

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**ERIC WILLIAM SCARBOROUGH,  
Defendant**

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**No. CP-41-CR-0000487-2005**

**CRIMINAL**

**Motion to Suppress**

**OPINION AND ORDER**

Before this Honorable Court is the Defendant's Omnibus Pre-Trial Motion filed June 29, 2005. Defendant sets forth a Motion to Suppress Evidence and a Motion to reclassify the first degree misdemeanor charge in Count I, as an ungraded misdemeanor. Having carefully considered the issues raised, the Court denies the Defendant's Motion to Suppress Evidence and reclassify charges.

**BACKGROUND**

On January 30, 2005, Pennsylvania State Police Troopers Jason Terwilliger and Robert Bell observed the Defendant driving in Armstrong Township. After witnessing the Defendant conduct a turn without utilizing a turn signal, perform an improper u-turn, and cause his vehicle to become stuck in a roadside ditch, the Troopers conducted a vehicle stop of the Defendant. During the course of the vehicle stop, Trooper Bell noted the Defendant's bloodshot and dilated eyes and detected an odor of alcohol emitting from the Defendant. The Defendant admitted having consumed alcohol that evening and complied with Trooper Bell's request that he submit to field sobriety tests. After failing the field sobriety tests and giving a positive alcohol reading in a subsequent Portable Breath Test, Trooper Bell placed the Defendant under arrest and transported him to the Lycoming County DUI Center.

At the Lycoming County DUI Center, Trooper Bell apprised the Defendant of his *O'Connell*<sup>1</sup> and implied consent warnings, after which, the Defendant refused to submit to a chemical blood analysis. On February 9, 2005, Trooper Bell filed a Criminal Complaint against the Defendant charging him with Driving Under the Influence of Alcohol and other related offenses.

The Defendant now alleges that the Trooper Bell and Terwilliger lacked the necessary probable cause to stop his vehicle on January 30, 2005 and, therefore, any evidence obtained as a result of that stop should be suppressed. Furthermore, the Defendant alleges that because Trooper Bell did not explain the enhanced penalties provisions to him in detail or provide him an opportunity to consult with counsel before deciding whether to submit to the chemical blood analysis, that his refusal to submit to the chemical blood analysis was not knowing, intelligent and voluntary and, therefore inadmissible. Lastly, the Defendant alleges that the charging document fails to enumerate the necessary elements to establish the stated charges against the Defendant and, because these elements enhance the applicable maximum sentence, these elements be pled in the charging document and proven to the fact finder beyond a reasonable doubt.

## **DISCUSSION**

“The legislature has vested police officers with authority to stop a vehicle when they have "articulable and reasonable grounds to suspect a violation" of the Vehicle Code.”

*Commonwealth v. Battaglia*, 2002 Pa.Super. 209, 802 A.2d 652, 655 (2002), citing 75 P.S. §

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<sup>1</sup> When a licensee is arrested for driving under the influence of alcohol and asked to submit to chemical blood testing, the police must explain to the arrestee that he does not have a right to call an attorney or anyone else regarding the request for chemical blood testing and that he does not have a right to consult with an attorney or anyone else prior to submitting to the test. *Commonwealth, Dep't of Transp., Bureau of Traffic Safety v. O'Connell*, 521 Pa. 242, 248, 555 A.2d 873 (1989).

6308(b). The Court finds that the police had an “articulable and reasonable” basis to stop the Defendant’s vehicle because they witnessed him conduct a turn without utilizing a turn signal and perform an improper u-turn before becoming stuck in a roadside ditch.

“Preparatory steps in the gathering of evidence by the prosecution, ‘such as systematized or scientific analyzing of the accused’s fingerprints, blood sample, clothing, hair, and the like,’ are not critical stages at which the accused has the right to the presence of his counsel.” *Commonwealth v. West*, 370 Pa. Super. 365, 370, 536 A.2d 447, 450 (1988), citing *U.S. v. Wade*, 388 U.S. 218, 227 (1967). The Court finds that the chemical blood analysis of the Defendant, sought by the police, at the Lycoming County DUI Center on the night in question properly falls under the standard articulated in *West*. *See id.* The Court also finds that the Defendant’s refusal to submit to the requested chemical blood analysis was in fact knowing, intelligent and voluntary because the police officers advised the Defendant that his refusal to submit to the chemical blood analysis would result in enhanced penalties for the Defendant; specifically, the police officers informed the Defendant that his refusal to submit to the analysis could result in “at least 72 hours of incarceration” for the Defendant.

The Defendant’s correctly states that, “any fact, other than a prior conviction, ‘which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt,’” *Commonwealth v. Reid*, 2005 PA Super 39 (2005), citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), citing *U.S. v. Booker*, 125 S. Ct. 738, 748 (2005); however, this line of cases is irrelevant because the “fact” in the instant matter affecting the Defendant’s sentence (i.e. his refusal to submit to a chemical blood analysis) was adequately pled in the charging documents and, implicates a sentencing issue and not an issue of appropriate charges;

therefore, the Court finds that the current charges against Defendant are appropriate and denies the Defendant's motion to reclassify charges.

**ORDER**

AND NOW, this \_\_\_\_\_ day of November 2005, for the reasons set forth above, the Court DENIES the Defendant's Motion to Suppress Evidence and reclassify charges.

By the Court,

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Nancy L. Butts, Judge

cc. Peter T. Campana, Esq.  
DA  
Hon. Nancy L. Butts  
Law Clerk