

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

STATE OF OHIO,	:	APPEAL NO. C-240658
Plaintiff-Appellant,	:	TRIAL NO. 24/TRC/5850/A/B
vs.	:	
JERRY A. THOMAS,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellee.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court’s accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

The State appeals the trial court’s order granting Jerry A. Thomas’s motion to suppress after determining that there was no probable cause to arrest Thomas for operating a motor vehicle while impaired (“OVI”) in violation of R.C. 4511.19(A)(1)(a) and refusal of a chemical test under R.C. 4511.19(A)(2).

Appellate review of a motion to suppress presents a mixed question of law and fact. *State v. Duncan*, 2025-Ohio-1153, ¶ 23 (1st Dist.), citing *State v. Burnside*, 2003-Ohio-5372, ¶ 8. “We must accept the trial court’s factual findings if they are supported by competent, credible evidence, but we review de novo the trial court’s application of the law to those facts. *State v. Thorton*, 2018-Ohio-2960, ¶ 19 (1st Dist.), citing *Burnside* at ¶ 8.

In the context of an OVI arrest, the standard for determining whether an officer had probable cause to arrest is whether the facts and circumstances within the police

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officer's knowledge are sufficient to cause a reasonably prudent person to believe that the defendant was driving under the influence. *See Thorton* at ¶ 20, citing *State v. Homan*, 89 Ohio St.3d 421, 427 (2000). In making this determination, an appellate court examines the totality of facts and circumstances surrounding the arrest. *Id.*

The officer, who testified at the hearing, had been an officer for two months and was accompanied by a training officer. Thomas's arrest was his first arrest for OVI. The officer testified that he had probable cause for the arrest based on Thomas's confusion and incoherence, especially during the first few seconds of the initial encounter, though he later admitted that he could understand Thomas's responses. The officer described Thomas's motor skills as "fumbling" and claimed that Thomas handed the officer his car keys instead of his driver's license. However, the body-worn-camera ("BWC") video did not support the officer's contention that Thomas attempted to provide his keys instead of his license.

The officer further testified that Thomas's actions were slow, and it could be attributed to his age. Thomas repeated his date of birth when asked for his address and social security number. The officer testified that Thomas had watery eyes, but the State submitted no evidence that watery eyes are an indicator of alcohol-based impairment. The officer suspected Thomas of alcohol impairment and had checked the box in his investigative summary confirming that he observed no "evidence of drug abuse." Finally, the officer testified that Thomas was combative and uncooperative, but he admitted that he frequently encounters uncooperative individuals who do not like speaking with the police or have anxiety and agreed that was not an indication that they had done something wrong.

The trial court found that there was reasonable suspicion to stop Thomas for being asleep in his car with the car in reverse but not moving. The car was in the

parking lane and stopped almost “directly adjacent to the curb.” The court determined that Thomas “appeared to be very confused by the officer’s questions.” The court noted that the officer who testified at the hearing did not suspect or observe any indication of drug usage and did not allege or observe slurred speech, bloodshot eyes, or any odor of alcohol. The court further found that Thomas did not perform any field-sobriety tests (“FSTs”) and denied consuming any alcohol. Based on the testimony and BWC video, the court found that the facts and circumstances did not amount to probable cause at the time of arrest and granted the motion to suppress.

Thomas argues that the trial court’s determination is supported by this court’s decision in *State v. Phoenix*, 2010-Ohio-6009 (1st Dist.) In *Phoenix*, we held that there was insufficient evidence for a reasonable belief that Phoenix was impaired where Phoenix admitted he had consumed alcohol and the officer observed glassy, bloodshot eyes, an open beer bottle in the back seat, and a slight odor of alcohol. *Id.* at ¶ 8, 11. Additionally, Phoenix demonstrated one clue on each of the walk-and-turn and one-leg-stand field-sobriety tests. *Id.* at ¶ 8. In reaching this conclusion, the court emphasized that Phoenix exhibited no erratic driving, no slurred speech, no coordination issues, and only a slight odor of alcohol. *Id.* at ¶ 8. In this case, Thomas, like Phoenix, exhibited no erratic driving, no slurred speech, and no coordination issues. Significantly, unlike Phoenix, Thomas had no odor of alcohol on his breath or his person.

Relying on *State v. Rice*, 2017-Ohio-9114 (1st Dist.), the State argues that the facts were sufficient to establish probable cause because Thomas was asleep at the wheel in a lane of travel with his vehicle in reverse, acted erratically, was confused and combative, retrieved his keys when asked for his license, and took a significant amount of time to turn down the music.

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In *Rice*, this court held the arrest for OVI was supported by probable cause based on the totality of the circumstances, which included that the defendant was involved in a two-car collision and crashed into a tree. *Id.* at ¶ 3. Rice, who denied consuming alcohol, had slurred speech, bloodshot eyes, difficulty producing his license, impaired motor skills, erratic behavior, and the presence of an “odor-masking agent.” *Id.* at ¶ 27, 30. “Rice was also fixated on obtaining two unopened containers of alcohol from his vehicle before it was towed.” *Id.* at ¶ 27.

Additionally, Rice performed two FSTs and “swayed and lost his balance throughout the walk-and-turn test, including when the officer read the instructions to him,” and “could not even perform the one-leg-stand test because he kept dropping his foot.” *Id.* at ¶ 27. Thus, Rice exhibited multiple indicia of impairment including poor driving that resulted in a crash, slurred speech, bloodshot eyes, coordination issues and confusion, and he performed very poorly on two field-sobriety tests.

Unlike Rice, Thomas was not involved in a crash, and the officer did not observe containers of alcohol in his vehicle. Additionally, the trial court did not find that he exhibited erratic or poor driving. Rather, the court found Thomas was stopped “almost directly adjacent to the curb.” Thomas did not slur his speech or have bloodshot eyes. Moreover, Thomas denied consuming any alcohol, and no odor was detected on Thomas’s breath or person.

Thomas put the car in park immediately upon request, and the BWC video showed that he also turned the music down when asked. Thomas did not fail a FST or perform so poorly on a second FST that the test could not be completed. While the officer observed that Thomas had watery eyes, there is nothing in the record to support that watery eyes are an indicia of alcohol impairment. Although Thomas appeared to be annoyed and aggravated during the conversation and appeared to be confused by

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some of the questions, absent any other indicia of alcohol impairment, these facts would not “cause a reasonably prudent person to believe that the defendant was driving under the influence.” *See Thorton*, 2018-Ohio-2960, at ¶ 20 (1st Dist.), citing *Homan*, 89 Ohio St.3d at 427.

Given that there was insufficient evidence for a reasonable belief that Thomas was impaired, the trial court properly determined that there were insufficient facts supportive of probable cause to arrest Thomas for OVI.

Accordingly, we overrule the assignment of error and affirm the judgment of the trial court.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., and **ZAYAS, J.**, concur.
BOCK, J., dissents.

BOCK, J., dissenting.

Because I believe that the officers had probable cause to suspect that Mr. Thomas was driving while impaired by alcohol, I respectfully dissent.

As in every criminal case, the degree of proof necessary to find probable cause in an OVI case is lower than what is needed for a conviction. Officers have probable cause to arrest a driver for OVI when “the facts and circumstances within the police officer’s knowledge are sufficient to cause a reasonably prudent person to believe that the defendant was driving under the influence.” *State v. Duncan*, 2025-Ohio-1153, ¶ 24 (1st Dist.).

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The facts and circumstances during the officers' interaction with Mr. Thomas were sufficient to cause a reasonably prudent person to believe that Mr. Thomas was driving under the influence of alcohol.

1. A passerby flagged down a police officer and told him that Mr. Thomas had been in the same spot for 15 minutes, asleep at the wheel, with the car running, and in reverse instead of park.
2. As the officers approached Mr. Thomas's car, the reverse lights were on.
3. Despite it being winter, Mr. Thomas's car windows were down.
4. When an officer knocked on Mr. Thomas's car door, Mr. Thomas was in the driver's seat, with the car in reverse, and appeared to be asleep.
5. Mr. Thomas's responses to some questions were nonsensical. For example, when an officer asked what Mr. Thomas was doing, he replied that he was staring at the wheel.
6. More than once, Mr. Thomas placed his head in his hand, apparently in an attempt to go back to sleep.
7. Mr. Thomas's eyes were watery.
8. When an officer requested Mr. Thomas's identification, after some back and forth in which he said his ID was in his pocket, Mr. Thomas pulled his keys out of his pocket and appeared to examine them for about nine seconds before asking, "See the keys?" When officers again asked for his ID, Mr. Thomas responded, "What ID?"
9. When asked, Mr. Thomas provided his correct name and date of birth. But when officers asked for his address five times, Mr. Thomas answered four times by repeating his date of birth. (The fifth time Mr. Thomas was

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interrupted by another officer.) Mr. Thomas twice provided his date of birth when an officer asked for his social security number.

10. Several times, Mr. Thomas appeared to forget the question officers asked him or forgot what he had already told the officers.

It is certainly possible that Mr. Thomas's behavior and appearance resulted from an innocent cause. But another reasonable explanation is that Mr. Thomas was impaired due to consuming alcoholic beverages.

While these facts and circumstances may or may not have resulted in a conviction, they were sufficient to cause a reasonably prudent person to believe that Mr. Thomas was driving while impaired by alcohol. I would reverse the trial court's judgment. I dissent.

To the clerk:

Enter upon the journal of the court on 7/9/2025 per order of the court.

By:  _____
Administrative Judge