

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	CR-709-2014
	:	
v.	:	
	:	CRIMINAL DIVISION
PATRICK EUGENE WRIGHT,	:	
Defendant	:	1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

On January 27, 2015, this Court convicted the Defendant of Driving under the Influence of Alcohol (incapable of safely driving)¹ and Driving while Operating Privilege is Suspended or Revoked.²

I. Factual Background

A. Lieutenant Steven Helm's Testimony

Steven Helm (Helm) is a lieutenant in the Williamsport Bureau of Police. He has been involved in multiple DUI arrests and has received training in all of the standard field sobriety tests. On July 25, 2013, Helm was operating an unmarked police car on Fourth Street in Williamsport. Helm was two car lengths behind a vehicle, which was not swerving as it approached the traffic light at the intersection of Fourth Street and Campbell Street. Helm observed the vehicle stop suddenly at the light. Part of the vehicle was over the stop line at the intersection, but the vehicle was not in the crosswalk. When the light turned green, the vehicle turned left onto Campbell Street. The vehicle's right front almost hit a car legally parked on Campbell Street. The vehicle continued on Campbell Street; it was not swerving or speeding. After three tenths of a mile on Campbell Street, the vehicle's driver activated the turn signal and turned onto Park Avenue, where Helm initiated a traffic stop.

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 1543(b)(1.1)(i).

The Defendant exited the vehicle. He asked why he was being stopped and said that he had not been drinking. Helm told the Defendant to get back into the vehicle, and, after arguing, the Defendant reentered the vehicle. Helm noticed that the Defendant had glassy eyes and “slow, thick” speech. He also noticed a moderate odor of alcohol. The Defendant said that he was almost home and asked why he could not go home. The Defendant offered to perform field sobriety tests and exited the vehicle. Helm explained the one-leg stand test, but the Defendant would not listen to the instructions. During the test, the Defendant did not drop his raised foot, but he swayed and raised his arms more than two inches from the side of his body. Helm explained the walk and turn test, but the Defendant again would not listen to the instructions. The Defendant wanted to start the test early and said that he should be allowed to walk home. During the walk and turn, the Defendant took nine steps out, as instructed, but he did not make a proper turn. He began a return to the start spot but did not finish the return. The Defendant did not stumble or stagger during the tests.

Helm arrested the Defendant because he believed that the Defendant was unable to safely drive as a result of alcohol consumption. He transported the Defendant to a room in the Williamsport Hospital. The room was not big, but people could see into the room. The Defendant was in a chair; he never asked for a different chair. The Defendant was “talking over” Helm as Helm explained Pennsylvania’s chemical testing law. The Defendant refused a blood draw.

B. Officer Chris Moore’s Testimony

Chris Moore (Moore) is an officer with the Williamsport Bureau of Police. He has been involved in DUI arrests and has been trained to administer the standard field sobriety tests. Moore went to Park Avenue to assist Helm in the traffic stop. Moore noticed that the Defendant had an odor of alcohol. During the one-leg stand, the Defendant raised his left foot one inch

instead of the instructed six inches. The Defendant swayed and raised his arms six to 12 inches from side of his body. On the walk and turn, the Defendant did not maintain the start position and did not make heel to toe contact on his fourth step. Moore testified that the Defendant made an improper turn but could not say what was improper about the turn. Moore testified that the Defendant did not make heel to toe contact on the first and third return steps. Moore believed that the Defendant was under the influence of alcohol and incapable of safely driving.

C. Defendant's Testimony

The Defendant was not drinking on July 25, 2013. He was driving to pick his wife up from a party on Park Avenue. He originally stopped at the stop line at intersection of Fourth Street and Campbell Street but "eased up" when he anticipated the light turning green. No cars were parked on Campbell Street when he made the turn. He continued on Campbell Street, used a turn signal, and made a left onto Park Avenue. When he exited his vehicle, a police officer told him to get back in, so he reentered the vehicle. He told the officer that he was picking up his wife and volunteered to perform field sobriety tests. The Defendant's wife and children exited a house on Park Avenue. The police officers disrespected the Defendant in front of his wife and children. The Defendant's wife and children came onto the street and there was a lot of commotion. His wife was yelling at the officer. The Defendant described the situation as confusing and testified that were "too many things going on" to finish the tests.

The Defendant refused the blood draw because he was concerned about the bacteria on the chair in which he was sitting. He worked in the hospital and knows about bacteria in the emergency room. He just wanted to have his blood drawn in a more private room. He was not offered other types of tests, which would have proven that he was not drinking.

II. Discussion

A. The Evidence was Sufficient to Convict the Defendant of DUI (Incapable of Safely Driving).

The Defendant argues that the evidence was insufficient to establish beyond a reasonable doubt that he was incapable of safely driving as a result of being under the influence of alcohol. “When reviewing a challenge to the sufficiency of the evidence, [a court] must determine if the Commonwealth established beyond a reasonable doubt each of the elements of the offense, considering the entire trial record and all of the evidence received, and drawing all reasonable inferences from the evidence in favor of the Commonwealth as the verdict-winner.”

