

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,

PENNSYLVANIA

COMMONWEALTH : No. CR-427-2012  
 :  
 v. :  
 :  
 :  
 KEVIN A. ARMSTRONG, : Omnibus Pre-trial Motion  
 Defendant :

**OPINION AND ORDER**

Before the Court is Defendant's Omnibus Pre-Trial Motion.

Defendant has raised two issues: (1) the police did not have probable cause to believe that the Defendant was operating a vehicle under the influence of alcohol; and (2) Defendant's Constitutional rights were violated when he was questioned without being advised of his Miranda rights.

Hearings were held on June 20<sup>th</sup>, 2012 and July 24<sup>th</sup>, 2012. Following the hearings, the Defendant withdrew the claim that his Constitutional rights were violated when he was questioned without being advised of his Miranda rights.

Trooper Justin Bieber and Trooper Richard Holz of the Pennsylvania State Police Patrol Unit testified on behalf of the Commonwealth. Both Troopers were present when the Defendant was arrested. Troy Geenaway, an employee at Giant Food Store, and Michael Finnerty, the manager of Giant Food Store, also testified on behalf of the Commonwealth. Video surveillance from Giant Food Store on the night in question was also admitted into evidence.

On November 17<sup>th</sup>, 2011, the Defendant drove into the Giant Food

Store parking lot in Loyalsock Township at or around 2:20 a.m. The Defendant parked his vehicle in a handi-cap parking stall and then unsteadily walked into the store. Upon entering the store, the Defendant walked into a display of coffee bags, knocking it to the ground. After hitting the display, the Defendant fell to the ground. Employee Troy Greenaway heard the crash and then noticed the Defendant's feet positioned like he had fallen. Mr. Greenaway approached the Defendant to assess the situation. Mr. Greenaway "knew instantly" that the Defendant "was drunk" based upon several observations. Mr. Greenaway tried to help the Defendant up from the floor.

After a minute passed, Mr. Greenaway realized that the Defendant was too heavy to help to his feet. The Defendant told Mr. Greenaway that his daughter was in the store. Mr. Greenaway found the Defendant's daughter, and by the time the two returned to the Defendant, he had gotten up from the floor. The Defendant was leaning against a shelf or some other object to help him stand.

After the Defendant returned to his feet, Mr. Greenaway told his manager, Michael Finnerty, about the Defendant's actions. Mr. Greenaway returned to his duties while the Manager went to the display where the Defendant had fallen. The Manager testified that when he arrived at the display, the Defendant started to curse at him. The Defendant was yelling and disruptive. Based upon Mr. Finnerty's observations, the Defendant was "definitely under the influence." The Defendant was disruptive, loud, slobbering, spitting, and swaying during their interaction. The Manager called the police for assistance because of the Defendant's behaviors.

Trooper Bieber and Trooper Holz were dispatched to Giant Food Store. Trooper Bieber and Trooper Holz both testified that upon arrival, they noticed the Defendant had blood shot eyes, smelled of an alcoholic beverage, was unsteady on his feet, and slurred his speech. Trooper Bieber immediately suspected that the Defendant was “highly intoxicated.”

Trooper Bieber, along with the Manager, then watched video surveillance of the events that took place both in the parking lot and store. The video showed the Defendant pulling into Giant’s parking lot, improperly parking his vehicle in a handi-cap parking stall, initially stumbling outside of his car, and then walking somewhat unsteadily into the store. While Trooper Bieber was watching the video, Trooper Holz was detaining the Defendant near the exit doors to the store. After watching the video, Trooper Bieber decided to escort the Defendant outside to further investigate. Trooper Bieber testified that while outside, the Defendant clearly displayed signs of intoxication. Eventually, the Defendant was taken into custody and transported to the Lycoming County DUI Center.

With respect to the Defendant’s probable cause argument, following the hearing, Defendant argued only that there was insufficient probable cause to believe that the Defendant was operating a vehicle. Defendant abandoned any argument related to the Defendant being under the influence of alcohol despite much of his Attorney’s questioning during the hearing being related to such.

With respect to the driving issue, Defendant argued that the video does not depict the entirety of the events and does not clearly “show that the

Defendant exited the van from the driver's seat.”

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. Ct. 1995)).

Contrary to the Defendant's argument, the Court finds, based on the totality of the circumstances, that Trooper Bieber and Trooper Holz had probable cause to arrest the Defendant for DUI. The Court finds both Troopers' testimony to be entirely credible. As well, the video clearly corroborated the testimony of the Troopers and other witnesses.

Trooper Bieber has made between 250 to 300 D.U.I. arrests throughout his career. Trooper Holz has made approximately 180 D.U.I. arrests in his career. Both Troopers are familiar with the varied signs of intoxication. Trooper Bieber explained in detail the signs of intoxication that the Defendant displayed. The outward appearance of the Defendant, coupled with his actions in Giant Food Store, gave Trooper Bieber probable cause to believe that Defendant was intoxicated.

Video surveillance of the Defendant driving into the parking lot and improperly parking the car in a handi-cap stall coupled with the Defendant's signs of intoxication gave the Troopers probable cause to believe that the Defendant committed the crime of D.U.I. After the vehicle was parked improperly, the

Defendant exited the vehicle from the driver's side.<sup>1</sup> He appeared to be closer to the front and walked in front of the vehicle. No other passengers exited the vehicle at that time. Though the video surveillance does not depict a clear picture of which door the Defendant exited, the circumstances are sufficient to warrant a person of reasonable caution to believe that the Defendant was the driver. The Defendant's argument is better reserved for trial where the allegedly limited video surveillance as well as perhaps other evidence may be used to argue reasonable doubt.

**ORDER**

AND NOW, this \_\_\_\_ day of July, 2012, the Court DENIES  
Defendant's Omnibus Pre-trial Motion.

By the Court,

\_\_\_\_\_  
Judge Marc F. Lovecchio

cc: CA  
DA  
George Lepley, Esquire  
Gary Weber (Lycoming Reporter)  
Angeline Allen (Intern)  
Work File

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<sup>1</sup> The Commonwealth argued that the Defendant admitted to driving the vehicle. The testimony of the Troopers regarding the events that occurred prior to the Defendant's arrest does not support this contention.