

IN THE MUNICIPAL COURT OF TOLEDO
LUCAS COUNTY, OHIO

FILED

2025 MAY 15 A 9:08

City of Toledo

Plaintiff

Case Number: TRC-24-20312

Judge Connelly

CLERK
VALLIE BOWMAN-ENGLISH

-VS-

Response to Motion to Suppress

Andrew Kurtz,

Defendant

Lucas R. Grabowski
Assistant Prosecutor
City of Toledo
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Lucas.Grabowski@toledo.oh.gov

Now comes the City of Toledo, by and through the office of City Prosecutor, and responds to Defendant's motion to suppress. The City respectfully asks this Court to deny the motion and allow the evidence at issue to be presented at trial.

Facts

On December 26th, 2024, at approximately 9:30 P.M., Toledo Police Department (TPD) responded to a dispatch involving an accident on Monroe near Sylvania, in the city of Toledo, Ohio. As TPD Officer Hagen and Officer Ginier arrived on scene, they encountered both a white Ford F-150 with significant frontal damage parked behind a black Chevrolet Silverado that had damage to its rear end. Officer Hagen then approached the defendant, Andrew Richard Kurtz, who was sitting in the driver's seat of the Ford with the door open. Officer Hagen proceeded to ask what happened, to which the defendant replied "I don't know I was too fucked up". Officer Hagen then asked how much the defendant had to drink, to which defendant replied "Not too much, just a little bit." When asked for his driver's license, the defendant looked in his car for approximately 30 seconds before responding to the officer that he would have to "check it for me" while handing his wallet to the Officer. The license was not found in his wallet at that time but was found at a later time in the middle console of the vehicle when officers searched the

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vehicle. Officer Hagen proceeded to ask the defendant if he could locate the car keys to the car he was driving, to which the defendant attempted to look for the keys for the car and could not find them (defendant's keys were later found on his person during a safety pat-down). During this interaction defendant can be heard slurring his speech and Officer Hagen noted that he could smell alcohol on the defendant's breath.

Due to the car crash, smell of alcohol, slurred speech, admission to drinking, and slow uncoordinated movements by the defendant, Officer Hagen proceeded to ask the defendant to step out of the car to perform Standardized Field Sobriety Tests, which defendant then agreed to perform. Officer Hagen performed both the Horizontal Gaze Nystagmus test (HGN) as well as the Walk and Turn test. Prior to each test, Officer Hagen instructed the defendant on how to complete each test in substantial compliance with the standards set by the National Highway Safety Traffic Administration manual. During the HGN test, Officer Hagen noticed lack of smooth pursuit in both eyes. During performance of the Walk and Turn test, defendant started before being told to start, held his arms out for balance, needed to be reminded to count his steps out loud, and had such poor balance that Officer Hagen had to end the test prematurely for fear that the defendant would fall and injure himself.

At that time, Officer Hagen determined that the defendant was operating his vehicle while impaired by alcohol and placed him under arrest. The defendant refused any chemical testing and was subsequently released to St. Annes Hospital.

Law and Argument

Defense counsel is seeking to suppress all evidence resulting from the stop and interactions with the Defendant. In support of this request, the defense puts forward the following arguments: 1) there was no reasonable suspicion to stop the driver and request the driver to perform standardized field sobriety tests; 2) the field sobriety tests were not performed in substantial compliance with National Highway Safety Traffic standards; 3) there was no probable cause to arrest the defendant; 4) statements made by the defendant after being stopped by the officer were post-arrest and therefore should be suppressed due to being obtained in violation of the United States Constitution; and 5) the breath test was improperly calibrated.

In response, the city will show that there was no stop as Officer Hagen arrived on the scene of the crash due to a injury accident dispatch call and investigated using an officer's function as a caretaker, that Officer Hagen had reasonable suspicion to further investigate an OVI and therefore request the driver to perform standardized field sobriety tests which led to probable cause to arrest the defendant for operating the vehicle while impaired, that the standardized field sobriety tests were instructed and performed in substantial compliance with national standards, that no statements were obtained in violation of Miranda or the Constitution, and that the calibration of the breath test machine has no relevancy in this case.

Officer Caretaker Function and Lack of Stop

A traffic stop conducted by an officer is a seizure under the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Such seizures, however, do not violate the Fourth Amendment when the officer has "reasonable suspicion that the individual is engaged in criminal activity." *Maumee v. Weisner*, 87 Ohio St.3d 295, 299 (1999). Such reasonable suspicion must be formed from "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

However, Officers are not required to possess reasonable suspicion of criminal activity when exercising community caretaking functions. *State v. Norman*, 136 Ohio App.3d 46, 1999 Ohio 961, 735 N.E.2d 953 (3d Dist.1999). "Courts recognize that a community-caretaking/emergency-aid exception to the Fourth Amendment warrant requirement is necessary to allow police to respond to emergency situations where life or limb is in jeopardy." *State v. Dunn*, 131 Ohio St.3d 325, 2012 Ohio 1008, 964 N.E.2d 1037. Officers frequently investigate vehicle accidents where there is no claim of criminal liability to engage in community caretaking functions, "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973). "Likewise, under appropriate circumstances, a law enforcement officer may be justified in approaching a vehicle to provide assistance without needing any reasonable basis to suspect criminal activity." *Id.* at 8. We must remember that the

bounds of an officer's ability to investigate, pursuant to the community caretaking function, are not limitless. A police officer must possess "objectively reasonable grounds to believe that there is an immediate need for his or her assistance to protect life or prevent serious injury to effect a community-caretaking/emergency-aid stop." *Dunn* at 26.

Here, Officer Hagen arrived on scene after being dispatched for an accident with injuries. Upon immediately seeing that there was heavy damage to the vehicles involved and having the information given that there was an injury accident, Hagen certainly possessed the objectively reasonable grounds to believe that there is an immediate need for his assistance to protect citizens from death or potential serious injury. Hagen then used his caretaker function as an officer to approach the defendant in defendant's damaged vehicle to further investigate for injuries. The city puts forth that due to the caretaker function exception given to Officer Hagen in this case, Hagen was justified in approaching defendant's vehicle and further investigation.

Reasonable Suspicion for Standardized Field Sobriety Tests

Once an officer is justified in stopping a person, they may extend the scope of their stop beyond their original intent if they find evidence of another potential offense. More specifically, an officer conducting a routine traffic stop may expand the stop's scope in order to investigate whether the individual stopped is under the influence of alcohol and may continue to detain the individual to confirm or dispel his suspicions if the officer observes additional facts during the routine stop which reasonably lead him to suspect that the individual may be under the influence. The expanded stop might include field sobriety tests. *State v. Kilbarger* (4th Dist.), 2012 Ohio 1521 at *P16-17. The Ohio Supreme Court in *State v. Evans* offered a non-comprehensive list of factors to consider in determining whether an officer had reasonable suspicion to administer field sobriety tests under the totality of the circumstances. The court concluded that there were a number of different factors to be considered: 1) time of day and week, 2) location of the stop, 3) indicia of erratic driving before the stop had been made, 4) a cognizable report of intoxication, 5) condition of the suspect's eyes, 6) speech impairments, 7) an odor of alcohol emanating from the vehicle or defendant, 8) the strength of that odor as described by the officer,

9) the suspect's demeanor, 10) actions by the suspect after the stop indicating a lack of coordination, and 11) the suspects admissions of alcohol consumption. 127 Ohio App.3d 56, 63 (note 2). No single factor is dispositive nor needs to be present.

Here, Officer Hagen was dispatched to a traffic accident that occurred at 9:30 PM. As Hagen approached the scene, he could see the damaged vehicles and the defendant still sitting in the driver's seat of defendant's vehicle. Once Officer Hagen made contact with the defendant, the defendant admitted to having drank alcoholic beverages that night. During the conversation the defendant had noticeably slurred speech patterns, had delayed response times, and seemed unable to focus on the conversation. Defendant was also unable to find the keys to the vehicle that the defendant was sitting in before Officer Hagen arrived (the keys were later found in defendant's pocket during a pat-down conducted by officer Hagen). Officer Hagen also noted that he could smell alcohol on the defendant's breath during the conversation with the defendant. Under the totality of the circumstances, all of these facts gave Officer Hagen reasonable suspicion to believe that defendant was operating a vehicle while impaired. While Officer Hagen may not yet have had probable cause to arrest defendant for the offense, he did indeed have reasonable suspicion to investigate further and request that the defendant complete SFSTs.