Commonwealth v. Segida, 985 A.2d 871, 880 (Pa. 2009).

For DUI (incapable of safely driving), “the Commonwealth [must] prove the following elements: the accused was driving, operating, or in actual physical control of the movement of a vehicle during the time when he or she was rendered incapable of safely doing so due to the consumption of alcohol.” Id. at 879. “In order to be found guilty of DUI – general impairment, an individual’s alcohol consumption must substantially impair his or her ability to safely operate a vehicle.” Commonwealth v. Mobley, 14 A.3d 887, 890 (Pa. Super. 2011) (citing Commonwealth v. Palmer, 751 A.2d 223 (Pa. Super. 2000)).

“Evidence that the driver was not in control of himself, such as failing to pass a field sobriety test, may establish that the driver was under the influence of alcohol to a degree which rendered him incapable of safe driving, notwithstanding the absence of evidence of erratic or unsafe driving.” Palmer, 751 A.2d at 228. “The types of evidence that the Commonwealth may proffer in a [DUI (incapable of safely driving)] 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.” Segida, 985 A.2d at 879. “In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 3802 or any other violation of this title arising out of the same action, the fact that the defendant refused to submit to chemical testing as required by subsection (a) may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumptions shall arise from this evidence but it may be considered along with other factors concerning the charge.” 75 Pa.C.S. § 1547(e).

Here, the evidence was sufficient to establish beyond a reasonable doubt that the Defendant drove a vehicle when he was rendered incapable of safely doing so due to alcohol consumption. Helm testified that the Defendant stopped suddenly at a traffic light and almost hit a legally parked car. Helm noticed that the Defendant had glassy eyes; he also noticed an odor of alcohol. The Defendant argued with Helm and would not listen to the instructions on the field sobriety tests. During the one-leg stand, the Defendant lifted his foot only an inch, swayed, and raised his arms. On the walk and turn, the Defendant wanted to start the test early and thrice missed heel to toe contact. Additionally, the Defendant did not finish the walk and turn. After observing the sobriety tests, both Helm and Moore believed that the Defendant was incapable of safely driving as a result of alcohol consumption. The Defendant testified that there were “too many things going on” to finish the tests. He “talked over” Helm when Helm was trying to explain the chemical testing law, and he refused the blood draw. Such evidence is sufficient to establish DUI (incapable of safely driving) beyond a reasonable doubt.

B. The Stop was Lawful Because Officer Helm had Reasonable Suspicion that the Defendant was Committing DUI.

The Defendant argues that Helm did not have the requisite reasonable suspicion to stop him. In its opinion filed on October 23, 2014, the Court determined that Helm had reasonable

suspicion to pull over the Defendant for stopping his vehicle over the stop line. The Court recognizes that the Helm needed probable cause to pull over the Defendant for stopping over the line. See Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010) (en banc) (holding that “[m]ere reasonable suspicion will not justify a vehicle stop when the driver’s detention cannot serve an investigatory purpose relevant to the suspected violation”). Nonetheless, the Court believes Helm lawfully stopped the Defendant.

“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. “[A]n investigatory traffic stop may be based upon an officer’s observation of erratic driving.” Commonwealth v. Starr, 739 A.2d 191, 195 (Pa. Super. 1999).

As discussed in the Court’s opinion filed on October 23, 2014, Helm articulated specific facts, which were sufficient to provide him with reasonable suspicion to believe that the Defendant was committing DUI. Helm saw the Defendant’s vehicle stop suddenly at a red light even though the light was red as the vehicle approached the intersection. When the vehicle came to a stop, half of it was over the stop line. When the light turned green, the vehicle accelerated rapidly and Helm heard a slight “chirp” of the tires. The vehicle made a wide turn and almost hit legally parked vehicles. Although not mentioned in the October 23, 2014 opinion, during the suppression hearing, Helm testified that a driver could make the turn without coming close to the parked vehicles. Helm observed the Defendant make another turn without slowing down much.

He testified that sudden behavior is a major indicator of impaired driving. Although the Defendant was not speeding and used his turn signal, the totality of the circumstances shows that Helm had reasonable suspicion that the Defendant was committing DUI.

III. Conclusion

The evidence was sufficient to establish beyond a reasonable doubt that the Defendant was driving when he was incapable of safety doing so due to alcohol consumption. Officer Helm lawfully stopped the Defendant because the totality of the circumstances shows that Helm reasonably suspected that the Defendant was committing DUI. For the foregoing reasons, the Court respectfully requests that its Order of January 27, 2015 be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

cc: DA
Kirsten A. Gardner, Esq.