

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-504-2011**
:
RYAN SMITH, :
Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on April 20, 2011 with two counts of Driving Under the Influence and related traffic summaries. The Commonwealth alleges that on August 14, 2010, Defendant was involved in a one-car crash in Anthony Township. The Commonwealth further contends that at the time of the crash Defendant was under the influence of alcohol to the extent that he was incapable of safely driving. Furthermore, the Commonwealth asserts that within two hours of the time that he was operating his vehicle, the Defendant's blood alcohol content (BAC) was .123%.

On June 22, 2011, Defendant filed an Omnibus Pretrial Motion which consisted of a Motion to Suppress and a Petition for Habeas Corpus. With respect to the Motion to Suppress, Defendant alleges that there was insufficient probable cause for the issuance of a search warrant to obtain Defendant's medical records. Following the crash, the Defendant was transported to Geisinger Medical Center. The investigating trooper submitted an application for search warrant along with a supporting Affidavit of Probable Cause. The search warrant sought any and all toxicology reports relating to the Defendant and stemming from the crash. The search warrant application was approved by Magisterial District Justice Marvin Schrawder and a search warrant was served on Geisinger Medical Center. As a result of the search warrant, the trooper obtained Defendant's medical records which evidenced his BAC.

Defendant also filed a Petition for Habeas Corpus. At the argument in this matter, Defendant acknowledged that the Petition for Habeas Corpus was dependent upon the Court's decision with respect to the admissibility of the BAC results. Defendant conceded that if the Court did not suppress the BAC results, there would be sufficient evidence to establish a prima facie case with respect to being incapable of safely driving and driving above the legal BAC limit.

Both the Fourth Amendment to the United States Constitution as well as Article 1, section 8 of the Pennsylvania Constitution protect individuals against unreasonable searches and seizures from the government. Rule 203 of the Pennsylvania Rules of Criminal Procedure requires that a search warrant be issued only upon probable cause supported by an affidavit. Pa. R. Crim. P. 203 (B). The issuing authority may not consider any evidence outside of the Affidavit. Pa.R.Cr.P. 203 (B). Moreover, at any hearing on a Motion for Suppression of evidence, no evidence is admissible to establish probable cause other than the Affidavit. Pa.R.Cr.P. 203 (D).

Case law is clear that in analyzing a probable cause challenge to a warrant, the Court is "confined to the four corners of the Affidavit." Commonwealth v. James, 12 A.3d 388, 392 (Pa.Super. 2010), citing Commonwealth v. Coleman, 830 A.2d 554, 560 (Pa. 2003).

"Probable cause is a practical and fluid concept that turns on the assessment of probabilities in particular factual contexts, which cannot readily be reduced to a neat set of legal rules." Commonwealth v. Huntington, 924 A.2d 1252, 1256 (Pa. Super. 2007), citing Commonwealth v. Murphy, 916 A.2d, 679, 682 (Pa. Super. 2007). The issuing authority must determine if under all of the circumstances there is a fair probability that evidence of a crime

would be discovered. Huntington, supra. at 1256, citing Commonwealth v. Ryerson, 817 A.2d 510, 514 (Pa. Super. 2003).

A hearing was held on Defendant's Motion to Suppress on July 13, 2011. Trooper Douglas Hoffman of the Pennsylvania State Police testified that on August 14, 2010, he responded to the scene of a one-vehicle crash that took place in Anthony Township, Lycoming County. Upon further investigation, he determined that the driver of the vehicle was life-flighted to Geisinger Medical Center. He determined the identity of the driver and subsequently interviewed the driver's girlfriend, Tabitha Pepperman. He also interviewed a woman at the scene.

While there were no indicia of consumption of alcohol by the Defendant from what the Trooper saw at the scene, he was informed by Ms. Pepperman that the Defendant had been drinking alcoholic beverages with Ms. Pepperman the evening before, the parties were "fighting all night long," the Defendant then became upset and left. Trooper Hoffman confirmed that Ms. Pepperman indicated that the Defendant left at approximately 1:00 a.m. The accident occurred between 6:15 and approximately 6:30 a.m.

