

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-724-2015

vs.

:
:
:

PHILIP SAILOR,
Defendant

: **Opinion and Order re**
: **Defendant's Motion in Limine**
: **Concerning Dr. Guzzardi's testimony**

OPINION AND ORDER

This matter came before the court on November 9, 2017, for a hearing and argument on Defendant's motion in limine to permit the introduction of expert testimony by Dr. Lawrence Guzzardi concerning how the amount of marijuana consumed impacts the ability to drive; how the odor of marijuana and reddened, bloodshot eyes do not correlate with impairment; how lack of convergence is a sign of conjunctival irritation as opposed to impairment; how the odor of marijuana can have a lingering effect on items; marijuana and field sobriety tests; and the impact of marijuana on the central nervous system and cerebellar system.

At the argument, the Commonwealth conceded that Dr. Guzzardi could testify regarding most of the contents of his supplemental report. The Commonwealth only objected to the statement in the second paragraph of Dr. Guzzardi's report that marijuana's "effects on the ability to safely drive a motor vehicle are small or non-existent when a small amount has been recently consumed." The Commonwealth asserted that such testimony was speculative, misleading, and not relevant as there was no evidence regarding the amount of marijuana consumed by Defendant.

The court notes that the full second paragraph of Dr. Guzzardi's report states:

I will testify as to the expected effects of marijuana on driving performance and that while the consumption of large amounts of marijuana may affect driving, its effects on the ability to safely drive a motor vehicle are small or non-existent when a small amount has been recently consumed. Also, levels of marijuana are transient and quickly dissipate from impairing levels to non-impairing levels.

Defendant is charged with aggravated assault by vehicle while driving under the influence of a controlled substance and several other offenses. At trial, the jury will be required to determine whether Defendant was under the influence of a controlled substance to the extent that he was incapable of safely driving, and, if so, whether his impairment, speeding, the pedestrian's inattentiveness, some other cause, or a combination of causes resulted in the collision between Defendant's vehicle and the pedestrian.

The Commonwealth intends to qualify police officers as expert witnesses and have them testify that Defendant was incapable of safely driving based on their observations regarding a "strong" odor of marijuana, Defendant's red or bloodshot eyes, his lethargy, and his poor balance. According to the Commonwealth, these are legitimate inferences based on the evidence, and not speculation, despite the fact that there are many other possible explanations for each of those observations.

According to the affidavit of probable cause, when the police searched Defendant's vehicle they found a baggie containing a small amount of marijuana, a kit with paraphernalia for smoking marijuana including rolling papers and a lighter, and a partly smoked marijuana cigarette. Based on the evidence within Defendant's vehicle, one could infer that Defendant smoked part of a marijuana cigarette prior to the accident. Although it

is possible that more marijuana cigarettes were smoked, there was apparently no other physical evidence found within Defendant's vehicle to show that Defendant smoked more than a part of a marijuana cigarette. Just as the jury is free to accept or reject the police inferences and conclusions, which are not the only ones that could be drawn from their observations, the jury is free to accept or reject Dr. Guzzardi's proposed testimony. The court, however, will not preclude Dr. Guzzardi from testifying.¹

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of November 2017, the court GRANTS Defendant's motion in limine and it will permit Dr. Guzzardi to testify consistent with his report.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
William Miele, Esquire (PD)/Joshua Bower, Esquire (APD)
Work file

¹The court also does not know if Defendant will testify at trial on this subject and provide additional support for Dr. Guzzardi's testimony regarding the small or non-existent effects when a small amount of marijuana has been recently consumed.