

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
Plaintiffs,	:	
vs.	:	DOCKET NO. 1083-2014
	:	
	:	CRIMINAL DIVISION
KIRK HAYS,	:	
Defendant	:	MOTION IN LIMINE

OPINION AND ORDER

Before the Court is the Commonwealth’s motion in limine seeking to preclude or limit evidence. Upon review of the motions, briefs and arguments of Counsel, the Court grants the Commonwealth’s motion. The Court provides the following opinion in support of its decision.

FACTUAL BACKGROUND

By information filed July 17, 2014, the Commonwealth charged the defendant Kirk Hays with Count 1, driving under the influence of alcohol or controlled substance (2nd), an ungraded misdemeanor and Count 2, driving under the influence with highest rate of alcohol (2nd), a misdemeanor of the first degree (BAC .19%) and three traffic summary offenses.¹ The charges arose from a traffic stop on April 11, 2014. Kirk Hays was driving. On January 21, 2015, defendant filed an omnibus pre-trial motion challenging the legality of the traffic stop and moving to suppress evidence. Following a hearing, the Honorable President Judge denied the motion to suppress evidence and concluded that the traffic stop was lawful. A jury trial is scheduled for June 22, 2016.

DISCUSSION

The Commonwealth filed a motion in limine to exclude anticipated evidence on the grounds that the evidence is not relevant under Pa. R.E. 402 and/or the evidence creates unfair prejudice, confusion or a waste of time as contemplated by Pa. R.E. 403. Specifically, the

¹ 75 Pa. C.S.A. § 3802(a)(1); 75 Pa. C.S.A. § 3802(c); 75 Pa. C.S.A. § 3309(1); 75 Pa. C.S.A. § 3334(a); 75 Pa. C.S.A. § 3714A.

Commonwealth sought to preclude cross-examination of Trooper Adam Kirk about a comment attributed to him in which he indicated that when he investigates a crash he assumes it may be DUI related. In addition, the Commonwealth sought to preclude evidence that Trooper Kirk conducts more DUI related arrests than average officers and received an award for making the highest number of DUI related arrests.² The defense seeks to introduce such evidence to show that Trooper Kirk holds a cognitive bias that causes him to interpret the same set of facts as DUI related when others would not make such a conclusion.

The admission and exclusion of evidence is within the sound discretion of the trial court. Jacobs v. Chatwani, 922 A.2d 950, 960 (Pa.Super. 2007). Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa. R.E. 401. “All relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.” Pa. R.E. 402. “The court may exclude relevant evidence if its probative value is outweighed by a danger of ... unfair prejudice, confusing the issues,..[or] misleading the jury[.]” Pa. R.E. 403. Unfair prejudice results when the evidence suggests decision on an improper basis or diverts the jury's attention away from its duty of weighing the evidence impartially. Pa.R.E. 403 (comment); see, Commonwealth v. Hitcho, 123 A.3d 731, 767 (Pa. 2015).

At issue in the present case for Count 1 is whether the Defendant, as driver of the vehicle, was driving after “imbibing a sufficient amount of alcohol such that” he was “rendered incapable of safely driving” the vehicle. At issue for Count 2 is the BAC level of the defendant. Here, the BAC level was reported by the lab as .19. The number of arrests that Trooper Kirk has made in

² The Commonwealth sought to limit evidence regarding the camera and recording system contained within the patrol vehicle. The parties reached an agreement for the scope of inquiry related to the camera and recording system contained within the patrol vehicle. Accordingly, the Court will incorporate that agreement as part of its order without further discussion.

comparison to other officers has no bearing on the BAC level reported by the lab. The BAC level provides evidence as to both Counts. In addition to BAC level, evidence relevant to Count 1 includes “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.” Commonwealth v. Segida, 604 Pa. 103, 115-116, 985 A.2d 871, 879 (Pa. 2009).

The evidence at issue in the present case is not relevant or probative because it does not tend to make the existence of any fact that is of consequence in this matter any more or less probable. It is not relevant whether Trooper Kirk assumes a car crash may be DUI related. This case does not involve a car crash. In addition, the fact that Trooper Kirk has a higher than average number of DUI arrests and has earned an award for such arrests does not show that Trooper Kirk holds a cognitive bias or incorrectly interprets facts. Even if relevant, the value of such evidence, that the Trooper has higher than average number of DUI arrests and has earned an award for such arrests, without more, is outweighed by the danger of unfair prejudice, confusing the issues, and/or misleading the jury.

The defense claim of cognitive bias relies on a series of non-sequiturs and speculation without underlying facts for support. For example, it does not follow that an interpretation of the same facts differently is evidence of bias *if the interpretation is correct*. It does not follow that the number of arrests evidences bias if number of correct arrests is of comparable proportion as that of other officers. It very well may be that Trooper Kirk has a higher number of arrests because his work hours and locations expose him to more intoxicated drivers. He may take less vacation. His training and experience may allow him to more readily and accurately identify drivers who are incapable of safe driving. In short, Trooper Kirk may have a higher number of arrests simply because he is good at his job. The number of arrests, standing alone, does not

have a factual link to any material fact and instead may cause unfair prejudice, confusion or misleading of the jury.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 17th day of June, 2016, for the foregoing reasons, it is ORDERED and DIRECTED as follows.

1. As to the camera and recording system, the defense shall be limited to inquiring as to (1) the ability to hit a switch and the decision not to do so and (2) the procedure for dumping and why it was not chosen. Beyond that, the Defense shall come to side-bar.
2. The Commonwealth's motion in limine to preclude evidence that Trooper Kirk has a higher than average number of DUI arrests and received an award for his high number of arrests is GRANTED. The evidence is excluded.
3. The Commonwealth's motion in limine to preclude evidence that Trooper Kirk indicated that when he investigates a car crash, he assumes that it might be DUI related is GRANTED. The evidence is excluded.

BY THE COURT,

June 17, 2016
Date

Richard A. Gray, J.

cc: DA (AC)
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