

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-642-2017  
 :  
 DANIEL DIEHL, :  
 Defendant : Motion to Suppress

**OPINION AND ORDER**

Defendant is charged by Information filed on April 21, 2017 with Driving Under the Influence (DUI) and related charges. Among other things, defendant is alleged to have driven his vehicle on February 4, 2017 after drinking a sufficient amount of alcohol such that the alcohol concentration in his blood within two hours after he drove the vehicle was .19%.

Similar to motions that have been filed on behalf of other defendants, Defendant filed a motion to suppress the blood test results. A hearing on the motion was held before this court on August 30, 2017. It had originally been scheduled for July 25, 2017 but continued at the request of defense counsel.

Defendant argues, consistent with his written motion, that his blood alcohol results must be suppressed for varied reasons. First, Defendant argues that under all circumstances a search warrant is required and one was not obtained in this case. Secondly, Defendant argues that his consent was coerced because he was not advised of his right to request a search warrant and was provided deliberate misinformation by law enforcement when he was not told of the prior consequences for refusing a blood test which had subsequently been deemed invalid by the courts. Finally, Defendant argues that the

Commonwealth did not demonstrate that Defendant's consent met what Defendant claims is the appropriate legal standard of knowing, intelligent and voluntary.

Officer Eric Winters of the Montgomery Police Department first testified at the hearing. Through his employment as a police officer in Montgomery as well as 11 total years with other departments, Officer Winters has extensive training and experience in the detection, investigation and prosecution of DUI offenders.

On February 4, 2017, at approximately 7:30 p.m. in the evening while on patrol, Officer Winters observed a green Ford traveling southbound on Route 15 in Brady Township. The driver of the vehicle, eventually identified as Defendant, was driving the vehicle in a very erratic manner. Officer Winters observed several Vehicle Code violations.

Defendant turned off of Route 15 onto an adjacent road and came to a dead stop in the middle of the roadway. Officer Winters activated his emergency lights and stopped the vehicle.

Officer Winters' initial observations lead him to believe that Defendant had been drinking alcoholic beverages. Defendant's breath smelled of an odor of alcoholic beverages; his speech was slurred; he fumbled with his wallet while trying to obtain his license; he failed to provide his insurance and registration information; he "mumbled" that he had three drinks; and he first indicated that he came from work and then changed his story and indicated that he came from the legion.

Officer Winters asked Defendant to step out of the vehicle to perform standard field sobriety tests. Defendant complied but as he stepped from the vehicle his

balance was unsteady.

Initially, Defendant indicated he was willing to perform the tests but after the horizontal gaze nystagmus (HGN) test, he refused to do anymore and started walking back to the vehicle.

At that time, Officer Winters informed Defendant that he was being detained on suspicion of DUI. Defendant became belligerent and unruly. He started swearing, tried to walk away, refused to place his arms behind his back, and was verbally abusive and argumentative.

Eventually, Defendant was placed in handcuffs. With some difficulty and despite resistance by Defendant, Officer Winters eventually placed Defendant in the back of the patrol car.

Fortunately, a relative of Defendant showed up at the scene and calmed Defendant down. Officer Winters explained to Defendant that he was being taken to the Muncy Valley Hospital for a blood draw. Officer Winters explained to Defendant that it was the officer's opinion that Defendant was unable to safely drive.

On the way to the hospital, Defendant continued to "yell" and "scream." According to Officer Winters, Defendant was clearly upset.

When they arrived at the hospital, they were directed to a "storage or overflow room" by hospital personnel. Once they arrived at the room, Defendant was seated in a chair. Officer Winters read to him a DL-26 B form. After reading the form, Officer Winters asked Defendant if he understood it. Defendant indicated that he did. Officer Winters then asked

Defendant if he would give blood at which time Defendant said: "I will give blood if you take the handcuffs off." Officer Winters repeated his request to Defendant and again Defendant indicated that he would give blood once the "handcuffs were off."

The hospital's phlebotomist soon arrived. Officer Winters reminded Defendant that he had the absolute right to submit to the test or to refuse the test. Again, Defendant indicated that he would give the blood and take the test if his handcuffs were taken off.

Knowing that he would need to remove the cuffs anyway to allow the blood draw and wanting Defendant to consent, Officer Winters complied with Defendant's condition of consent and removed the cuffs. Once the handcuffs were removed, Defendant signed the DL-26 B form, which certified that he was advised of the "blood test warnings," and he gave blood. He followed the request of the phlebotomist by placing his arm out and allowing her to take his blood. No force or coercion was applied by the phlebotomist during this process and Defendant was completely cooperative.

