

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 277-2015
 :
 JONATHAN W. THEIS, :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on March 5, 2015 with driving under the influence of alcohol and a related summary offense. Defendant filed an Omnibus Pretrial Motion on April 2, 2015. The Omnibus Pretrial Motion contained several motions. At the first hearing on the Omnibus Pretrial Motion held on July 1, 2015, the Court disposed of all of Defendant's motions except for Defendant's motion to suppress based on the alleged failure of the arresting officer to have sufficient probable cause to arrest Defendant for driving under the influence.

Testimony was taken on July 1, 2015 with respect to said motion to suppress. Another hearing was held on October 16, 2015. At this hearing no testimony was taken, but a copy of the arresting officer's "dash-cam" video was marked as Commonwealth's Exhibit 1, admitted into evidence, and subsequently viewed in depth by the Court. The Court initially directed that a transcript of the July 1, 2015 hearing be prepared and that the parties submit respective briefs. In considering the matter further, however, and in the interests of timely, economical and provident justice, the Court will address the matter without the benefit of a transcript or briefs. This matter is now ripe for decision.

“Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances.” *Commonwealth v. Francis*, 76 A.3d 562, 565 (Pa. Super. 2013), quoting *Commonwealth v. Williams*, 941 A.2d 14, 27 (Pa. Super. 2008)(internal citations and quotations marks omitted).

The Court must view the totality of the circumstances as seen through the eyes of a trained officer, and not as an ordinary citizen would view them. *Commonwealth v. Nobalez*, 805 A.2d 598, 600 (Pa. Super. 2002). It is only the probability, and not a prima facie showing of criminal activity that is the standard of probable cause. *Commonwealth v. Thompson*, 604 Pa. 198, 985 A.2d 928, 931 (2009). Probable cause exists when criminality is one reasonable inference; it need not be the only inference. *Commonwealth v. Spieler*, 887 A.2d 1271, 1275 (Pa. Super. 2005); *Commonwealth v. Burnside*, 625 A.2d 678, 681 (Pa. Super. 1993). “Probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent persons act.” *Commonwealth v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012), quoting *Williams*, supra.

Lieutenant Brett Williams of the Williamsport Bureau of Police was on duty on October 5, 2014. He was conducting a DUI roving patrol. He came upon a vehicle stopped at an intersection to Market Street. Market Street runs in a north-south direction. The car was stopped for 35 seconds without any turn signal being activated. The car remained

stopped despite the fact that the car could only turn right per the posted traffic sign at the intersection and there were no vehicles traveling on the roadway which would have prevented the car from safely turning right.

After 35 seconds, without utilizing the turn signal, the car turned right south on Market Street. It rapidly accelerated southbound across the Market Street Bridge. After crossing the bridge, it came to an intersection. As it approached a red light, it crossed from the middle lane to the right turning lane and, without stopping, it turned right. It accelerated westbound on a two-lane roadway crossing over the double yellow divider lines a handful times before being stopped by Lieutenant Williams.

Lieutenant Williams, along with Chief Solomon of the Old Lycoming Township Police Department, approached the vehicle. Defendant was identified as the operator. Defendant indicated he “was chasing a girl.” Lieutenant Williams made several observations which concerned him. Lieutenant Williams had to ask for Defendant’s registration three times. Defendant provided his insurance card even though he was not asked for such. Lieutenant Williams noticed that Defendant had poor dexterity in his fingers when Defendant was obtaining the registration card from a plastic sleeve. Lieutenant Williams noticed the odor of an alcoholic beverage on Defendant’s breath but Defendant denied drinking. Lieutenant Williams further noted that Defendant’s eyes were glassy and bloodshot.

Defendant was subsequently asked to exit the vehicle. Defendant exited the vehicle and walked to the back of his vehicle without any apparent difficulty. He was first

administered the HGN standard field sobriety test. According to Lieutenant Williams, Defendant did poorly on this test. Defendant demonstrated a handful of impairment clues, including a lack of smooth pursuit, deviation in his eyes, nystagmus past 45 degrees and vertical gaze nystagmus. Lieutenant Williams conceded on cross-examination that if he did not adhere to the relevant “timeframes” with respect to the test, “no weight” could be placed on them. The Court could not observe any behaviors of Defendant indicative of any impairment during the administration of the HGN test although given the distance from which the video was taken, the Court would not expect to be able to observe any eye clues.

Lieutenant Williams next administered the walk and turn standard field sobriety test. That test was administered on a flat, smooth surface, but without a designated line. According to Lieutenant Williams, Defendant did poorly on this test as well. Defendant could not maintain his balance during the instruction phase; he did not maintain the heel to toe standing position and his entire foot stepped off the imaginary line. Defendant also significantly raised his arms for balance a few times and he failed to turn properly in that he just spun around and did not take small steps as directed by Lieutenant Williams. The Court’s observations of Defendant’s performance on the walk and turn test confirmed Lieutenant Williams’ observations and conclusions.

Lieutenant Williams next administered the one-legged stand standard field sobriety test. According to Lieutenant Williams, Defendant also did poorly on this test. Defendant’s leg touched down at least twice, he swayed and he used his arms for balance. The Court’s observations of Defendant’s performance actually showed Defendant

significantly swaying and touching his foot down four times. As well, Defendant used his arms for balance on more than one occasion.

It appears from the video that Chief Solomon administered a PBT test to Defendant although there was no testimony regarding such. Shortly thereafter, Defendant was taken into custody.

Defendant submits that probable cause did not exist for his arrest, because the standard field sobriety test results were meaningless and the observations by Lieutenant Williams, when addressed separately, could be explained by innocent conduct or caused by innocent factors. Unfortunately for Defendant, however, he misapprehends the applicable standard for probable cause. It is not a mechanical consideration of specific factors, but rather a totality of circumstances analysis. *Commonwealth v. Clark*, 611 Pa. 601, 28 A.3d 1284, 1287-89 (2011); *Commonwealth v. Dommel*, 885 A.2d 998, 1002 (Pa. Super. 2005).

Taking into account the observations of Lieutenant Williams along with his experience and training relating to DUI traffic stops, the Court concludes that he had probable cause to arrest Defendant for driving under the influence. In sum, these observations included: very poor, erratic and illegal driving; Defendant's inability to properly respond to Lieutenant Williams' questions relating to the registration card; poor dexterity in the Defendant's fingers; Defendant's denial that he was drinking despite the presence of an odor of an alcoholic beverage on Defendant's breath; and Defendant's eyes being glassy and bloodshot. As well, during the administration of the field sobriety tests, Defendant exhibited numerous signs evidencing impairment including, but not limited to,

losing his balance, not properly following directions, swaying, and using his arms for balance.

In light of the applicable law governing probable cause, Defendant's argument that his behavior could have other explanations begs logic. Probable cause "exists when criminality is one reasonable inference, not necessarily even the most likely inference." *Commonwealth v. Spieler*, 887 A.2d 1271, 1275 (Pa. Super. 2005).

As well, Defendant's argument with respect to the standard field sobriety test virtually ignores established case law. Failing a standard field sobriety test is not a requirement for a determination of probable cause. *Commonwealth v. Slonaker*, 795 A.2d 397, 402 (Pa. Super. 2002). Conversely, performing poorly may be sufficient for a finding of impairment. *Commonwealth v. Downing*, 739 A.2d 169, 173 (Pa. Super. 1999). It is of no moment that the tests could not ascertain with certainty a particular blood alcohol content or the degree to which the Defendant may have been impaired; they are not meant to do so. They're meant only to provide the officer with information useful to determine whether the driver is impaired. See *Commonwealth v. Ragan*, 652 A.2d 925, 928 (Pa. Super. 1995).

Given all of the observations and conclusions as set forth above, the Court does not hesitate in finding sufficient probable cause. In fact, numerous cases have found probable cause under much less incriminating circumstances. See *Commonwealth v. Levesque*, 364 A.2d 932 (Pa. 1976) (evidence that the defendant was weaving and struck a parked car, had an odor of alcohol on his breath and a general lack of coordination sufficient); *Commonwealth v. Slonaker*, supra (erratic driving, odor of alcohol and

bloodshot, glassy eyes sufficient); *Commonwealth v. Rehmeyer*, 502 A.2d 1332, 1335 (Pa. Super. 1985) (officer noticed that the defendant drove through red light, had a heavy odor of alcohol on his breath and had difficulty locating his driver's license, which was sufficient to establish probable cause); *Commonwealth v. Monaghan*, 441 A.2d 1318 (Pa. Super. 1982) (vehicle accident, staggering gate, slurred speech and odor of alcohol sufficient).

ORDER

AND NOW, this __ day of October 2015, upon consideration of Defendant's motion to suppress contained in his Omnibus Pretrial Motion and following a hearing, the Court DENIES Defendant's motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Timothy Barrouk, Esquire
The McShane Firm, LLC
3601 Vartan Way, 2nd Fl.
Harrisburg, PA 17110
Gary Weber, Esquire
Work file