

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 00-11,379

VS :

KEVIN LEE BEATTY :

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pretrial Motion. Defendant has been charged with driving under the influence of alcohol and escape as a result of an incident that occurred on July 9, 2000. A preliminary hearing was held before District Justice James Sortman, wherein the charges were bound over. The Defendant filed a timely motion challenging the testimony presented by the Commonwealth, alleging they failed to meet their burden of proof on the charges. Defendant has also argued that the charges should be dismissed, as the arrest was made outside of the jurisdiction of the arresting officer. After a review of the transcript from the preliminary hearing, the Court finds the following facts:

Wayne Williams, a patrol officer with the Old Lycoming Township Police Department testified that on July 9, 2000, at approximately 1:24 a.m., he attempted to turn into the Coastal Market on Dewey Avenue. A pick-up truck driven by the Defendant had compromised the entrance. As Officer Williams (Williams) narrowly navigated the entrance, he looked for recognition from the driver of the vehicle that had compromised the exit. Williams did a U-turn in the parking lot and followed the truck as it proceeded north bound on Dewey Avenue. (N.T. 8/30/00, p.3) Williams testified that the vehicle rolled back and forth inside its lane of travel. (Id., p. 5)

Williams followed as the truck proceeded to the area of Wheatland Avenue and activated its right turn signal. The turn signal remained on for approximately three blocks and eventually shut off. The Defendant did not make any turns. The truck proceeded to the intersection at Mill Lane. When the Defendant's vehicle came to a stop, Williams was able to get a good view of the license plate. The Defendant again activated his right turn signal, and proceeded to make a right turn onto Mill Lane. Williams testified that upon negotiating the turn, the tires of the truck crossed the center line of Mill Lane. (*Id.*, p. 4) The Defendant proceeded to the intersection of Green Avenue and Mill Lane, made a left turn, and headed north on Lycoming Creek Road.

Williams turned in the opposite direction, but caught up with the vehicle on Lycoming Creek Road in the area of *Ray's Homes*.¹ As he followed the vehicle on Lycoming Creek Road, he observed the vehicle moving back and forth in its own lane of travel. He also observed the vehicle cross the center line between six and ten times. (*Id.*, p. 5) Williams testified that on at least three occasions, the vehicle swerved completely into the opposite lane of travel. (*Ibid.*) Williams activated his emergency lights at the intersection of Lycoming Creek Road and Log Run Road.² At the intersection of Log Run Road, the Defendant negotiated a turn. Williams followed the Defendant approximately six tenths of a mile on Log Run Road before the vehicle finally pulled into the driveway of a residence. In addition to his emergency lights, Williams had shined a spotlight at the vehicle, attempting to get the driver's attention. Williams

¹ Williams agreed that he was in Loyalsock Township at this point.

² Williams testified that he decided to stop the vehicle for possible DUI based on his observation at the Coastal Mart, the fact that the vehicle had rolled back and forth in his lane of travel on Dewey Avenue, and the fact that he had activated his turn signal for approximately a block—but failed to make any turns. It was also based on his observation of the Defendant's vehicle cross the center line upon negotiating the turn onto Mill Lane.

testified that the vehicle crossed the center line on Log Run Road approximately six times before finally stopping. (Ibid.)

Williams exited the patrol car, approached the Defendant, and requested his license and registration. The Defendant stepped out of his vehicle and pulled out his wallet from his back pocket. As the Defendant stepped outside the vehicle Williams observed an older white male also in the vehicle. Williams also observed three six-packs of what he believed to be Labatts Brew on the seat of the truck. (Id., p. 7) The Defendant fumbled with the wallet as he attempted to retrieve his license, and dropped the wallet on the ground. He made several attempts before he was able to retrieve his license. Williams testified that as the Defendant spoke, his speech was slurred. The Defendant also swayed as he stood, his eyes were red and bloodshot, and Williams detected a strong odor of an alcoholic beverage. (Id., p. 6)

Williams testified that the Defendant suddenly became concerned with letting dogs out of the house. Williams informed the Defendant that he was going to request a field sobriety test. The Defendant walked away from Williams, and attempted to climb some steps to the residence. Williams testified that as the Defendant stumbled and fell into a seating position, he was able to get a handcuff on him. Williams led the Defendant back to the vehicles³, and administered the horizontal gaze nystagmus test, and the walk and turn. The Defendant attempted the one leg stand, but eventually refused to go further. Both Williams and McCormick testified that based upon their experience and training, the Defendant failed the administered tests. McCormick

³ Matthew McCormick, (McCormick) a patrol officer for the Old Lycoming Township Police Department, testified that he overheard Officer Williams report that he was making a stop on Log Run Road. McCormick decided to assist with the stop, and he reported to the scene. (Id., p. 19) McCormick arrived on the scene as Williams began the field sobriety tests.

testified that the Defendant's legs were shaking uncontrollably, and was unable to comprehend simple instructions. McCormick additionally observed an odor of an alcoholic beverage emanating from the Defendant. (Id., p 20)

