

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-893-2013
v.	:	
	:	
ALBERTO HERNANDEZ,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On November 6, 2013, the Defendant filed a Motion to Suppress Evidence. On February 6, 2014, the Defendant's motion was dismissed because the Defendant was not present at the hearing on the motion. On February 12, 2014, the Defendant filed a Motion for Reconsideration / Motion to Schedule a Suppression Hearing. This Court granted the Defendant's motion, and a suppression hearing was held on May 6, 2014.

I. Background

On May 6, 2013, Pennsylvania State Police (PSP) Trooper Rosboschil (Rosboschil) was operating a marked patrol car on State Route 180 near exit 13. PSP Trooper Doebler (Doebler) was his partner that day. Rosboschil followed a black SUV travelling east on State Route 180. As Rosboschil drove closer to the vehicle, he had the headlights of the patrol car on high beam. Both Rosboschil and Doebler observed the vehicle slow down rapidly for no apparent reason. They then saw the vehicle twice cross the broken white lane line. The troopers observed the vehicle change lanes without using a turn signal. Rosboschil followed the vehicle onto the ramp for exit 13B, where the vehicle twice crossed the fog line. The vehicle then came unusually close to a concrete barrier. It was at this point that the troopers stopped the vehicle.

Rosboschil and Doebler approached the vehicle and began talking with the operator, identified as Alberto Hernandez (Defendant). Both troopers noticed that the Defendant had

glassy eyes, slurred speech, and an odor of alcohol emitting from the his breath. While standing alongside the vehicle, Rosboschil saw an open beer can in the vehicle's center console. The troopers also saw the butt of a handgun sticking out from the center console. Doebler reached into the vehicle and secured the handgun.

As the Defendant exited the vehicle, Rosboschil noticed that the Defendant was unsteady on his feet and swayed when he walked. Rosboschil asked the Defendant to perform field sobriety tests, which, in Rosboschil's estimation, the Defendant did not pass. The Defendant said that he had been drinking at a bar but did not remember the name of the bar. Rosboschil placed the Defendant under arrest for Driving under the Influence of Alcohol.¹ The Defendant was transported to Muncy Hospital to have his blood drawn in order to determine his blood alcohol content; he did not consent, so a sample of his blood was not drawn.

The Defendant was charged with Firearms not to be Carried without a License,² Driving under the Influence of Alcohol,³ Driving without a License,⁴ Driving on Roadways Lanes for Traffic,⁵ Careless Driving,⁶ and Restriction on Alcoholic Beverages.⁷

In his Motion to Suppress Evidence, the Defendant argues that no probable cause existed for the traffic stop as there was nothing inappropriate, unlawful, or dangerous about the manner in which the Defendant operated his vehicle. The Defendant also argues that no probable cause existed to require the Defendant to submit to field sobriety tests or to supply a blood sample.

¹ 75 Pa. C.S. § 3802(a)(1).

² 18 Pa. C.S. § 6106.

³ 75 Pa. C.S. § 3802(a)(1).

⁴ 75 Pa. C.S. § 1501(a).

⁵ 75 Pa. C.S. § 3309(1).

⁶ 75 Pa. C.S. § 3714(a).

⁷ 75 Pa. C.S. § 3809(a).

II. Discussion

A. The Troopers Lawfully Stopped the Defendant's Vehicle Because They had Reasonable Suspicion that the Defendant was Driving under the Influence.

“Whenever a police officer . . . has reasonable suspicion that a violation of [Title 75] is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle’s registration, proof of financial responsibility, vehicle identification number or engine number or the driver’s license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.” 75 Pa. C.S. § 6308(b). In Commonwealth v. Chase,⁸ the Supreme Court of Pennsylvania held that a vehicle stop does not violate an individual’s right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution when a police officer has (1) reasonable suspicion that a violation of Title 75 is occurring or has occurred and (2) an expectation that the stop will allow light to be shed on the relevant matters. Chase, 960 A.2d at 115 and 120-21. “Extensive case law supports the conclusion a vehicle stop for DUI may be based on reasonable suspicion, as a post-stop investigation is normally feasible.” Chase, 960 A.2d at 116. “In order to determine whether the police officer had reasonable suspicion, the totality of the circumstances must be considered.” Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004).

Here, the totality of circumstances shows that the troopers had reasonable suspicion to believe that the Defendant was driving under the influence. They observed the Defendant’s vehicle slow down rapidly on a highway for no apparent reason. The vehicle twice crossed the broken white lane line, changed lanes without using a turn signal, and twice crossed the fog line. The troopers also observed the vehicle drive unusually close a concrete barrier. Because

⁸ 960 A.2d 108 (Pa. 2008).

Rosboschil and Doebler had reasonable suspicion that the Defendant was driving under the influence, the Court finds that the stop of the Defendant's vehicle was lawful.

During the hearing on the Motion to Suppress, the Defendant argued that the reason for his poor driving was the high beams behind him from the troopers' patrol car. Specifically, he argued that he switched lanes without a turn signal because he wanted to quickly exit the highway in order to get away from the car behind him with the high beams. Video taken by the dashboard camera in the troopers' car shows that the troopers followed the Defendant from before Exit 13A to the middle of the ramp of Exit 13B. If the Defendant felt that he needed to exit the highway to escape the high beams, he could have used Exit 13A. In addition, the ramp of Exit 13B is curved. Video from the dashboard camera shows that the Defendant's vehicle crossed the fog line on the ramp where the curve would have prevented the high beams from reflecting off the vehicle's mirrors. For the foregoing reasons, this Court is not persuaded by the Defendant's explanation.

B. The Troopers were Justified in Asking the Defendant to Perform Field Sobriety Tests Because They had Reasonable Suspicion that the Defendant was Driving under the Influence of Alcohol.

“Under Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), an officer may stop and briefly detain an individual in order to conduct a limited investigation if the officer has a reasonable suspicion, based on specific and articulable facts that criminal activity is afoot.” Commonwealth v. Ragan, 652 A.2d 925, 929 (Pa. Super. 1995). “[A court] must look to the totality of the circumstances to determine whether the officer had reasonable suspicion that criminal activity was afoot.” Commonwealth v. Cauley, 10 A.3d 321, 326 (Pa. Super. 2010) (quoting Commonwealth v. Barber, 889 A.2d 587, 593 (Pa. Super. 2005)). Reasonable suspicion

that a person is driving under the influence justifies an officer's request for the person to perform field sobriety tests. See Ragan, 652 A.2d at 929; Commonwealth v. Toanone, 553 A.2d 998, 1000 (Pa. Super. 1989); Cauley, 10 A.3d at 326-27.

As discussed in the previous section, the Court found that Rosboschil and Doebler had reasonable suspicion that the Defendant was driving under the influence before they stopped the Defendant's vehicle. The troopers' observations of the Defendant after they stopped him added to the suspicion. These observations included the Defendant's glassy eyes, the slurred speech, and the odor of alcohol coming from the Defendant's breath. The troopers noticed that the Defendant was both unsteady on his feet and swayed when he walked. They further observed an open beer can in the Defendant's vehicle. As all of these additional details supported the troopers' belief that the Defendant was driving under the influence of alcohol, they were justified in asking the Defendant to perform field sobriety tests.

C. The Troopers' Request for the Defendant to Supply a Blood Sample was Lawful Because there was Probable Cause that the Defendant was Driving under the Influence.

The existence of probable cause that a person is driving under the influence suffices as a constitutional basis for a blood test. Commonwealth v. Cieri, 499 A.2d 317, 324 (Pa. Super. 1985). "To determine whether probable cause exists . . . [a court] must consider the totality of the circumstances." Commonwealth v. Clark, 735 A.2d 1248, 1252 (Pa. 1999).

Here, the totality of circumstances supports that there was probable cause for the troopers to believe that the Defendant was driving under the influence of alcohol. In addition to all of the troopers' observations regarding the Defendant's driving and appearance, the Defendant failed field sobriety tests. The troopers' observations along with the failed sobriety tests established probable cause that the Defendant was driving under the influence of alcohol. Because there was

probable cause that the Defendant was driving under the influence of alcohol, the troopers' request for a blood sample was lawful.

III. Conclusion

The stop of the Defendant's vehicle was lawful because the troopers had reasonable suspicion that the Defendant was driving under the influence. The request for the Defendant to perform field sobriety tests was lawful because the troopers had reasonable suspicion that the Defendant was driving under the influence of alcohol. The request for the Defendant to supply a blood sample was lawful because there was probable cause that the Defendant was driving under the influence of alcohol.

ORDER

AND NOW, this _____ day of July, 2014, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress Evidence be hereby DENIED.

By the Court,

Nancy L. Butts, President Judge