Easter, Not Reported in N.E.2d (1996)

1996 WL 700272

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Court of Appeals of Ohio,
Third District, Union County.

STATE of Ohio Plaintiff-Appellee

v.

Richard EASTER Defendant-Appellant

NO. 14-96-26. | Dec. 4, 1996.

Criminal Appeal from Municipal Court.

Attorneys and Law Firms

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Opinion

OPINION

[SHAW, J.](#)

*1 This is an appeal by the defendant-appellant, Richard Easter, from a judgment of conviction and sentence in the Marysville Municipal Court, Union County. After the denial of defendant's motion to suppress and dismiss, he pled no contest to the charge of driving a motor vehicle while under the influence of alcohol in violation of [R.C. 4511.19\(A\)\(1\)](#).

On February 11, 1996 at 2:44 a.m., Deputy John Kleiber of the Union County Sheriff's Office observed defendant's vehicle cross the marked center line approximately two to three times by about one foot. Deputy Kleiber also observed the defendant's vehicle travel over the right edge line five or

six times by about three feet. At this point, the deputy pulled defendant's vehicle over.

When Deputy Kleiber approached defendant's vehicle, he noticed that defendant had "very bloodshot" eyes and also noted the odor of alcohol. He asked defendant whether he had been drinking and defendant responded that he did not drink. The deputy then asked defendant to exit his vehicle and perform some field sobriety tests. It is disputed as to whether the arrest for driving under the influence of alcohol took place when the defendant refused to exit his vehicle or not until after he exited his vehicle and performed a series of field sobriety tests.

Defendant was subsequently charged with driving while under the influence of alcohol in violation of [R.C. 4511.19\(A\)\(1\)](#), failure to drive within marked lanes in violation of [R.C. 4511.33](#), and resisting arrest, a violation of [R.C. 2921.33](#). On April 30, 1996, defendant filed a motion to suppress evidence and dismiss the charges against him. A hearing was held on defendant's motion and the trial court overruled it. The defendant thereafter changed his plea to the charges from not guilty to no contest, and he was convicted by the trial court and sentenced accordingly.

Defendant now appeals only his conviction and sentence for the violation of [R.C. 4511.19\(A\)\(1\)](#) and raises two assignments of error. For his first assignment of error, defendant asserts:

Appellant's conviction must be reversed because the trial court erred to the prejudice of the appellant when it overruled his joint motion to dismiss/suppress when it concluded that the arresting officer had reasonable suspicion to justify a traffic stop of appellant's vehicle.

In support of his assignment of error, defendant claims that absent any evidence that his lane movement interfered with or endangered any other vehicle, the deputy did not have a reasonable and articulable suspicion that defendant was violating [R.C. 4511.33](#) for failure to drive in marked lanes, and therefore, the initial stop was improper.

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R.C. 4511.33 states:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic * * * the following rules apply:

(A) A vehicle * * * shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

*2 In order to justify the stop of defendant's vehicle, the deputy must have an articulable and reasonable suspicion that defendant was "subject to seizure for violation of law." *State v. Cruzen* (Sept. 27, 1994), Logan App. No. 8-94-3, unreported, citing *Delaware v. Prouse* (1979), 440 U.S. 648, 664. Prior to stopping the defendant, Deputy Kleiber observed the defendant's vehicle repeatedly cross the white lines. The record further reveals that the deputy testified at the suppression hearing that defendant's vehicle was "swerving, weaving erratically." In considering this evidence of erratic driving together with what can be considered as substantial crossings of the right edge line, we find that Deputy Kleiber had a reasonable and articulable suspicion that defendant was "subject to seizure for violation of law," allowing him to stop defendant's vehicle even if no other traffic was present. See *State v. Parent* (Aug. 15, 1991), Logan App. No. 8-90-15, unreported.

Accordingly, defendant's first assignment of error is overruled.

For his second assignment of error, defendant asserts:

Appellant's conviction must be reversed
because the trial court erred to the

prejudice of the appellant when it overruled his joint motion to dismiss/suppress when it concluded that the arresting officer had probable cause to make a warrantless arrest of him.

In his assignment of error, defendant argues that Deputy Kleiber lacked probable cause to arrest him for driving under the influence of alcohol when he refused to exit his vehicle. The deputy had probable cause for defendant's arrest if all the facts and circumstances within the deputy's knowledge were sufficient to cause a prudent person to believe that defendant had committed an offense. *State v. Cruzen, supra*, citing *Beck v. Ohio* (1964), 379 U.S. 89.

Even assuming that defendant was arrested when he refused to exit his vehicle, we nonetheless find that there was sufficient evidence to support a finding of probable cause at that time to arrest the defendant for a violation of R.C. 4511.19(A)(1). Besides the defendant's refusal to get out of his vehicle, the deputy had observed erratic driving by the defendant at an early morning hour, the defendant's bloodshot eyes, the odor of alcohol, and defendant's rude and vulgar language.

Accordingly, defendant's second assignment of error is overruled and the judgment and sentence entered by the Marysville Municipal Court is affirmed.

Judgment affirmed.

HADLEY, P.J., and EVANS, J., concur.