

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**JEREMY WRIGHT,
Defendant**

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**CR: 1224-2013
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on November 5, 2013. A hearing on the motion was held on December 5, 2013.

Background

On May 9, 2013, at approximately 11:25 PM, Trooper Adam Kirk (Kirk) of the Pennsylvania State Police was at the intersection of Arch Street and Reach Road when he observed a gold Chevy Cavalier pull out of a driveway. The vehicle exited the driveway in reverse at a high rate of speed and did not yield to traffic. The operator then hit the brakes and proceeded forward while fishtailing into the oncoming lane. Kirk followed the vehicle for approximately a quarter of a mile and activated his lights on his marked police vehicle. The Chevy Cavalier was stopped in order to issue citations for violations of the Vehicle Code.

Kirk identified Jeremy Wright (Defendant) as the driver of the vehicle. Kirk observed that the Defendant had blood shot eyes and an odor of alcohol emanating from his person. Kirk also saw that the Defendant had a prescription bottle of Hydrocodone in the cup holder of his vehicle; the Defendant handed the bottle to him. The Defendant performed field sobriety tests on a sidewalk; Kirk requested the walk and turn test and the one leg stand test. Since the Defendant failed to perform the tests satisfactory he was placed under arrest for driving under the influence of alcohol. In securing the Defendant's vehicle, Kirk returned the prescription bottle of

Hydrocodone to the center console of the Defendant's vehicle and while there he observed a blue glass pipe and a plastic bag containing marijuana. Kirk had not been given consent to search the vehicle by the Defendant and testified he was solely concerned with securing the prescription due to its sellable nature.

The Defendant was charged with Possession of Small Amount of Marijuana,¹ Possession of Drug Paraphernalia,² Driving Under the Influence of Alcohol,³ Entering Vehicle or Crossing a Roadway,⁴ Careless driving,⁵ and Reckless Driving.⁶ The Defendant filed an Omnibus Pre-Trial Motion raising three issues: 1) whether the vehicle stop was legitimate; 2) whether there was reasonable suspicion and probable cause to believe the Defendant committed Driving Under the Influence of Alcohol; and 3) whether the discovery of the pipe and marijuana was legal.

Motion to Suppress

1. Whether the vehicle stop was legal.

The first issue alleged by the Defendant is whether Kirk had reasonable suspicion or probable cause to stop the Defendant's vehicle. Kirk testified that the Defendant's vehicle reversed out of a driveway at a high rate of speed and without yielding to traffic. In addition, the vehicle fishtailed into the oncoming lane as it drove forward. The Defendant was charged with three summary traffic offenses, which were Entering Vehicle or Crossing a Roadway, Careless Driving, and Reckless Driving.

The offense of Entering Vehicle or Crossing Roadway states that "[t]he driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield

¹ 35 P.S. § 780-113(a)(31)(i).

² 35 P.S. § 780-113(a)(32).

³ 75 Pa.C.S. § 3802(a)(1).

⁴ 75 Pa.C.S. § 3324.

⁵ 75 Pa.C.S. § 3714(a).

⁶ 75 Pa.C.S. § 3736.

the right-of-way to all vehicles approaching on the roadway to be entered or crossed.” An individual commits offense of Careless Driving if he “drives a vehicle in careless disregard for the safety of persons or property.” Finally, an individual commits Reckless Driving if he “drives any vehicle in willful or wanton disregard for the safety of persons or property.” Based upon Kirk’s testimony, which the Court finds credible, the Court finds that he had probable cause to believe a violation of the Motor Vehicle Code had occurred and legally stopped the Defendant.

2. *Whether there was reasonable suspicion and probable cause for Driving Under the Influence of Alcohol.*

The second issue raised by the Defendant is whether Kirk had reasonable suspicion and/or probable cause for the offense of Driving Under the Influence of Alcohol. Reasonable suspicion is decided by the court after a review of the totality of the circumstances and a finding that the facts support a reasonable belief that the law is being broken. Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007). “In making this determination, we must give ‘due weight . . . to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Id. (citing Commonwealth v. Cook, 735 A.2d 673, 76 (Pa. 1999)). To establish reasonable suspicion the officer must be able to articulate specific observations that led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Commonwealth v. Little, 903 A.2d 1269, 1272 (Pa. Super. 2006).

To clarify, the Defendant had already been stopped due to traffic violations; therefore the officer only needed reasonable suspicion to further investigate whether the Defendant had committed the offense of Driving Under the Influence. Here, Kirk observed that the Defendant had blood shot eyes and an odor of alcohol emanating from his person. When considered

alongside the traffic violations committed by the Defendant and the time of night, Kirk had reasonable suspicion that the Defendant had been consuming alcohol and driving. Therefore, Kirk had reasonable suspicion to conduct field sobriety tests on the Defendant.

Next, the Court needs to determine whether the officer had probable cause to arrest the Defendant for the offense of Driving Under the Influence of Alcohol. “Probable cause exists where the officer has knowledge of sufficient facts and circumstances to warrant a prudent person to believe that the driver has been driving under the influence of alcohol or a controlled substance.” Commonwealth v. Hilliar, 943 A.2d 984, 994 (Pa. Super. 2008). The Court determines probable cause by considering all the relevant facts under a totality of the circumstances analysis. Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007). “A police officer may utilize both his experience and personal observations to render an opinion as to whether a person is intoxicated.” Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008). “Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.” Commonwealth v. Cook, 865 A.2d 869, 875 (Pa. Super. 2004) (citing Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004)).

