

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**MICHAEL CONFAIR,
Defendant**

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**CR: 1791-2011
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on March 7, 2012. The Motion included a Motion to Suppress and a Motion to Suppress on Scene Identification and In-Court Identification. A hearing on both Motions was held March 29, 2012.

Background

On October 21, 2011, Nicholas Laylon (Laylon) was driving a pick-up truck with a trailer attached when he approached the intersections of West Fourth Street and Campbell Street. As he crossed the intersection, which had flashing yellow lights, his vehicle was struck on the left-hand side by a white Toyota sedan. Laylon was able to see the driver of the sedan for a few seconds. The sedan did not stop at the scene of the accident and Laylon followed the vehicle for several blocks before his own vehicle became disabled. About a minute later Officer Nathan Moyer (Moyer) approached Laylon in his police car and was told by Laylon that he was struck by a white Toyota sedan, and in which direction the vehicle fled. Approximately five (5) minutes later Moyer located a white Toyota Corolla parked in front of 804 Glenwood Avenue. This address was approximately six (6) to eight (8) blocks from the scene of the accident. The vehicle

was registered to the Defendant of 804 Glenwood Avenue. The vehicle had damage to the right front headlight and fender area and Moyer noted that the engine and the brake rotors of the vehicle were still warm.

Moyer knocked on the door of 804 Glenwood Avenue and after a few minutes the Defendant answered. Defendant refused to identify himself. Moyer noticed that the Defendant smelled of alcohol, had a swaying stance, and had slurred speech. During the course of the conversation the Defendant had walked onto the porch of his residence while holding a bottle of wine. While on the porch, Moyer placed handcuffs on the Defendant. Laylon was then transported to 804 Glenwood Avenue and from the sidewalk made an identification of the vehicle and the Defendant. During the identification the Defendant was on the porch in handcuffs and a light was shown on him so that Laylon could make the identification. Laylon said that the identification was made approximately ten (10) minutes after the accident and that he specifically remembered Defendant's glasses and type of haircut. After the identification, Defendant was escorted to a police vehicle and transported to the DUI Center at the Williamsport Hospital and Medical Center.

The Defendant testified at the Suppression hearing on his own behalf. Defendant stated that when he answered the door Moyer ordered him from the residence and then immediately placed him in handcuffs and escorted him to a police car. Further, Defendant testified that he never saw Laylon and believes he was never brought to 804 Glenwood Avenue to make an identification.

Motion to Suppress Evidence

Defendant argues that police went to Defendant's residence and arrested him without a warrant and inside the residence by ordering that he come out of the residence and taking him into custody on the front porch. Further, Defendant argues that Defendant did not have probable cause for an arrest. Generally, for an arrest to be lawful, it must occur pursuant to a warrant. "Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." In re C.J.J., 2002 Pa. Super. 149, 799 A.2d 116, 121 (Pa. Super. 2002). "Probable cause justifying a warrantless arrest is determined by the 'totality of the circumstances.'" Id. (quoting Commonwealth v. Myers, 1999 Pa. Super. 41, 728 A.2d 960, 962 (Pa. Super. 1999)).

In Fickes, police responded to a hit and run accident. Commonwealth v. Fickes, 2009 Pa. Super. 64, 969 A.2d 1251, 1253 (Pa. Super. 2009). Police received a description of the vehicle from a witness and then followed where they believed the vehicle was heading based upon skid marks. Police discovered a stop sign that had been struck by a vehicle approximately a mile down the road. Police then found a vehicle that matched the description and noted that there were wet tire tracks leading into the garage, that the engine of the car was emitting a ticking sound, that there was damage to the hood of the vehicle, and that the car had struck two coaches in the garage area. The Court stated that "we conclude that after viewing the scene of the initial hit and run, the pushed over stop sign, and the condition of the vehicle in the garage with one couch pinned against the wall and another leaning on its hood, Officer Ross possessed probable cause to suspect that Appellant had been driving under the influence." Id. at 1258.

In this case there are many factors for the court to consider in the totality of the circumstances. First, a white Toyota sedan caused an accident by going through the red flashing lights of a traffic intersection at approximately 1:30 AM. Second, the white Toyota sedan fled the scene of the accident. Third, a vehicle was found that matched the description given by Laylon and had damage to the right front headlight and fender area. Fourth, the vehicle appeared to have just been running because Moyer noticed that the engine and the brake rotors of the vehicle were still warm. Finally, Moyer checked the registration of the vehicle and determined that it was registered to Defendant of 804 Glenwood Avenue. Moyer knocked on the door of the address and was confronted by the Defendant, who smelled of alcohol, had a swaying stance, had slurred speech, and refused to disclose his name. The Court finds that in the totality of the circumstances, that Moyer did, at that moment, have probable cause for the charge of Driving Under the Influence.

Defendant argues that his arrest occurred inside his residence by Moyer ordering him out of the residence and taking him into custody on the front porch. This Court found the testimony of Moyer, which was corroborated in part by Laylon, to be more reliable. Therefore, the Court believes that Defendant exited his residence onto his front porch on his own during the course of the conversation with Moyer. Accordingly, Defendant's motion to suppress the arrest has no merit and will be denied.

