

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA : No. 2150-2007
:
: CRIMINAL
:
ALBERT LEROY KURTZ, : MOTION TO SUPPRESS
Defendant : EVIDENCE

ORDER

AND NOW, this day of May 2008, the Court DENIES Defendant's Motion to Suppress Evidence.

On August 29, 2007, at about 11:18 p.m. Trooper Matthew McDermott was dispatched to a vehicle accident at Cemetery Road and Bloomingrove Road. When he arrived at the scene, he observed two crashed vehicles – one in a ditch and one up an embankment against a barn. Emergency medical personnel were at the scene with an injured passenger, but both operators had fled. While the passenger was in an ambulance, Trooper McDermott interviewed her. She told the trooper that the vehicle in the ditch attempted to pass the vehicle in which she was a passenger. The driver, who had been drinking, sped up and refused to let Defendant's vehicle pass. Neither driver relented. When they realized Cemetery Road ended in a T intersection with Bloomingrove Road, it was too late. Both drivers lost control of their vehicles. Although they did not come in contact with each other, both vehicles left the roadway and crashed.

After Trooper McDermott spoke with the passenger, he started to collect information from the vehicles to determine ownership, registration and insurance. As he was doing this, Defendant returned to the scene and said he was the operator of the vehicle in the ditch. Defendant was not under arrest or otherwise in custody. Trooper McDermott then began asking Defendant questions he routinely asks when investigating an accident. During his conversation with Defendant, Trooper McDermott smelled a strong odor of alcohol emanating from Defendant's person. Trooper McDermott asked Defendant to perform field sobriety tests. Defendant failed the one-leg stand and refused to perform the walk and turn

test. Then Trooper McDermott placed Defendant under arrest for driving under the influence of alcohol.

Trooper McDermott transported Defendant to the DUI Processing Center in the Williamsport Hospital. Defendant consented to a blood test. Defendant's blood alcohol content (BAC) was .10%.

Defendant filed a Motion to Suppress Evidence in which he claims the officer lacked probable cause to justify detaining and, in effect, arresting Defendant. Defendant claims he should have been advised of his rights before the officer proceeded to question him. This Court cannot agree. Defendant voluntarily returned to the scene and stated he was the driver of the vehicle in the ditch. From the information contained in the vehicle, Trooper McDermott knew the vehicle was registered to Defendant. From the information volunteered by Defendant and the information Trooper McDermott had from his observations at the scene and his interview of the passenger of the other vehicle, Trooper McDermott had reasonable suspicion to believe Defendant had committed violations of the Vehicle Code, which justified an investigation. During this investigation, Trooper McDermott developed probable cause to arrest Defendant for DUI. Defendant was not in custody at any time prior to his arrest. Therefore, Trooper McDermott did not have to read Defendant his Miranda rights before speaking to him at the scene. Commonwealth v. Ford, 539 Pa. 85, 98, 650 A.2d 433, 439 (1994)(Miranda warning are required only where a suspect is in custody). Since the Court finds no violation of any of Defendant's constitutional rights, the Court DENIES Defendant's Motion to Suppress Evidence.

By The Court,

Kenneth D. Brown, J.

cc: George Lepley, Esquire
Henry Mitchell, Esquire (ADA)
Work file

Gary Weber, Esquire (Lycoming Reporter)