

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-500-2014
	:
vs.	:
	:
	: <b>Opinion and Order re</b>
MELISSA TAYLOR,	: <b>Defendant's Omnibus Pre-trial Motion</b>
Defendant	:

**OPINION AND ORDER**

By Information filed on April 11, 2014, Defendant is charged with one count of Driving Under the Influence of Alcohol (incapable of safely driving/refusal), a misdemeanor of the first degree, Resisting Arrest, a misdemeanor of the second degree, Recklessly Endangering Another Person, a misdemeanor of the second degree, and Disorderly Conduct, a misdemeanor of the third degree. Defendant is also charged with numerous summary offenses including, but not limited to, Driving While Operating Privilege Suspended or Revoked. The charges arise out of an incident on February 3, 2014 when Defendant was stopped by police for allegedly speeding.

On May 13, 2014, Defendant filed an Omnibus Pretrial Motion, which included Motions to Dismiss (Writs of Habeas Corpus) with respect to the DUI, Resisting Arrest, Recklessly Endangering, Disorderly Conduct and one of the Driving Under Suspension charges.

A hearing was first held on July 17, 2014. At the hearing, however, the Commonwealth conceded that it erred in failing to subpoena the affiant. As a result and upon agreement of the parties, the hearing was continued. Nonetheless, the parties introduced, as Commonwealth's Exhibit 1, the transcript of the preliminary hearing held on March 26, 2014

before Magisterial District Judge Jerry Lepley. Furthermore, and upon stipulation of the parties, it was agreed that Count 9, Driving While Operating Privileges Suspended or Revoked (DUI Related) would be dismissed.

The next hearing was held on September 29, 2014. Trooper Edward Dammer of the Pennsylvania State Police testified on behalf of the Commonwealth. The Court also viewed C-2 which is the in-car video recording of the interaction with Defendant on the roadway. The following facts were established through both the preliminary hearing and omnibus hearing testimony, as well as the video recording.

On February 3, 2014, Trooper Dammer was on patrol, monitoring traffic and running radar on State Route 220 in the area of Spook Hollow Road. That roadway is posted for a speed of 55 mph. He observed Defendant's vehicle approaching him at a high rate of speed. Using his handheld radar, he clocked Defendant's speed at 73 mph.

Prior to Defendant's vehicle reaching him, Trooper Dammer activated his emergency lights and siren. Nonetheless, Defendant's vehicle passed right by him not slowing down at all. Trooper Dammer thus pursued the vehicle.

Despite Trooper Dammer pursuing the vehicle while his emergency lights and siren were activated, the vehicle did not pull over for approximately one minute and/or one mile further down the roadway. Defendant's vehicle passed numerous locations where she could have safely pulled over.

Trooper Dammer approached Defendant and asked for her license, registration and insurance. Defendant failed to provide any of these items but identified herself. Trooper Dammer confirmed Defendant's identity via his patrol vehicle's computer

and determined that she was operating the vehicle under a DUI suspension.

Trooper Dammer then returned to Defendant's vehicle. He noticed an odor of an alcoholic beverage. There were no other occupants of the vehicle. According to Trooper Dammer, he "smelled alcohol coming from her."

Trooper Dammer directed Defendant to exit her vehicle to perform field sobriety tests. Trooper Dammer smelled an alcoholic beverage on Defendant's person. Defendant denied drinking any alcoholic beverages. Trooper Dammer administered an HGN (horizontal gaze nystagmus) test, the OLS (one legged stand) and the WAT (walk and turn) standard field sobriety tests. According to Trooper Dammer, Defendant failed the field sobriety tests "giving indicators that she was under the influence of alcohol."

Trooper Dammer spoke with Defendant briefly. He allowed Defendant to get back into her car because it was rather cold out. Trooper Dammer then returned to his vehicle and called the Tiadaghton Valley Regional Police Department to request a Portable Breath Test (PBT) unit. Once an officer arrived with the PBT, he explained it to Defendant while she was seated in her vehicle and she refused to take it.

Trooper Dammer subsequently advised Defendant that she was under arrest for suspicion of driving under the influence. She started to become argumentative and refused to get out of her car by gripping the steering wheel. Another officer tried to remove the keys from the vehicle at which time Defendant grabbed the officer by his arm. Defendant continued to resist by not complying. Trooper Dammer then physically removed Defendant from the vehicle by pulling her out by her left arm.

Defendant struggled with and tried pulling away from Trooper Dammer and had to be physically restrained. Trooper Dammer attempted to complete handcuffing Defendant. She then attempted to run away from Trooper Dammer and the other officers across Route 220 highway into oncoming traffic, which included a tractor trailer descending the hill. Specifically, Defendant attempted to run between Trooper Dammer and another officer. Her shoulder pushed the one officer onto the roadway. Her entire body was in the lane of traffic. All three police officers were also forced into the lane of traffic.

Trooper Dammer and the others quickly grabbed her and pulled her back out of the highway. Defendant got about five feet from her vehicle and a few feet into the highway but then was yanked back off of the roadway with such force that her head hit the window of her car and broke it.

Defendant, however, continued to resist. She was told several times by all three officers to stop resisting, but she refused to comply. She was ordered to put her hands behind her back so she could be handcuffed. She refused, somewhat pulling her arms about and attempting to get away from Trooper Dammer until eventually he and the two other officers forced her to the ground and strong-armed her arms behind her back in order to facilitate the arrest. Defendant, however, refused to voluntarily walk to the patrol car and had to be compelled back to the patrol car and placed in it.

Trooper Dammer transported Defendant to the Williamsport Hospital. While in route, Defendant continued to be “combative.” While at the hospital, Defendant was read her implied consent warnings. As the warnings were being read, Defendant screamed at Trooper Dammer. In the confines of the busy hospital emergency room, she was insulting the

trooper and making comments about the trooper allegedly beating his wife. Her behavior at the hospital was described as “highly agitated” and “insulting.” After being advised that she would be charged with disorderly conduct, she became less vocal, but refused the blood test.

At the September 29, 2014 hearing, Defendant also testified. She confirmed the stop and admitted that she denied drinking. She indicated that Trooper Dammer told her that her performance on the standard field sobriety tests was “good.” After she returned to the car, she refused to take the PBT because she wasn’t drinking and was told by Trooper Dammer that she had done well on the field sobriety tests.

She then observed another officer in her vehicle grabbing her car keys. She denied grabbing this officer’s arm. She said Trooper Dammer just pulled her from her vehicle after a short conversation.

She denied resisting. She pulled away into the highway because Trooper Dammer was hurting her arm. She may have stepped into the road but denied running into the road. She moved so as to avoid being hurt. When she was pulled back by Trooper Dammer, she was thrown with such force against her vehicle that her head smashed through her side window. After that, she wasn’t given the opportunity to comply. She was eventually taken down and into custody.

After such, she was certainly upset and angry towards Trooper Dammer. She was transported to the hospital. She minimized her statements to Trooper Dammer, admitting only that she told him that he should be proud of throwing her around and asking if this is how he treated his wife. She refused to submit to a blood test at the hospital, despite knowing that such could prove her contention that she wasn’t drinking.

The Court credits the testimony of Trooper Dammer to the extent it conflicts with that of the Defendant. Trooper Dammer's testimony is also corroborated by the video.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a writ of a habeas corpus. Commonwealth v. Marti, 779 A.2d 1177, 1178 n.1 (Pa. Super. 2001). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant. Commonwealth v. Williams, 911 A.2d 548, 550 (Pa. Super. 2006).

"A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime." Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001). "Stated another way, a prima facie case in support of an accused's guilt consists of evidence that, if accepted as true, would warrant submission of the case to a jury." Id. at 1071.

The Court will first address Defendant's challenge to the sufficiency of the evidence with respect to the driving under the influence charge. In order for Defendant to be convicted of this offense, the Commonwealth would need to prove that she was driving, operating, or in actual physical control of the movement of the vehicle during a time when she was rendered incapable of safely doing so due to the consumption of alcohol. 75 Pa.C.S.A. §3802(a)(1); Commonwealth v. Segida, 604 Pa. 103, 114-116, 985 A.2d 871, 878-79 (Pa. 2009).

As the Supreme Court in Segida noted and as relied on and quoted by the Superior Court in Commonwealth v. Teems, 74 A.3d 142 (Pa. Super. 2013):

Section 3802(a)(1), like its predecessor [statute], is a general provision and provides no specific restraint upon the Commonwealth in the manner in which it may prove that an accused operated a vehicle under the influence of alcohol to a degree which rendered him incapable of safely driving....The types of evidence that the Commonwealth may proffer in a subsection 3802(a)(1) prosecution include but are not limited to, the following: the offender's actions and behavior, including manner of driving and ability to pass field sobriety tests; demeanor, including toward the investigating officer; physical appearance, particularly bloodshot eyes and other physical signs of intoxication; odor of alcohol and slurred speech. Blood alcohol level may be added to this list, although it is not necessary....The weight to be assigned these various types of evidence presents a question for the fact-finder, who may rely on his or her experience, common sense, and/or expert testimony. Regardless of the type of evidence that the Commonwealth proffers to support its case, the focus of subsection 3802(a)(1) remains on the inability of the individual to drive safely due to consumption of alcohol – not on a particular blood alcohol level.

Teems, 74 A.3d at 145, quoting Segida, 985 A.2d at 879.