Moreover, the Court believes that even if the arrest occurred inside the residence that it would be justified as an arrest pursuant to exigent circumstances. In a private home, searches and seizures without a warrant are presumptively unreasonable. Arizona v. Hicks, 480 U.S. 321, 327 (1987). Absent probable cause and exigent circumstances, the entry of a home without a warrant is prohibited under the Fourth Amendment. Payton v. New York, 445 U.S. 573, 583-90

(1980). In determining whether exigent circumstances exist, a number of factors are to be considered:

(1) the gravity of the offense, (2) whether the suspect is reasonably believed to be armed, (3) whether there is above and beyond a clear showing of probable cause, (4) whether there is strong reason to believe that the suspect is within the premises being entered, (5) whether there is likelihood that the suspect will escape if not swiftly apprehended, (6) whether the entry was peaceable, and (7) the time of the entry, i.e., whether it was made at night. These factors are to be balanced against one another in determining whether the warrantless intrusion was justified.

Commonwealth v. Wagner, 468 Pa. 548, 557, 406 A.2d 1026, 1031 (1979).

In Fickes, the Superior Court stated that “while a DUI is a misdemeanor it was one of the few, if not only misdemeanors, that results in over 500 deaths per year in our Commonwealth. Of course we gravely view an offense with such deleterious effects. Consequently, we conclude that the gravity of the offense was high.” Commonwealth v. Fickes, 2009 Pa. Super. 64, 969 A.2d 1251, 1258 (Pa. Super. 2009) (citations omitted). Second, Moyer had a strong reason to believe that the perpetrator entered the premises. The vehicle matching the description of Laylon was parked outside the residence, the vehicle was registered to that address, the vehicle’s engine and brake rotors were still warm, and the vehicle had damage consistent with the hit-and-run accident.

Third, the entry would have been peaceable. Moyer knocked on the door for numerous minutes before the Defendant answered. Fourth, even though the entry would have been made at night, it would have been done without surprise to Defendant. Moyer arrived in uniform and in a marked police car. Defendant stated that he knew that police were outside his house before answering the door several minutes later. See Fickes at 1259; See also Commonwealth v. Dommel, 2005 Pa. Super. 333, 885 A.2d 998 (Pa. Super. 2005).

Finally, as stated in Fickes, evidence necessary to establish a defendant's guilt of DUI is a blood alcohol content test, which "there is a high likelihood that the evidence would be destroyed by any number of means in the time it took the police to secure a warrant." Fickes at 1259. Including the fact that probable cause existed, six (6) out of the seven (7) factors weigh towards a justified warrantless intrusion. Weighing the factors listed, the Court concludes that there would have been exigent circumstances for a warrantless entry if one did indeed take place.

Motion to Suppress on Scene Identification and In-Court Identification

Defendant argues that the identification of the Defendant was the product of an illegal arrest and was unduly suggestive. Further, Defendant wants this Court to preclude Laylon from identifying the Defendant at trial for the same reasons listed above. The Court must determine then whether under the totality of the circumstances, the identification was reliable. McElrath v. Commonwealth, 405 Pa. Super. 431, 592 A.2d 740, 742 (Pa. Super. 1991). "Absent some special element of unfairness, a prompt one-on-one identification is not so suggestive as to give rise to an irreparable likelihood of misidentification. Commonwealth v. Brown, 417 Pa. Super. 165, 171, 611 A.2d 1318, 1321 (Pa. Super. 1992). The fact that an identification occurred with the defendant in handcuffs does not render the identification improper. Id. Factors to determine whether the victim had an independent basis for an in-court identification include:

The opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior to description of the criminal, the level of certainty demonstrated by the witness at the confrontation and the length of time between the crime and the confrontation.

Commonwealth v. Slaughter, 482 Pa. 538, 546, 394 A.2d 453, 457 (1978).

As discussed, the arrest of Defendant was not illegal, but the result of probable cause. Therefore, the Court is left to determine if the identification was unduly suggestive. Here, Laylon saw the Defendant for a few seconds during the accident; he stated he specifically remembered Defendant's glasses and haircut. Laylon also explained he was able to see Defendant even though it was dark and without obstruction from the car windows due to the lighting in the intersection. Also, Laylon unhesitantly made the identification of Defendant about ten (10) minutes after the accident. The fact that Defendant was handcuffed and offered to Laylon does not in these circumstances necessarily constitute elements of unfairness. See Commonwealth v. Allen, 287 Pa. Super. 88, 429 A.2d 1113, 1121 (Pa. Super. 1981). Therefore, the Court finds that the identification was not unduly suggestive. Further, the Court finds that Laylon has an independent basis for in-court identification for the aforestated reasons.

ORDER

AND NOW, this ____ day of May, 2012, based upon the foregoing Opinion, the Court finds that probable cause existed for the Defendant's arrest and that the identification of Defendant by the eyewitness was not unduly suggestive. Therefore, the Defendant's Motion to Suppress and Motion to Suppress on Scene Identification and In-Court Identification are DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter T. Campana, Esquire
Gary Weber