

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002352-DG

SETH NORAT

APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE LAURENCE B. VANMETER, JUDGE
ACTION NO. 02-XX-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE. On March 3, 2002, shortly after midnight, Lexington Police Officer Paul Damron stopped Seth Norat for using the left turn lane to pass two vehicles. Damron noticed the odor of alcohol on Norat's person and in his vehicle, and administered field sobriety tests and a preliminary breath test ("PBT") on Norat. Norat registered 0.109 on the PBT and failed four of five field tests. Norat did not have his operator's

license with him at the time. Damron then took Norat (sixteen years old at the time) to the juvenile detention center.

Once there, Norat was observed for over twenty minutes before he was administered an Intoxilizer test. His blood alcohol content was 0.083. And according to the arrest report, Norat admitted to drinking three or four beers and further stated, "I feel a buzz, but perfectly capable of driving. I just made a bad decision to pass those cars."

Norat was arrested for Driving Under the Influence, First Offense. He moved the Fayette District Court to suppress the results of the Intoxilizer, arguing that: (1) Damron did not have legal grounds for the initial stop; and (2) the test was not administered in accordance with Kentucky statutes, administrative regulations, and operating instructions.

The trial court held an evidentiary hearing on the motion to suppress. After Norat's motion was denied, he entered a conditional plea of guilty (RCr 8.09) and received a \$200.00 fine and a forty-five day license suspension, plus fees and court costs. He filed a direct appeal to the Fayette Circuit Court, which affirmed the district court's denial of the motion to suppress. Norat sought and was granted discretionary review. We affirm.

Norat's sole argument on discretionary review, as it was on direct appeal, is that the district court erred in

denying the motion to suppress the Intoxilyzer results. He specifically finds fault with the administering officer's failure to recall whether the simulator's temperature was thirty-four plus or minus 0.2 degrees centigrade.

The officer never stated that he did not verify the temperature, only that he did not recall doing so. The officer testified that all other operational checklists were met, and proper documentary evidence was introduced. We agree with the Commonwealth that "any problems . . . should go to the weight of such evidence, rather than its admissibility"

Commonwealth v. Davis, Ky., 25 S.W.2d 106, 108 (2000). See also Commonwealth v. Roberts, Ky., 122 S.W.2d 524 (2003).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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