During the entire process of Defendant being taken into custody, being transported to the hospital, being read the blood test warnings, being requested to either consent or refuse and then giving blood, Officer Winters indicated that he employed no force, threats or coercion.

Defendant took the stand. He did not dispute any of the testimony of Officer Winters. Instead, he indicated that he gave blood because he "knows the laws."

More specifically, Defendant indicated that he knew that if he refused to give

blood his sentence “would be a whole lot more.” His friends had told him that he would get “more time in jail.”

Defendant’s testimony regarding when he became aware of the alleged increased penalties or when his friends told him was somewhat confused. At first he indicated that his friends told him “one or two months after he was caught.” Then he indicated that he also was aware of the alleged penalties because of his previous “DUI’s” where he “had refused.”

This court has had the opportunity to address Defendant’s legal issues in other recent Opinions. See *Commonwealth v. DeSciscio*, CR-1943-2016 (September 1, 2017); *Commonwealth v. Littlejohn*, CR-1199-2017 (September 7, 2017). For the reasons set forth in those Opinions and based on the appellate authority cited in said Opinions, Defendant’s arguments related to the necessity of a search warrant and coercion fail.

Further, and contrary to Defendant’s assertion, Defendant’s consent need not be knowing and intelligent; it only needs to be voluntary. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Commonwealth v. Cleckley*, 558 Pa. 517, 738 A.2d 427 (Pa. 1999); *see also Commonwealth v. Myers*, 2017 Pa. LEXIS 1689 (July 19, 2017); *Commonwealth v. Smith*, 621 Pa. 218, 77 A.3d 562 (2013); *Commonwealth v. Evans*, 153 A.3d 323 (Pa. Super. 2016); *Commonwealth v. Xander*, 14 A.3d 174 (Pa. Super 2011).

In determining the validity of a given consent, the Commonwealth bears the burden of establishing that it is the product of an essentially free and unconstrained choice and not the result of duress or coercion express or implied, or a will overborn under the

totality of the circumstances. The standard for measuring the scope of a person's consent is based on an objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent. *Evans*, supra at 327.

Further, and as this court noted in *Littlejohn*, the Pennsylvania Supreme Court has eschewed per se rules and has clearly held that no one fact or circumstance can be talismanic in the evaluation of the validity of a person's consent. *Smith*, 77 A.3d at 572. As a result, the Pennsylvania Supreme Court has rejected arguments in support of per se rules that for consent to be valid, an individual must be advised of his or her right to refuse or that the results of the test may be used against them in a criminal prosecution. *Cleckley*, supra (right to refuse); *Smith*, supra (results may be used in a criminal prosecution).

Considering the particular circumstances of this case, the court concludes that Defendant's consent was voluntary. Defendant's "understanding" of the law regarding refusal, albeit incorrect, is certainly not determinative. Indeed, and as this court has previously held, Defendant is presumed to know all of the laws governing driving under the influence including those laws that have determined that the statute is unenforceable and that one who refuses a blood test cannot be punished more harshly because of such refusal.

Moreover, Defendant's consent was not "tainted" in this case, because he was never informed of the enhanced criminal penalties for refusal which have since been declared unconstitutional. Defendant was taken into custody and transported to the hospital to give blood. Defendant was read an amended DL-26B form, given an opportunity to review it and then sign it.

According to Defendant, he was aware that he would “get more jail time” if he refused even though the DL-26B form did not reference such. After it was read to him, he indicated that he understood it but refused to sign it.

Instead, Defendant negotiated conditions under which he would sign it. Specifically, Defendant offered his consent in exchange for his handcuffs being removed. Initially, Officer Winters refused Defendant’s offer and insisted on an answer. After approximately “60 to 90 seconds” of going back and forth with Defendant repeatedly offering to consent in exchange for the handcuffs being removed, however, the officer accepted Defendant’s offer. Once the officer removed the handcuffs, Defendant signed the DL-26B form and gave blood.

Defendant’s voluntary consent could not be more evident. Once his offer was accepted and the officer removed the handcuffs, Defendant’s demeanor changed and he was entirely cooperative with the phlebotomist. His consent was the product of a clear and essentially free and unconstrained choice that was negotiated by him. It was not the result of duress or coercion, express or implied.

**ORDER**

**AND NOW**, this \_\_\_ day of September 2017, following a hearing and argument, Defendant’s motion to suppress is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

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