

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Upper Arlington,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	Nos. 11AP-450
	:	(M.C. No. 2010 TRC 135975)
Jessica L. Nagel,	:	and 11AP-451
	:	(M.C. No. 2010 CRB 010833)
Defendant-Appellant.	:	
	:	(REGULAR CALENDAR)
	:	

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D E C I S I O N

Rendered on November 29, 2011

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*Jeanine Hummer*, Upper Arlington City Attorney, and *Tom Lindsey*, for appellee.

*Vincent DePascale*, for appellant.

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APPEALS from the Franklin County Municipal Court

TYACK, J.

{¶1} Jessica L. Nagel is appealing from her conviction on charges of possessing drug paraphernalia and improper turn signal following pleas of no contest to those charges. She also contests her Administrative License Suspension ("ALS"). She assigns four errors for our consideration:

I. A TOTALITY OF CIRCUMSTANCES MEANS A TOTALITY OF ALL CIRCUMSTANCES RELEVANT TO THE INCIDENT OR CONFRONTATION OR SITUATION AND INCLUDE THE ISSUES BEHIND THE CONDUCT OF THE POLICE AS WELL AS ANY FACTS AND FACTORS BENEFICIAL TO THE PERSON AND NOT JUST THOSE FACTS OR

FACTORS SELECTED BY THE POLICE TO JUSTIFY A PRE-ORDAINED CONCLUSION.

II. ONCE A PERSON SAYS "I WANT A LAWYER" ALL INTERROGATION MUST CEASE IRRESPECTIVE OF WHETHER A LAWYER WILL BE CALLED TO THE SCENE OF THE PRESENT INTERROGATION.

III. AN ILLEGAL AND UNCONSTITUTIONAL ARREST, NOT FOUNDED IN PROBABLE CAUSE, WILL NOT SUPPORT A DEMAND FOR A CHEMICAL TEST OR AN ADMINISTRATIVE LICENSE SUSPENSION FOR A REFUSAL OF SAME.

IV. AN INVENTORY CANNOT SUPPORT THE DISCOVERY OF EVIDENCE, AND PASS CONSTITUTIONAL MUSTER, UNLESS IT RESULTS FROM A LAWFUL IMPOUNDMENT BASED ON A LAWFUL ARREST AND IS MADE PURSUANT TO A LAWFUL IN-PLACE POLICY.

{¶2} Nagel was operating her motor vehicle in the early morning hours of March 21, 2010 when she was pulled over by a police officer in Upper Arlington. A light/signal was blinking on the right side of her car and her car was burning oil. Upon inspection, the car was found to have a flat tire and visible damage to a hubcap.

{¶3} Nagel was eventually arrested and charged with operating a vehicle under the influence ("OVI"). A search of her purse revealed a marijuana pipe and a small amount of marijuana. The improper turn signal violation, also filed against her, was the result of Nagel making repeated left turns without using a left turn signal. Instead, she had a light on the right rear side of her vehicle blinking throughout the time she was viewed by Upper Arlington police.

{¶4} What a person willingly displays to the public at large loses any Fourth Amendment protection which might otherwise attach. A person does not have a reasonable expectation of privacy in the turn signal or other exterior lights the person has

used while operating on a public highway. No Fourth Amendment issues are raised with respect to the observation of Nagel's failure to signal her left turns. To the extent the four assignments of error present issues with respect to the improper turn signal charge, they are overruled.

{¶5} The marijuana paraphernalia found in Nagel's purse was found as the result of an inventory search. The legality of the inventory search is the central issue in the first, second, and fourth assignments of error. The inventory search, in the context of this case, must follow a legal arrest, so the legality of Nagel's arrest is necessarily implicated.

{¶6} The encounter with Upper Arlington police was, for the most part, recorded by a video camera in the police cruiser. That video recording and the testimony at a two-day motion to suppress hearing are the bases for our analysis of the legal and factual issues.

{¶7} The video recording of the encounter reveals a young woman who is speaking, with no noticeable slurring of speech. Officer Karena Wilka, who performed horizontal gaze nystagmus and the vertical gaze nystagmus tests as part of field sobriety testing, performed the tests with lights from some source, apparently the police cruiser from a back-up police officer, flashing throughout the test. Doing the tests in the presence of flashing lights is not in accord with the National Highway Transportation Safety Association standards for such testing.

{¶8} Officer Wilka believed that she was administering the nystagmus tests in accord with the proper legal standards. The fact that lights were flashing from another police cruiser could have affected the admissibility of the test results had this case proceeded to the point of a trial on the OVI charge. However, the test results could and

did have an effect on Officer Wilka's evaluation of whether Nagel was operating a motor vehicle on a public street while under the influence. Stated differently, this record does not provide a basis to conclude the tests were not administered with sufficient compliance with the appropriate testing procedures; they thus could contribute to Officer Wilka's belief that Nagel was impaired.

{¶9} Certain other factors to be weighed by the officer are not in dispute. Nagel was driving her motor vehicle slowly, with a rear light on the right side of the vehicle flashing. Upon closer inspection, the lights on the vehicle on the left rear side were not lighting up. The result was that Nagel appeared to be signaling a right turn while making three separate left turns. She had the obvious option of making hand signals to notify motorists behind her and/or Officer Wilka, that she was making left turns, not right turns. She also had the option of not driving the vehicle at all.

{¶10} Nagel was driving the vehicle at approximately 2:00 a.m. Officer Wilka thought she detected a moderate odor of alcohol in Nagel's breath. Nagel was driving the vehicle despite having a flat tire and noticeable damage to a hubcap. When she stopped the vehicle after Officer Wilka activated the flashers on the cruiser, Nagel did not pull over to the side of the road. Instead, she stopped the vehicle in her lane of travel approximately two and one-half feet from the edge of the road.

{¶11} Under the circumstances, Officer Wilka had reasonable grounds to believe that Nagel was driving while impaired. Nagel's judgment was clearly impaired. The fact that Nagel spoke clearly and responded quickly to Officer Wilka's questioning does not, in and of itself, mean that Nagel was not impaired. The jolt of adrenalin which comes from being pulled over by a police officer at 2:00 a.m. tends to sober some drivers up at least

a little. An OVI charge does not require that a driver be drunk, only impaired by alcohol and/or a drug of abuse.

{¶12} Given the facts above, we cannot find that the trial court judge erred in finding probable cause to arrest existed and that the arrest was therefore lawful. We similarly cannot find that the trial court erred in finding that Officer Wilka had reasonable grounds to believe that Nagel was operating a motor vehicle on a public road while under the influence for purposes of the ALS.

{¶13} We overrule the first and third assignments of error.

{¶14} The charges to which Nagel entered pleas of no contest were not dependant upon any statements she made. The illegal turn signal violation occurred in the officer's presence before Nagel's vehicle was stopped. The possessing drug paraphernalia charge stemmed from an inventory search of Nagel's purse at the police station after she was arrested for OVI. Since the arrest was legal, the search was not the fruit of an illegal arrest. No statements were involved in the instituting or prosecuting of either charge.

{¶15} The drug paraphernalia was not found as a part of the impoundment of Nagel's vehicle, but as a part of the slating procedure as Nagel was being booked at the Upper Arlington police station. The police policy for inventorying items in possession of a person who is being booked into police custody is virtually universal for the benefit of both police and the accused. Officer Wilka testified about such a policy being in place in Upper Arlington. The evidence supported the trial court's finding that the inventory of Nagel's purse, which led to the possessing drug paraphernalia charges, was legal.

{¶16} The second and fourth assignments of error are overruled.

{¶17} All four assignments of error having been overruled, the judgments of the Franklin County Municipal Court are affirmed.

*Judgments affirmed.*

BRYANT, P.J., and BROWN, J., concur.

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