

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,496
:
:
vs. : CRIMINAL DIVISION
: Petition for Writ of Habeas Corpus
ROBERT JAMES GILLETTE, III, :
Defendant :

OPINION AND ORDER

Defendant has been charged with driving under the influence, driving on roadways laned for traffic, careless driving and public drunkenness. In his Petition for Writ of Habeas Corpus, filed September 12, 2002, Defendant seeks dismissal of the charges on the grounds the Commonwealth failed to establish the Corpus delicti prior to introducing a statement made by Defendant to the effect that he had been driving the vehicle. A hearing on the Petition was held November 25, 2002.

According to the evidence presented at the hearing, Officer Curt Hockman of the Montoursville Police Department was involved in a vehicle stop of an unrelated vehicle at approximately 1:40 a.m. on June 9, 2002 on State Route 87 when he heard and observed another vehicle drive by with two flat tires. After leaving the scene of his stop, he drove south on Rt. 87 and observed that same vehicle parked along the roadway, with two flat tires and with grass and debris hanging down underneath the car. He then called the state police and notified them of the vehicle's location and indicated his opinion that it might have been involved in an

accident. Officer Hockman saw no one in the vehicle and saw no one along the road from there to Montoursville. He indicated that when the vehicle passed him he did observe it was being driven by a male but could otherwise not identify the driver. He further indicated that he did not see anyone else in the vehicle other than the driver. Trooper Justin Bieber of the Pennsylvania State Police testified to receiving the dispatch regarding the vehicle and arriving there within one hour of that dispatch. He indicated the vehicle was unoccupied at the time but that the hood and tires were still warm. He observed two flat tires on the passenger's side of the vehicle. Trooper Bieber ran the registration and learned the vehicle was owned by Robert Gillette, Defendant herein. As Trooper Bieber was driving south on Rt. 87 toward Montoursville, he saw Defendant walking along Rt. 87 2/10's of a mile south of the vehicle. Trooper Bieber stopped and made contact with Defendant. Trooper Bieber testified that Defendant had been stumbling as he was walking, that his speech was slurred, his eyes were bloodshot and he smelled strongly of alcohol. According to Trooper Bieber, Defendant could not perform either field sobriety test in a satisfactory manner and in the Trooper's opinion, Defendant was highly intoxicated. When the Trooper asked Defendant what he was doing along the roadway, Defendant made the statement he now seeks to exclude under the Corpus delecti Rule.

The Commonwealth argues that the statement should be considered under the "closely related crime" exception to the rule and further, that the Corpus delecti was indeed established prior to admission of the statement in any event. The Court does not reach the issue regarding the closely related crime exception as it agrees with the Commonwealth there was sufficient independent evidence of the crimes charged.

The Court believes the Officer's observation of the vehicle being driven with two flat tires by a male driver, and seeing no one else in the car, and the Trooper's observation of Defendant walking away from the vehicle 2/10's of a mile from it, having confirmed the vehicle's registration in Defendant's name, at approximately 2:30 a.m., and his observation of Defendant's intoxicated condition within one hour of the Officer's observation of the vehicle being driven, circumstantially indicate that Defendant drove the vehicle while intoxicated. Since this evidence is sufficient to establish a prima facie case, there was no error in admitting Defendant's statement that he drove the vehicle.

Further, evidence of the grass and other debris hanging from underneath the vehicle establish a prima facie case that the vehicle was driven outside of the regular lane of traffic and in a careless manner.

Finally, the Trooper's testimony regarding Defendant walking along Rt. 87 at 2:30 a.m. in a highly intoxicated condition establishes a prima facie case of public drunkenness.

ORDER

AND NOW, this 26th day of November, 2002, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
William Miele, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson