

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1587-2013
	:	
vs.	:	CRIMINAL DIVISION
	:	
	:	
JACOB SCAMPONE, Defendant	:	Motion to Suppress
	:	

OPINION AND ORDER

Defendant is charged with Driving Under the Influence and related offenses as a result of an incident that allegedly occurred on May 9, 2013.

Officer Kevin Grant of the South Williamsport Police Department was on duty on May 9, 2013. He was dispatched to the scene of a vehicle accident. He arrived at the scene shortly before midnight.

While at the scene, he saw that a pickup truck had hit a utility pole and then turned over. While speaking with eyewitnesses, he obtained a description of the driver. One of the eyewitnesses knew the name of the owner and driver of the pickup truck. While he remained on scene to complete the accident investigation, another officer traveled throughout the adjacent area looking for the suspect.

Once Officer Grant “cleared” the scene, he did an immediate search around the area and after finding nothing, he got in his patrol vehicle and drove around the area looking for the driver.

At approximately 1:00 a.m., he encountered Defendant walking eastbound on the 200 block of West Southern Avenue. He saw that Defendant was having a very difficult time walking. He was unsteady and stumbling. He drove his police vehicle around the block and made contact with Defendant. Upon making contact Defendant identified himself by

name. Officer Grant immediately observed that Defendant had slurred speech, the odor of an alcoholic beverage on him and vomit on him as well.

It appeared to Officer Grant that Defendant could not stand without swaying and might actually hurt himself unless he sat down. Accordingly, Officer Grant asked the Defendant to take a seat. Defendant sat down on a grassy area while Officer Grant was several feet away on the sidewalk.

Almost instantaneously, Defendant told Officer Grant and Officer Thompson, who had arrived by that time, that he was going to jail. He then laid on his stomach and put his hands behind his back.

The officers inquired as to why Defendant believed he was going to jail at which point Defendant indicated that he had wrecked his truck. Defendant remained lying on the ground when his wife arrived. There were “other instances between” Defendant and his wife.

While Defendant was lying on the ground, he was engaged in conversation with the officers. Officer Grant asked him why he fled the scene to which Defendant responded “I don’t know.” Officer Grant also asked him if he had anything to drink between the time of the accident and “now” to which Defendant said no.

Approximately 20 minutes passed between the time that Officer Grant first encountered Defendant and EMS personnel arrived. Once EMS personnel arrived, they attended to Defendant and transported him to the hospital. While Defendant was laying on the ground, the officers were standing near him approximately two feet away.

Both of the officers were in full uniform. Defendant, however, was not placed

under arrest nor was he told he was under arrest. He was never physically handled by either of the officers. He was not placed on the ground or placed in any patrol unit. He was not asked to perform any field sobriety tests, wasn't handcuffed and wasn't compelled to perform any breath tests. While the officers were with him, their major concern was Defendant's personal safety given his severely intoxicated state.

Through a Motion to Suppress filed on November 21, 2013, Defendant claims that his statement to the police that he had nothing to drink between the time of the accident and his encounter with police, should be suppressed because Defendant was not provided any Miranda¹ warnings.

A hearing on this matter was held on January 6, 2014. Following the hearing, Defendant orally amended his Motion to include a request that the Court suppress his statement to the police that he did not know why he fled the scene to also be suppressed because he was not mirandized.

At the hearing in this matter on January 6, 2014, Officer Grant testified to the facts as set forth above. As well, the Commonwealth submitted Exhibit "1" which is the Commonwealth of Pennsylvania Police Crash Reporting form prepared by Officer Grant.

"Miranda warnings are only required in a custodial interrogation."
Commonwealth v. Housman, 604 Pa. 596, 986 A.2d 822, 839 (2006)(citations omitted). In determining whether an individual is in custody, the court examines the totality of the circumstances using an objective standard with due consideration being given to the reasonable impression conveyed to the person being interrogated rather than the subjective

¹ Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966).

view of the police officers or the person being seized, but the ultimate inquiry is whether there was a formal arrest or restraint on freedom of movement as to constitute the functional equivalent of an arrest. Commonwealth v. Pakacki, 587 Pa. 511, 901 A.2d 983, 987-988 (2006).

Although the police were asking Defendant questions and Defendant's responses certainly incriminated him, the Court cannot conclude that the Defendant was undergoing custodial interrogation. In viewing the totality of the circumstances, the Defendant was not subjected to such coercive conditions that he would reasonably believe that he was under arrest. Instead, he was merely subject to an investigative detention.

When the police first encountered Defendant, he was stumbling down a public sidewalk. It was incumbent upon the police to interact with Defendant for two purposes: (1) to determine whether Defendant was a potential harm to himself or others; and (2) to investigate the prior accident. The initial interaction was a matter of seconds before Defendant was asked, not directed, to sit down for his own safety. When Defendant sat down, Officer Grant was several feet away. Officer Grant did not tell Defendant he was under arrest, he did not display any weapon, and he did not place Defendant in handcuffs or in a more private area such as the back of his police cruiser.

Apparently, Defendant, in his own mind, believed that he had committed wrongdoing. He acknowledged that he wrecked his truck and he was going to jail. Although he prostrated himself on the ground and put his hands behind his back in an arrest position, such was not done at the direction of the police. Moreover, the police did not follow through with Defendant's suspected belief. They did not arrest him or even transport him to the

hospital for chemical testing of his blood. Instead, Defendant was taken to the hospital by EMS personnel.

During the approximately 20 minutes while Defendant was lying on the ground, Defendant was engaged in continued conversation, much of which he initiated. Defendant's wife came to the scene and engaged Defendant in conversation as well. The police committed no conduct whatsoever toward him and made no statement whatsoever toward him which would lead a reasonable person to believe that he was under arrest or that his freedom of action was being restricted in the manner functionally equivalent to an arrest.

Accordingly, the Court finds that Miranda warnings were not required and that Defendant's statements should not be suppressed.

ORDER

AND NOW, this ____ day of January 2014 following a hearing and upon consideration of Defendant's Motion to Suppress, said Motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (AC)
PD (JF)
Gary Weber, Lycoming Reporter
Work file