Williams informed the Defendant that he had one further test, and that he would be back after retrieving it from the patrol unit. (Id., p. 17) As Williams went to retrieve a preliminary breath test device from his vehicle, the Defendant left the scene. (Id., p. 6) Williams testified that the next thing that he heard was McCormick's enraged tone coming from the direction of the residence. McCormick testified that after Williams left, the Defendant turned and began to walk away. When McCormick informed him that he had to wait, the Defendant stated that he needed to relieve himself. Moments later, the Defendant began running toward the residence. (Id., p. 21) McCormick followed the Defendant, and caught up with him at the door of the residence. McCormick testified that the Defendant attempted to slam the door in his face, but he was able to stop the door and kick it in with his foot before it was able to latch. (Ibid.)

McCormick followed the Defendant inside the residence. The Defendant struggled with McCormick and refused to return to the vehicles. McCormick eventually used chemical spray to attempt to gain control of the Defendant. As McCormick retrieved the chemical spray from his belt, he informed the Defendant that he was under arrest. (Id., p.21) Upon being hit with the spray, the Defendant ran from the room, and disappeared into another room in the residence. (Id., p. 22) McCormick was also affected by the spray, and he left the residence. Williams entered the residence, as McCormick left the residence. Despite attempts by Williams to coax him out, the Defendant refused to exit the residence at that time. For safety reasons, Williams and

McCormick did not go back into the residence. Additional units were called to the scene. A subsequent search of the residence revealed that the Defendant had exited through a rear door. Footprints were tracked through a creek and onto the bank, but officers were unable to locate the Defendant.

Defendant first asserts that there was insufficient evidence to establish a prima facie case of driving under the influence of alcohol to a degree that rendered him incapable of safe driving, and escape. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). To establish a prima facie case under 75 Pa.C.S. § 3731(a)(1), the Commonwealth must present sufficient evidence that the Defendant drove, operated, or was in actual physical control of the movement of a vehicle, while under the influence of alcohol to such a degree which rendered him incapable of safe driving.

In the instant case, Officer Williams followed the Defendant's vehicle for several miles before activating his emergency lights. Officer Williams observed the vehicle swerve within the lane of travel, cross the center line, and drive in the oncoming lane of traffic. Additionally, after stopping the Defendant's vehicle, Officer Williams observed an odor of an alcoholic beverage on the Defendant's breath, and more than one six pack of beer on the front seat of the Defendant's vehicle. Officer Williams requested that he perform field sobriety tests. Two officers observed the Defendant stumble, and his legs shake uncontrollably. The Defendant was additionally unable to comprehend simple instructions. The Court would find this testimony sufficient to establish that the

Defendant was under the influence to a degree which rendered him incapable of safe driving.

To establish a prima facie case of escape under 18 Pa.C.S. § 5121 (a) the Commonwealth must present sufficient evidence that the Defendant unlawfully removed himself from official detention, or failed to return to official detention following temporary leave granted for a specific purpose or limited purpose. Subsection (e) defines "official detention" as "arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but the phrase does not include supervision of probation or parole, or constraint incidental to release on bail."

The Court finds that the Commonwealth presented sufficient evidence to establish a prima facie case that the Defendant unlawfully removed himself from official detention where, after being told that he was under arrest, the Defendant ran from the presence of the officers, and ran from his residence to avoid being apprehended by the officers. The Court therefore rejects Defendant's argument.

Defendant next alleges that the arresting officers violated the Municipal Police Jurisdiction Act by arresting him outside their primary jurisdiction when they had no authority to do so. Defendant argues that the evidence obtained as a result of the stop should be suppressed, and the charges should be dismissed. The Municipal Police Jurisdiction Act provides in relevant part:

a) General rule.--Any duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or

otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases:

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

42 Pa.C.S.A. 8953(a)(2)

Defendant argues that Officer Williams did not have probable cause to believe that a DUI or any other offense was committed in Old Lycoming Township. The Court disagrees. The Court finds that Officer Williams' observations, including the Defendant's careless exit from the Coastal Mart, Defendant's weaving back and forth in his lane of traffic, Defendant's application of his turn signals for several blocks without effectuating a turn, and Defendant's exaggerated turn and cross of the center line, established probable cause to stop the Defendant's vehicle for careless driving under 75 Pa. C.S. A. §3714. As probable cause existed to stop the Defendant's vehicle in Old Lycoming Township, and since Officer Williams remained in fresh pursuit of the vehicle, the Court finds that the stop of the Defendant's vehicle in the neighboring jurisdiction was lawful under the Municipal Police Jurisdiction Act. See Commonwealth v McGrady, 454 Pa.Super. 444, 685 A.2d 1008 (1996).

ORDER

AND NOW, this _____day of February, 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED. It is further ORDERED and DIRECTED that Defendant's Motion to Suppress and Motion to Dismiss for violation of the Municipal Police Jurisdiction Act is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
Peter Campana, Esquire
William Simmers, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire