

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,746
	:
	:
vs.	: CRIMINAL DIVISION
	: Omnibus Pre-Trial Motion
DALE S. BARTLEY,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with one count of DUI (incapable of safe driving), as a result of his encounter with police on August 2, 2002. In the instant Omnibus Pre-Trial Motion, filed December 2, 2002, Defendant seeks a Writ of Habeas Corpus and also to suppress evidence obtained pursuant to the encounter. A hearing on the motion was held December 27, 2002, at which time counsel agreed to rely on a transcript of the preliminary hearing to supply the Court with the necessary factual basis.

From that transcript it appears Officer McCormick of the Old Lycoming Township Police Department came upon Defendant’s vehicle parked on the north berm of State Route 973 where it passes under Route 15 at approximately 1:00 a.m. on August 2, 2002. Officer McCormick testified he noticed the interior dome light as well as the cargo light on and saw someone sleeping in the driver’s seat. According to Officer McCormick he knocked on the driver’s side window in an attempt to awaken the driver, who turned out to be Defendant, and had to knock several times before

Defendant became aware of his presence. Defendant would not roll his window down and, as the driver's door was locked, Officer McCormick walked to the passenger's side of the truck and opened the door. Upon opening the door, the officer noticed the keys were in the ignition, the interior of the truck was cooler than the external air, indicating to him that the air conditioning had been recently turned off, and also noticed what he described as an overwhelming smell of alcoholic beverage. The officer observed Defendant to have a "blank stare" and also observed that he seem to have difficulty in his attempt to retrieve his driver's license from the glove box, which he ultimately failed to do. The officer asked Defendant to step out of his vehicle but he refused. Defendant then attempted to start the truck, but appeared unable to do so because of his intoxicated condition. The officer and another officer who had in the meantime arrived as back up physically removed Defendant from the truck and carried him to the patrol vehicle. Officer McCormick testified he did not ask Defendant to perform any field sobriety tests because he was so impaired he was not able to stand or walk let alone perform a sobriety test. Officer McCormick testified he felt Defendant was highly impaired and totally incapable of operating a motor vehicle.

In his Petition for Writ of Habeas Corpus, Defendant contends the Commonwealth failed to establish a prima facie case of driving under the influence of alcohol, specifically contending insufficient evidence that Defendant was in "actual physical control" of the motor vehicle. In support of this contention, Defendant cites Commonwealth v Byers, 650 A.2d 468 (Pa. Super. 1994). In Byers, troopers found Jeffrey Byers sleeping in the driver's seat of his vehicle in the parking lot of a lounge. The vehicle's motor was running and the headlights were on, but the car was not moving. After reviewing the case law and noting that the location of the vehicle is a key factor in the finding of actual

control, the Court in Byers determined the evidence insufficient to support the inference the defendant therein had been in control of the vehicle, since he was found in the parking lot of the bar where he had been drinking and there was no evidence to indicate the vehicle had been moved.

As noted in Byers, supra, the Courts of this Commonwealth have held that whether a person is in actual physical control of a motor vehicle is determined based on the totality of the circumstances, including the location of the vehicle, whether the engine was running and whether there was other evidence indicating that the defendant had driven the vehicle at some point prior to the arrival of police on the scene. Commonwealth v Wolen, 685 A.2d 1384 (Pa. 1996); Commonwealth v Byers, supra. In the instant case, although the engine was not running, the interior and cargo lights were on, the air conditioning had been recently run, the keys were in the ignition, Defendant was in the driver's seat, and the car was parked on the berm of Route 973. After a review of cases addressing this issue, the Court believes the Commonwealth has in the instant matter presented a prima facie case that Defendant was in actual physical control of the vehicle. The Court acknowledges there are explanations possible which could raise a reasonable doubt to whether Defendant had been driving the vehicle, but in a Petition for Habeas Corpus, only a finding of probability is required.

In his Motion to Suppress, Defendant contends the officer did not have reasonable grounds to believe there was a violation of the Vehicle Code so as to enable him to enter the vehicle and further, he did not have probable cause to believe Defendant violated the Vehicle Code so as to authorize him to arrest Defendant without a warrant. With respect to the first issue, Defendant refers to the question of whether Defendant was in actual physical control of the vehicle and since the Court has found a prima facie case to be established in that regard, it likewise finds the officer had reasonable grounds to

believe Defendant had violated the Vehicle Code. With respect to the issue of probable cause, the belief that Defendant had operated the vehicle, combined with the observations of Defendant's demeanor, odor of alcohol, blank stare, and inability to stand or walk, establishes probable cause for the officer to believe Defendant had violated the DUI provision of the Vehicle Code. Both the investigative detention and the arrest were therefore proper.

ORDER

AND NOW, this 16th day of January, 2003, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus and his Motion to Suppress are hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Peter Campana, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson