IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1918 - 2005
	:	
vs.	:	CRIMINAL DIVISION
	:	
MICHAEL ALLEN REESE,	:	
Defendant	:	Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress, filed as an Omnibus Pre-trial Motion on December 27, 2005. A hearing on the motion was held January 25, 2006.

Defendant has been charged with two counts of Driving Under the Influence. In his motion to suppress Defendant contends he was subjected to an illegal search and seizure following his arrest, arguing that the arresting officer was without probable cause to arrest him for DUI. Defendant raises two points in support of his argument.

First, Defendant contends the only considerations forming the basis for the trooper's decision to arrest him were (1) information from another officer that Defendant was the driver of the vehicle,[1] (2) her observation of a moderate odor of alcohol on his breath, and (3) her observation of Defendant's "blood shot" eyes, and argues that such is insufficient to support a finding of probable cause. Defendant contests the Commonwealth's contention that the trooper also relied on information from the Defendant that he had been drinking and that he had consumed "four beers and a shot". Defendant argues that the evidence indicates such information was imparted to the trooper only after Defendant had been arrested. The trooper testified, however, that she obtained that information from Defendant prior to making the arrest and that she relied on such in addition to the other information, in forming her opinion that Defendant drove under the influence. The Court believes the lack of direct testimony to that effect at the preliminary hearing is of no moment inasmuch as the trooper was not asked that

[1] Defendant's vehicle was stopped by another officer, as a result of a bulletin indicating the vehicle had been involved in a criminal incident. The arresting trooper in this case arrived at the scene after the vehicle was stopped, in response to the same bulletin.

specific question[2] and further, the focus at that time was not on probable cause to arrest. Therefore, it appears the trooper's decision to arrest Defendant was based on Defendant's indication he had had four beers and a shot, as well as the other information about which there is no dispute.

Defendant argues nevertheless that even if the Court considers the statement by Defendant as to his drinking, the trooper still did not have probable cause to arrest him for DUI. The Court does not agree. While a review of the cases addressing similar contentions does not provide a bright-line rule, the Court believes comparison with those cases supports the conclusion that the arrest in this case was supported by probable cause.[3] Indeed, "[p]robable cause does not involve certainties, but rather 'the factual and practical considerations of everyday life on which reasonable and prudent men act.'" Commonwealth v. Dommel, 885 A.2d 998 (Pa. Super. 2005)(citing Commonwealth v. Wright, 867 A.2d 1265, 1268 (Pa. Super. 2005)(quoting Commonwealth v. Romero, 673 A.2d 374, 376 (Pa. Super. 1996))). Here, the trooper had been informed by Defendant that he had consumed four beers and a shot, and he had a moderate odor of alcohol on his breath and bloodshot eyes. As the trooper testified, he "appeared intoxicated" to her. The Court has no trouble concluding a prudent person in the trooper's position, especially one with training related to the issue at hand, would reasonably believe Defendant was under the influence of alcohol and incapable of driving safely.

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[2] The trooper did state at the preliminary hearing, in response to a question about the types of information she elicited from Defendant when she first talked to him, that she was asking him "just basic information, if it was his car, had he been drinking", and indicated in her response to the very next question that Defendant did admit that he had been drinking. N.T. November 30, 2005, at p. 5.

[3] *See* Commonwealth v. Haynos, 525 A.2d 394 (Pa. Super. 1987)(vehicle accident and odor of alcohol sufficient probable cause); Commonwealth v. Guerry, 364 A.2d 700 (Pa. 1976)(vehicle accident, odor of alcohol, glassy and bloodshot eyes sufficient); Commonwealth v. Levesque, 364 A.2d 932 (Pa. 1976)(automobile weaving, accident, odor of alcohol and lack of coordination sufficient); Commonwealth v. Slonaker, 795 A.2d 397 (Pa. Super. 2002)(erratic driving, odor of alcohol and bloodshot, glassy eyes sufficient); Commonwealth v. Guiliano, 418 A.2d 476 (Pa. Super. 1980)(vehicle accident, "pupils, eyes and speech all suggested consumption of alcohol", sufficient); Commonwealth v. Monaghan, 441 A.2d 1318 (Pa. Super. 1982)(vehicle accident, staggering gait, slurred speech and odor of alcohol sufficient); Commonwealth v. Rehmeyer, 502 A.2d 1332 (Pa. Super. 1985)(drove through red light and odor of alcohol sufficient). *Compare* Commonwealth v. Monarch, 507 A.2d 74 (Pa. 1986)(vehicle accident and defendant stumbled as he exited vehicle not sufficient to establish probable cause); Commonwealth v. Danforth, 576 A.2d 1013 (Pa. Super. 1990)(vehicle accident alone insufficient without any of the typical signs of alcohol consumption, such as bloodshot eyes, alcohol on the breath, a staggering walk or inability to maintain balance while standing), *affirmed by* Commonwealth v. Kohl, 615 A.2d 308 (Pa. 1992).

Inasmuch as the arrest was indeed supported by probable cause, the motion to suppress the evidence obtained as a result of that arrest will be denied.

ORDER

AND NOW, this 27th day of January 2006, for the foregoing reasons, the motion to suppress is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Marc Lovecchio, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson