

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-852-2012
v.	:	
	:	
SONYA SMITH,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On December 3, 2014, the Defendant filed an omnibus pre-trial motion. Hearings on the motion were held on January 9, 2015 and April 6, 2015.

I. Background

A. Testimony of Officer Aaron Levan

On February 8, 2012, Officer Aaron Levan (Levan) of the Williamsport Bureau of Police was driving on Washington Boulevard in Williamsport. Levan saw a vehicle travelling in the opposite direction that he was travelling. As the vehicle approached Levan, it swerved to Washington Boulevard's center line and then made an abrupt turn back towards the center of its lane of travel. After Levan saw the vehicle's movements, he turned around and began to pursue it. The vehicle stopped at the intersection of Washington Boulevard and Market Street. It turned onto Market Street, came perpendicular to Harris Place, and then abruptly turned onto Harris Place. The vehicle stopped well short of a stop sign on Harris Place. After stopping short of the sign, it moved forward and then stopped again. The vehicle turned left onto Hepburn Street and then right onto High Street. On High Street, the vehicle's wheels twice crossed the center line. Levan then stopped the vehicle and identified the Defendant as the driver.

The Defendant was crying as Levan transported her to the emergency room (ER) at the Williamsport Hospital. The Defendant stopped as she and Levan were walking into the hospital,

so Levan grabbed the Defendant's sweatshirt and "escorted" her into the ER. The Defendant initially sat in a chair in the emergency room but abruptly stood up several times. After one of the times that the Defendant stood up, Levan placed his hand on the Defendant to sit her down. The Defendant's chair slid on the tile floor into a suture rack as Levan was putting the Defendant in the chair. The Defendant began to cry and scream. Levan read the implied consent warnings to the Defendant, who did not verbally consent to a blood draw. A phlebotomist arrived; the Defendant pulled her arm away several times as the phlebotomist attempted to take her blood. Levan did not grab the Defendant's arm, but he told the Defendant that if she pulled her arm away one more time, he would count it as a refusal. The Defendant then allowed the phlebotomist to take her blood.

B. Defendant's Testimony

The Defendant was intoxicated when she was stopped. She had had "like four [drinks] in a period of time." The drinks consisted of vodka and cranberry juice. The Defendant was crying and belligerent. She said, "[N]o, I don't want to give blood," but the police officer forced her to give blood. He held her arm and her blood was drawn.

C. Video from Officer Levan's Patrol Car

As a vehicle approaches Levan, its headlights change direction and momentarily point more towards Levan's lane of travel on Washington Boulevard. After the vehicle passes Levan in the correct lane of travel, Levan turns around and pursues the vehicle. Shortly after turning onto Market Street, the vehicle turns onto Harris Place. The vehicle stops short of the stop sign on Harris Place. The driver then pulls up to the sign and stops again. The vehicle's turn signal is activated and it turns left onto Hepburn Street. It stops at a stop sign on Hepburn Street before

making a wide turn onto High Street. When the driver straightens the vehicle, the vehicle's left side tires are completely across the double yellow line of High Street. The vehicle enters the proper lane of travel, but as it moves, its left side tires are almost touching the double yellow line. The vehicle eventually moves to the center of the lane, but after a few seconds of being in the center, it moves back towards the double yellow line. The vehicle then moves back towards the center of the lane, and Levan then pulls it over.

D. Defendant's Arguments

The Defendant argues that Levan did not have the requisite reasonable suspicion to pull her over. She also argues that the blood draw violated her constitutional rights because Levan held her arm and the draw was done without her consent. Lastly, the Defendant argues that "since [her] prior [DUI] conviction resulted from an uncounseled consent decree, the Commonwealth should be precluded from utilizing it to enhance" the present offense from an ungraded misdemeanor first DUI to a first-degree misdemeanor second DUI. The Defendant contends that because the prior conviction is an element of the offense, it must be proven beyond a reasonable doubt.

II. Discussion

A. The Stop of the Defendant was Lawful Because Officer Levan had Reasonable Suspicion that the Defendant was Committing DUI.

"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." Commonwealth v. Chase, 960 A.2d 108, 116 (Pa. 2008). "[I]n order to establish reasonable suspicion, an officer must be able to point to specific and articulable facts which led him to reasonably suspect a

violation of the Motor Vehicle Code. . . .” Commonwealth v. Holmes, 14 A.3d 89, 95-96 (Pa. 2011). “The determination of whether an officer had reasonable suspicion . . . is an objective one, which must be considered in light of the totality of the circumstances.” Id. at 96. “In making this determination, [a court] must give ‘due weight...to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007) (quoting Commonwealth v. Cook, 735 A.2d 673, 676 (Pa. 1999)).

Here, Levan articulated sufficient facts which led him to reasonably suspect that the Defendant was committing DUI. Levan observed the Defendant’s vehicle swerved towards the center line of Washington Boulevard. He saw vehicle stop short of the stop sign on Harris Place. He also observed the vehicle’s tires completely over the double yellow line on High Street. The video from the patrol car supports Levan’s observations. Such observations provided Levan with reasonable suspicion that the Defendant was committing DUI.

B. The Blood Test was Lawful Because the Defendant Consented to It.

“[U]nder the Implied Consent provision . . . testing is allowed absent an affirmative showing of the subject’s refusal to consent to the test at the time that the testing is administered.” Commonwealth v. Eisenhart, 611 A.2d 681, 683 (Pa. 1992). Here, by pulling her arm away several times, the Defendant showed her refusal to consent to the test. In Commonwealth v. Wege,¹ the Superior Court held that “police were not prohibited from extending [an arrestee] a second and third opportunity to submit to a breathalyzer test by the language of 75 Pa.C.S. § 1547(b)(1).” 533 A.2d at 777. Here, Levan gave the Defendant more than one opportunity to submit to a blood test, rather than a breathalyzer test. However, this difference is not significant

¹ 533 A.2d 776, 777 (Pa. Super. 1987).

since the same statutory provision applies. Therefore, under Wege, Levan was not prohibited from extending the Defendant multiple opportunities to submit to the blood test.

“In order for consent to be valid, it must be unequivocal, specific, and voluntary. The [consenter] must have intentionally relinquished or abandoned a known right or privilege. The burden is upon the Commonwealth to prove by clear and convincing evidence that valid consent was given The determination as to whether consent has been given voluntarily is a question of fact which must be determined in each case from the totality of the circumstances. [The Superior Court of Pennsylvania] has held that the following factors should be considered in determining whether consent was given voluntarily: the setting in which the consent was obtained; what was said and done by the parties present; and the age, intelligence, and educational background of the person consenting.” Commonwealth v. Dunne, 690 A.2d 1233, 1236 (Pa. Super. 1997) (internal quotations and citations omitted).

Initially, the Court finds Officer Levan’s testimony credible. The totality of the circumstances shows that the Defendant voluntarily consented to the blood draw. The Defendant was an adult. She was read the implied consent warnings. The Defendant was crying and belligerent, but she was willing and able to show her refusal as she had pulled her arm away several times. Levan told her that if she pulled her arm away again, he would count it as a refusal. If the Defendant wanted to refuse the blood draw, she could have pulled her arm away like she had done previously. The Defendant, however, did not pull her arm away.

C. The Fact of the Defendant’s Prior DUI Conviction does not Need to be Submitted to the Jury and Found Beyond a Reasonable Doubt.

“The Supreme Court’s decision in Almendarez-Torres v. United States, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998) held that the fact of a prior conviction does not need

to be submitted to the jury and found beyond a reasonable doubt. [Alleyne v. United States, 133 S. Ct. 2151 (2013)] explicitly noted that Almendarez-Torres remains good law.”

Commonwealth v. Miller, 102 A.3d 988, 995, n.5 (Pa. Super. 2014) (citations omitted).

III. Conclusion

The stop of the Defendant was lawful because Officer Levan articulated sufficient facts which led him to reasonably suspect that the Defendant was committing DUI. The blood test was lawful because the totality of the circumstances shows that the Defendant voluntarily consented to the blood draw. The fact of the Defendant’s prior DUI conviction does not need to be submitted to the jury and found beyond a reasonable doubt.

ORDER

AND NOW, this _____ day of April, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Omnibus Pre-trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge