

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 710-2010  
vs. :  
 : Opinion and Order denying  
MARK CABLE, : Defendant's Omnibus Pre-trial Motions  
Defendant :

**OPINION AND ORDER**

This matter came before the Court on Defendant's Omnibus Pre-trial Motion.

In his motion, Defendant raised three issues: (1) the police did not have probable cause to arrest him for driving under the influence of alcohol (DUI); (2) Defendant was not given O'Connell warnings prior to being asked to consent to a blood test; and (3) the blood test was tainted because an alcohol swab was used to sterilize his skin prior to withdrawing blood.

A hearing was held on October 7, 2010. Four witnesses testified at the hearing: Melinda Saldivia, a traveling motorist who observed Defendant's driving and called the police; James McGee, the Williamsport police officer who arrested Defendant; Karen Wachter, the phlebotomist who took the blood sample from Defendant; and Mark Vanderlin, the medical technologist who tested Defendant's blood. At the conclusion of the hearing, Defendant withdrew his claims regarding the O'Connell warnings and the blood draw. Therefore, this opinion will only discuss the facts surrounding the stop of Defendant's vehicle and Defendant's arrest for DUI.

In the early evening on March 15, 2010, Melinda Saldivia was traveling north on Loyalsock Avenue behind a white sedan. The white sedan pulled into the left turn lane to get onto the on-ramp for Route 180 west. Ms. Saldivia also was getting onto Route 180, so she pulled into the left lane behind the white sedan. The white sedan moved back over into

the right lane, then suddenly pulled back into the left lane, cutting Ms. Saldivia off. The white sedan proceeded onto Route 180 West, as did Ms. Saldivia. As Ms. Saldivia followed the white sedan, it was not staying on the roadway. The sedan was going back and forth across the roadway. The driver also was slowing down and then gunning the vehicle. The vehicle also drifted into the passing lane, nearly hitting a tractor trailer. Ms. Saldivia flashed her lights to try to get the driver to pull over, but was unsuccessful, so she called the police.

Officer James McGee of the Williamsport Bureau of Police was dispatched in response to Ms Salidivia's call. Officer McGee observed the vehicle on the Route 15 North on-ramp. This on-ramp is two lanes wide. The vehicle was straddling the center line, and both lanes of traffic were backed up behind it. Officer McGee estimated that the vehicle was traveling at a speed of 25 mph. Officer McGee went around the traffic and pulled the vehicle over. Defendant was the driver. Defendant was smoking a cigarette and the car was filled with smoke. When Defendant threw his cigarette out onto the highway, and the smoke inside the car dissipated, Officer McGee smelled a moderate odor of alcohol. Defendant fumbled with his wallet, but eventually pulled out his driver's license. Officer McGee asked Defendant to step out of the vehicle and walk to the passenger side, away from traffic.<sup>1</sup> Officer McGee then noticed that Defendant was unsteady on his feet, and had slurred speech and blood shot eyes. Officer McGee told Defendant that he thought Defendant had too much

---

<sup>1</sup> During a lawful traffic stop, the police may order the driver and the occupants out of the vehicle without any particularized suspicion. Pennsylvania v. Mimms, 434 U.S. 106, 110-111, 98 S.Ct. 330, 333 (1977).

to drink. Defendant said, “Probably.” Officer McGee believed Defendant was intoxicated and incapable of safe driving, so he arrested him for driving under the influence of alcohol (DUI).

Officer McGee did not conduct field sobriety tests at the scene before arresting Defendant, because he did not believe the conditions were conducive to such testing due to the amount of traffic, the limited space on the berm to the right side of Defendant’s vehicle, and the incline and angle of the surface in that area.

Officer McGee transported Defendant to the emergency room of the Williamsport Hospital so his blood could be drawn for testing because the DUI Processing Center was not open. Officer McGee read the implied consent form warnings to Defendant. Defendant agreed to have his blood drawn and signed the implied consent form. Defendant’s blood was drawn and the test results showed Defendant’s blood alcohol content was .172%.

Defense counsel argued that Officer McGee did not have probable cause to arrest Defendant for DUI because he did not conduct field sobriety tests prior to the arrest. He also argued that Defendant’s speech problem was due to his lisp<sup>2</sup> and his blood shot eyes were explained by the smoke in the vehicle.

Contrary to Defendant’s arguments, the Court finds based on the totality of the circumstances that Officer McGee had probable cause to arrest Defendant for DUI.

Probable cause exists where the facts and circumstances within the knowledge of the officer are reasonably trustworthy and sufficient to warrant a person of reasonable caution in believing that the person has committed the offense. Commonwealth v. Zook, 615

A.2d 1, 6 (Pa. 1992); see also Commonwealth v. Simon, 655 A.2d 1024, 1027-28 (Pa. Super. 1995).

Ms. Saldivia called the police about Defendant's erratic driving. Officer McGee was dispatched in response to Ms. Saldivia's call. Officer McGee observed Defendant driving his automobile such that it was straddling the center line of the Route 15 North on-ramp. Clearly, Defendant was driving his automobile in violation of the Vehicle Code, providing Officer McGee with a basis to stop his vehicle. See 75 Pa.C.S.A. §3309(1). During Officer McGee's contact with Defendant as a result of the vehicle stop, Officer McGee noticed Defendant had slurred speech, blood shot eyes, an unsteady gait, and a moderate odor of alcohol emanating from his person. These outward appearances of intoxication, coupled with Defendant's poor driving gave Officer McGee probable cause to believe that Defendant was committing the crime of DUI.

Defense counsel seems to argue that Officer McGee had to conduct field sobriety tests before he could conclude there was probable cause for DUI. The Court cannot agree. Field sobriety tests are but one factor in a totality of the circumstances analysis. There are numerous cases where the appellate courts have found probable to exist when the police did not conduct field sobriety tests. See Commonwealth v. Guerry, 364 A.2d 700, 701-02 (Pa. 1976)(appellant was taken to hospital for treatment); Commonwealth v. Angel, 946 A.2d 115, 118-19 (Pa. Super. 2008)(defendant refused to perform field sobriety tests); Commonwealth v. Williams, 941 A.2d 14, 28-29 (Pa. Super. 2008)(officer did not conduct field sobriety tests out of concern for appellant's safety).

---

<sup>2</sup> There is no evidence in the record that Defendant speaks with a lisp or has any other speech impediment.

Accordingly, the following order is entered:

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of December 2010, the Court DENIES

Defendant's Omnibus Pre-trial Motion.

By The Court,

---

Marc F. Lovecchio, Judge

cc: Paul Petcavage, Esquire (ADA)  
Jay C. Whittle, Esquire  
Boyle, Neblett & Wenger  
4660 Trindle Road, Suite 200, Camp Hill PA 17011