Defendant argues that the video recording is determinative. The totality of evidence presented however, clearly supports a prima facie finding with respect to this offense. Defendant was driving the vehicle. At the time she was driving, she was rendered incapable of safely doing so due to the consumption of alcohol. She was speeding almost 20 mph over the speed limit. Although the officer activated his emergency equipment, she failed to stop for approximately one mile afterwards. Once stopped, she failed to turned off her right turn signal for quite some time. She failed to provide the requested paperwork. She was driving under a DUI suspension. She was aggressive, belligerent and extremely agitated with respect to the police officers. She put herself and others in danger by attempting to break away and run across a highway. She failed the standard field sobriety tests. She and her

vehicle smelled of an alcoholic beverage. She failed to comply with numerous directives of the police. She refused to be handcuffed. She refused a PBT test. She was belligerent, aggressive and insulting at the hospital and refused a blood test. Her refusal to submit to this chemical test demonstrates consciousness of guilt.

With respect to resisting arrest, a person is guilty of resisting arrest if, “with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.” 18 Pa.C.S. §5104. The statute “does not require the aggressive use of force such as striking or kicking of the officer. A person *resists* arrest by conduct which ‘creates a substantial risk of bodily injury’ to the arresting officer or by conduct which justifies or requires ‘substantial force to overcome the resistance.’” Commonwealth v. Miller, 475 A.2d 145, 146 (Pa. Super. 1984).

The Court finds sufficient evidence was presented to establish a prima facie case of resisting arrest. Defendant grabbed a police officer’s hand while he was attempting to obtain the keys from her vehicle. She needed to be forcibly removed from her vehicle. She kept pulling away from Trooper Dammer and eventually broke free, running onto a highway and causing Trooper Dammer to grab her and pull her back with such force that she struck her vehicle and a window broke. Defendant kept pulling away while the police officers attempted to restrain her. She prevented them from handcuffing her and eventually it took two officers to bring her down to the ground to physically subdue her prior to her being handcuffed. She continued to refuse to cooperate, causing the police officers to have to



practically pick her up and actually carry her to the vehicle.

With respect to recklessly endangering another person, the Commonwealth contends that Defendant's conduct placed the arresting law enforcement officers in danger of death or serious bodily injury in that while she was actively resisting arrest, she attempted to run into traffic on a highway requiring the officers to physically stop and restrain her on the highway. Defendant argues that her conduct was far from reckless and in legitimate response to being hurt. She contends that her behavior was a poor choice but not criminal.

“A person commits [recklessly endangering another person] if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 Pa. C.S.A. § 2705.

In terms of the mens rea required for recklessly endangering, the Commonwealth must prove a conscious disregard of a known risk of death or serious bodily injury. Commonwealth v. Martuscelli, 54 A.3d 940, 949 (Pa. Super. 2012). Serious bodily injury is bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. 18 Pa.C.S.A. §2301; Martuscelli, supra.

While Defendant correctly argues that merely the apprehension of the danger is not enough,<sup>1</sup> in this case there was sufficient prima facie evidence to conclude that a danger was in fact created by Defendant who consciously disregarded such. Route 220 is a busy highway, the incident occurred during the evening hours in which the traffic was light but present. While the officers were attempting to arrest Defendant, she broke away and ran

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<sup>1</sup> See Commonwealth v. Kline, 795 A.2d 424 (Pa. Super. 2002)(“Danger, not mere apprehension of danger, must be created.”).

five feet out onto the highway while a tractor trailer truck was descending down the hill toward her, causing the troopers to “yank” her back. There was a real danger to the traveling motorists, as well as to the police officers. There was a danger that the truck driver, by attempting to avoid striking Defendant, would veer off the roadway, lose control of his vehicle, or strike the law enforcement personnel. There also was a danger that the truck could strike the officers when they were attempting to pull Defendant off the highway and take her into custody. Under the circumstances, it is entirely likely that the officers would have attempted to prevent Defendant from escaping and/or hurting herself, thus placing them in danger of death or serious bodily injury.

Finally, Defendant claims that the officers’ observations with respect to her counting and slurred speech should be suppressed as violative of her constitutional rights. Defendant’s argument is misplaced. Miranda warnings only apply when a Defendant is subjected to custodial interrogation. Defendant was not in custody when Trooper Dammer asked her to perform the field sobriety tests; she was the subject of an investigative detention. See Commonwealth v. Pakacki, 901 A.2d 983, 987-988 (Pa. 2006); Commonwealth v. Sullivan, 581 A.2d 956, 958 (Pa. Super. 1990). Moreover, the officers’ observation of Defendant slurring her speech is clearly nontestimonial. See Pennsylvania v. Muniz, 496 U.S. 582, 592 (1990)(any slurring of speech and other evidence of lack of muscular coordination constitute nontestimonial components of the suspect’s responses and requiring a suspect to reveal the physical manner in which he articulates words does not, without more, compel him to provide a “testimonial” response for purposes of the privilege).

**ORDER**

**AND NOW**, this \_\_\_\_ day of October 2014, following a hearing and argument, Defendant's Omnibus Pretrial Motion is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)  
Michael Rudinski, Esquire  
Gary Weber, Lycoming Reporter  
Work file