Proper Procedure for Standardized Field Sobriety Tests

Under Revised Code § 4511.19(D)(4)(b), officers can testify about SFSTs they administer, and prosecutors can introduce the results of such tests, so long as:

it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration[.]

The test is substantial compliance rather than strict compliance. Officer Hagen had the defendant perform the Horizontal Gaze Nystagmus test and the Walk and Turn test. For each test, Officer Hagen gave clear and detailed instructions to the defendant and asked if

the defendant understood them. The tests were performed on a clean, dry area of the pavement. The field sobriety tests in this case were conducted in substantial compliance with the relevant NHTSA standards. This will be shown by the officer's testimony as well as in the recording of the field sobriety testing.

After arresting the defendant, Officer Hagen read the defendant the BMV 2255 Implied Consent Form. After some consideration, the defendant then refused any chemical testing. The officer's testimony and footage from his body cam will confirm this information and show that all procedures were performed correctly.

Probable Cause for Arrest

Under the totality of the circumstances, giving due weight to the training and experience of the officer involved, there was probable cause to arrest defendant for operating a vehicle while impaired. Probable cause for such an arrest can only come about when there is evidence of impairment, not merely intoxication. *State v. Taylor*, 3 Ohio App. 3d 197 (1981). Certain indicia of intoxication but not necessarily impairment, such as an odor of alcohol, may not be sufficient alone, *State v. Finch*, 24 Ohio App. 3d 38 (1985), but more was present in this case. As previously stated, Officer Hagen had reasonable suspicion to believe that the defendant was operating a vehicle while impaired. He asked the defendant to exit the vehicle and then had the defendant perform Standardized Field Sobriety Tests. During performance of the Standardized Field Sobriety Tests, Officer Hagen made further observations indicating defendant's impairment and lack of motor coordination, even having to stop the Walk and Turn test early due to danger of the defendant hurting himself. It was the additional evidence gathered from the SFSTs that elevated the officer's reasonable suspicion up to probable cause to arrest him for operating a vehicle while impaired.

Statements Lawfully Obtained

No statements were obtained from the defendant in violation of the United States Constitution. Under the Supreme Court's holding in *Miranda v. Arizona*, a defendant's statements made during a custodial interrogation generally cannot be used against them in a

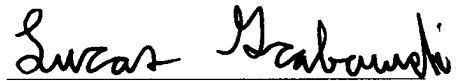
later prosecution unless the defendant is first advised of their rights. 384 U.S. 436 (1966).). In order to trigger the need for Miranda warnings, a defendant must be subject to a custodial interrogation. *State v. Warrell*, 41 Ohio App.3d. 286 (1987). While the Miranda doctrine applies to the custodial interrogation of a suspect accused of a misdemeanor traffic offense, it does not apply to the roadside questioning of a motorist detained pursuant to a traffic stop. *Berkemer v. McCarthy*, 468 U.S. 420 (1984). As such, any statements made by the defendant prior to his formal arrest are admissible as they do not fall under the Miranda doctrine.

Irrelevancy Of Breath Test Calibration

Defense argues that there is no evidence of the calibration a breath test machine. City argues the relevance of breath test calibration. In this case city makes no argument to prove the calibration of any breath test machines as no machine was used in any part of this incident, defendant refused to take any breath test.

Conclusion

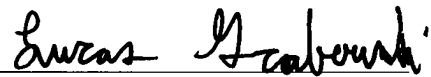
The City respectfully requests that this honorable Court deny defendant's motion to suppress for the above-stated reasons. There is no basis under Ohio law to exclude the evidence and the City asks that the Court allow the evidence to be presented at trial.



Lucas Grabowski
Assistant Prosecutor
City of Toledo

CERTIFICATION

This is to certify that a copy of the above Response to Motion to Suppress was sent on this 14th day of May, 2025 to Andrew Schuman, Attorney for Defendant, by email at andrew@andrewschuman.com.

A handwritten signature in black ink, reading "Lucas Grabowski". The signature is written in a cursive style with a horizontal line underneath.

Lucas Grabowski
Assistant Prosecutor
City of Toledo