The trooper had been dispatched to the scene at approximately 7:00 a.m. He spoke with medical personnel at the scene. The medical personnel informed the trooper that the "operator" of the vehicle, the Defendant, had told them that he had been drinking alcohol prior to the crash.

While Ms. Pepperman apparently indicated to Trooper Hoffman that the Defendant had stopped drinking around 1:00 a.m. and had left her residence angry, she also

related that the Defendant had spun his tires out of her driveway approximately 20 minutes before the crash. (See Defendant Exhibit No.3).

Rule 206 of the Pennsylvania Rules of Criminal Procedure governs the contents of an application for a search warrant. Subsection (6) requires that the applicant set forth specifically the facts and circumstances which form the basis for the conclusion that there is probable cause that believes that the items identified are evidence of a crime.

The Affidavit of Probable Cause attached to the application for search warrant (Defendant's Exhibit No. 1) states in significant part that upon responding to the scene of a one-vehicle crash, the trooper determined that the truck involved in the crash was registered to the Defendant. He learned that the operator was already on the way to Geisinger Medical Center via ambulance and then life flight. He was notified by medical personnel that the operator and only occupant was the Defendant. Significantly, Trooper Hoffman noted in the Affidavit as follows: "I was also informed that the operator had admitted to medical personnel that he had been drinking alcohol prior to the crash. The operator's girlfriend, Tabitha Pepperman was interviewed nearby on August 14, 2010 at approximately 07:45 hours and related that she and Ryan Smith, DOB: 7/10/87 had been drinking alcohol prior to the crash and did enter into a verbal argument. She related that Smith departed her residence in his truck while being upset, and did crash his truck into a tree shortly thereafter."

Defendant argues that the use of the term "prior" is not only impermissibly vague under the circumstances but also misleading in that at least with respect to Ms. Pepperman the Defendant had stopped drinking alcohol approximately six hours prior to the crash. The Court need not address this issue, however, since it concludes that there is sufficient

probable cause for the issuance of the warrant absent the statement from Ms. Pepperman. More specifically, in addition to the one-vehicle crash, the Affidavit also contains information that the Defendant had admitted to medical personnel that he had been drinking alcohol prior to the crash and that the Defendant departed Ms. Pepperman's residence in his truck while being upset and did crash his truck into a tree shortly thereafter.¹

Interpreting the Affidavit of Probable Cause in a common sense and realistic fashion leads the Court to conclude that there was indeed probable cause to believe that the Defendant's medical records would evidence blood alcohol test results which would confirm or refute whether the Defendant had drunk a sufficient amount of alcohol such that he was either incapable of safely driving or had a prohibited amount of alcohol in his blood while driving. First, the Defendant was involved in a one-vehicle crash causing him to be urgently transported to Geisinger Medical Center for treatment of his injuries. There was no evidence that the crash was caused by anything other than the Defendant's conduct or choices. The Defendant admitted on the scene that he had been drinking alcohol prior to the crash. While this could mean any time prior to the crash under the circumstances, the admission suggests that the consumption of alcohol was closer to the time of the crash than later. Finally, the Defendant's girlfriend admitted that the Defendant left her residence in his truck while being upset and did crash his truck into a tree shortly thereafter

Accordingly, Defendant's Motion to Suppress will be denied.

¹ According to the supplemental police report that was marked as Defendant's Exhibit #2, Defendant told medical personnel at the scene that "he had been drinking all night."

ORDER

AND NOW, this ____ day of August 2011 following a hearing and argument on Defendant's Motion to Suppress, said Motion is **DENIED**. Because Defendant's Petition for Habeas Corpus is dependent upon the Motion to Suppress, said Petition for Habeas Corpus is also **DENIED**.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Bradley S. Hillman, Esquire
DA
Gary Weber, Esquire (Lycoming Reporter)
Work File