Here, the Court finds that Kirk had probable cause to arrest the Defendant for Driving Under the Influence of Alcohol. In addition to the Motor Vehicle Code violations, the Defendant had failed to complete the field sobriety tests in a satisfactory manner. Further, as already discussed, the Defendant had blood shot eyes and had an odor of alcohol emanating from his person. Based on the totality of the circumstances, Kirk had probable cause to arrest the Defendant.

3. *Whether the officer lawfully searched the Defendant's vehicle.*

The final issue raised by the Defendant is whether Kirk lawfully searched his vehicle. Here, the Commonwealth has acknowledged that the officer did not receive consent to open the middle console of the vehicle but contends that it was part of an inventory search. Generally, a search warrant is required before police may conduct any search or seizure. Commonwealth v. White, 669 A.2d 896, 900 (Pa. 1995). One of the exceptions to a search warrant is an inventory search.

The inventory search exception is not meant to uncover criminal evidence but to protect the owner's property while it remains in police custody. "An inventory search of an automobile is permissible when (1) the police have lawfully impounded the vehicle; and (2) the police have acted in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of the impounded vehicle." Commonwealth v. Lagenella, 2013 Pa. LEXIS 3250 (Pa. December 27, 2013).

In determining whether a proper inventory search has occurred, the first inquiry is whether the police have lawfully impounded the automobile, i.e., have lawful custody of the automobile. The authority of the police to impound vehicles derives from the police's reasonable community care-taking functions. Such functions include removing disabled or damaged vehicles from the highway, impounding automobiles which violate parking ordinances (thereby jeopardizing public safety and efficient traffic flow), and protecting the community's safety.

The second inquiry is whether the police have conducted a reasonable inventory search. An inventory search is reasonable if it is conducted pursuant to reasonable standard police procedures and in good faith and not for the sole purpose of investigation. Id. (citing South Dakota v. Opperman, 428 U.S. 364 (1976)). In Lagenella, the Pennsylvania Supreme Court rejected to announce a rule "providing that police can conduct an inventory search of a vehicle that is immobilized and/or going to be towed unless the vehicle can still be operated and a person is present who is authorized to move the vehicle." See Commonwealth v.

Thompson, 999 A.2d 616 (Pa. Super. 2010). Instead, the Supreme Court held that “a vehicle which has simply been immobilized in place is not in the lawful custody of police for purposes of an inventory search.” The Supreme Court then cited numerous cases that explained that an inventory search is only appropriate when a vehicle has been impounded.⁷ See Colorado v. Bertine, 479 U.S. 367 (1987) (finding that a vehicle is in lawful police custody for purposes of an inventory search only when the vehicle has been impounded); South Dakota v. Opperman, 428 U.S. 364 (1976) (ruling that an inventory search was proper because it was done after the car had been impounded).

Here, the Court finds the inventory search improper solely based on the fact that the vehicle was never towed or impounded. The Defendant’s vehicle had been searched immediately after he had been arrested for Driving Under the Influence of Alcohol. The vehicle had not been towed and was not impounded, two conditions the Pennsylvania Supreme Court have clearly required for an inventory search to be conducted.

The Commonwealth relies on Brandt, where police searched a car that was in an accident and was going to be towed away from the scene. Commonwealth v. Brandt, 366 A.2d 1238 (Pa. Super. 1976). Applying the general law discussed above, the Superior Court found that the vehicle was lawfully within the custody of the police, even though the vehicle had not been towed or impounded, and that the search was in fact an inventory search. In a footnote the Superior Court stated that an inventory search may be taken prior to the vehicle being towed. Based on Lagenella, this holding in Brandt is no longer good law.

Further, the facts in this case are distinguishable from Brandt. In Brandt, the vehicle was searched prior to being towed to an impound lot; however, it was the officer’s intent to have it

⁷ The Pennsylvania Supreme Court unequivocally held “a warrantless inventory search of a vehicle is permissible only when the police have lawfully towed and stored, or impounded the vehicle. To the extent Thompson hold otherwise, that decision is disapproved.”

impounded. Here, the officer never testified that he had intent to tow or impound the Defendant's vehicle. The officer did not conduct an inventory search of the vehicle, but merely opened the middle console of the vehicle to place the Defendant's prescription. During the hearing the officer never stated that his intent in opening the middle console of the vehicle was to conduct an inventory search.

Finally, the officer had multiple options for hiding the prescription bottle within the vehicle for safety concerns besides opening up closed compartments in the vehicle. Even if the officer believed he could not have just given the legally obtained prescription back to the Defendant to hold, he could have just placed the prescription under a seat or floor mat in the vehicle. Since the officer had alternatives to conceal the bottle, his actions while well meaning, exceeded his lawful authority and infringed on the Defendant's constitutional rights.

ORDER

AND NOW, this _____ day of February, 2014, based upon the foregoing Opinion, Defendant's Omnibus Pre-Trial Motion is hereby GRANTED in part and DENIED in part. This Court finds that the Defendant's vehicle was legally stopped and that the officer had probable cause to arrest him for driving under the influence of alcohol. The officer, however, did not conduct a legal inventory search of the Defendant's vehicle. Accordingly, it is ORDERED and DIRECTED that any evidence found as a result of searching the Defendant's vehicle, which includes a glass pipe and a bag of marijuana, is hereby SUPPRESSED. In all other regards, the Defendant's Omnibus Pre-trial Motion is DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter T. Campana, Esq.
Eileen Dgien, Dep. CA