

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

| | | |
|-------------------------------------|---|------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | CR-1770-2015 |
| v. | : | |
| | : | |
| WILLIAM SWARTHOUT, | : | PRETRIAL MOTION |
| Defendant | : | |

OPINION AND ORDER

The Court heard Defendant's Motion to Suppress Evidence, filed May 3, 2016, on August 9, 2016.

Background

William Swarthout (Defendant) is charged in a criminal information filed November 6, 2015, with Count 1, Driving Under the Influence of Alcohol or Controlled Substance (third offense), a second degree misdemeanor¹; Count 2, Driving while Operating Privilege is Suspended, a summary offense²; Count 3, Accidents involving Damage to Vehicle or Property, a summary offense³; and Count 4, Driving Under the Influence with the Highest Rate of Alcohol (third offense), a first degree misdemeanor⁴. The charges arise from an incident on September 20, 2015, at the Pier 87 Restaurant in Montoursville, PA.

Testimony of Trista Musser

Trista Musser (Musser) hostess from Pier 87 Bar and Grill Montoursville, PA, testified on behalf of the Commonwealth. She testified that she called 911 because there was an altercation in the parking lot of that establishment where it appeared that a woman was attacking Defendant. Musser approached the arguing couple and noted that there was a beer bottle in their vehicle, a white four door vehicle. She thought it was from the restaurant and wanted Defendant

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 1543(B)(1).

³ 75 Pa.C.S. § 3745(a).

⁴ 75 Pa.C.S. § 3802(c).

to return it to her. Musser testified that the 911 operator told her to call back if the couple left the parking lot. The couple did leave the parking lot and as they backed out of their spot they hit another vehicle. Musser took down the vehicle plate number and provided the vehicle plate number to the dispatcher.

Musser was able to identify the Defendant in the courtroom as the person driving the vehicle on the date in question. On cross examination it was established that Musser never saw Defendant consume alcohol. Musser testified that she could not smell alcohol when she approached the driver/Defendant. Musser testified that she did not inspect the vehicle Defendant hit in the parking lot and that Defendant did not stop to check what damage might have occurred from the contact.

Testimony of Pennsylvania State Police Trooper Troy Hansen

Trooper Troy Hansen (Hansen) of the Pennsylvania State Police responded to the 911 dispatcher's call on the date in question. While driving North on 87, Hansen observed a white Ford Taurus with the same vehicle plate number reported by Musser to dispatch.

After observing the vehicle, Hansen noted it drove at a high rate of speed and contacted dispatch for a back-up unit.

After initiating a vehicle stop of the white Ford Taurus, vehicle plate number JHX 5495, Hansen noted that there was damage to the rear passenger side of the Taurus. He also noted that the Defendant was unusual in appearance: his white shirt was ripped and stretched. There were marks on his collar. Hansen testified that Defendant had the odor of alcohol, his eyes were glossy and his speech was slurred. After conducting the standard field sobriety tests, the DL-26 form was executed. Defendant refused PBT in the field. He answered "no" to the query of whether he

had been drinking. Defendant was mirandized at the hospital and submitted to a chemical test of his blood.

Hansen testified that the reason he stopped the vehicle was because of the report of the domestic situation as well as the report of the accident to the unattended vehicle.

Discussion

Defense Counsel argued that the required level of suspicion is probable cause not reasonable suspicion to justify the motor vehicle stop in this case and cites Commonwealth v. Feczko, 10 A.3d 1285 (Pa. Super. Ct. 2010) (petition for allowance of appeal denied July 26, 2011) for that proposition. Defense Counsel is correct that if Hansen were stopping Defendant's vehicle for a merely for a violation of the motor vehicle code, than probable cause would be required:

Our Supreme Court's rulings in Murray and twenty years later in Whitmyer articulated distinct, not conflicting, standards for a traffic stop. The Court in Murray held that a reasonable suspicion standard was a constitutional threshold of cause to justify a vehicle stop based on suspected criminal activity. The court also stated, however, that probable cause was required when the basis for a traffic stop was a suspected violation of the Commonwealth's Motor Vehicle Code...this distinction was directly at issue when the legislature sought to amend Section 6308(b) to its current form...we upheld the constitutionality of the "reasonable suspicion" standard set forth in the 2004 amendment to Section 6308(b)⁵ as applied to vehicle stops based on DUI...Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose. Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. Id.

⁵ **Authority of police officer.**—Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title. Commonwealth v. Feczko, 10 A.3d 1285 (Pa. Super. Ct. 2010).

However, here, Hansen did not need to have probable cause to stop the vehicle. Here all that was required was reasonable suspicion and the stop must serve a stated investigatory purpose. Hansen here did have a reasonable suspicion that criminal activity was afoot. His stop of the vehicle was appropriate to determine what if any criminal activity had been reported to him as occurring in and around the vehicle. Hansen was responding to a dispatch. The vehicle he stopped matched the exact description of the dispatch. The circumstances known to the officer at the time before the vehicle stop indicated criminal activity had occurred. The report of the conduct in the parking lot was sufficient to support further inquiry by police. The conduct reported to Hansen is concomitant with the crimes of disorderly conduct, harassment, assault. Additionally the report from dispatch included information regarding a possible violation of the motor vehicle code; to wit:

The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to the other vehicle or property shall immediately stop the vehicle at the scene of the accident or as close thereto as possible and shall then and there either locate and notify the operator or owner of the damaged vehicle or other property of his name, address, information relating to financial responsibility and the registration number of the vehicle being driven or shall attach securely in a conspicuous place in or on the damaged vehicle or other property a written notice giving his name, address, information relating to financial responsibility and the registration number of the vehicle being driven and shall without unnecessary delay notify the nearest office of a duly authorized police department. Every stop shall be made without obstructing traffic more than is necessary.

75 Pa.C.S. § 3745.

After the motor vehicle stop, the Court finds that Hansen did have the required probable cause affect an arrest for Driving Under the Influence. It is the facts and circumstances within the personal knowledge of the police officer that frames the determination of the existence of probable cause. See, e.g., Commonwealth v. Lawson, 454 Pa. 23, 27, 309 A.2d 391, 394 (1973) ("Probable cause exists if the facts and circumstances known to the officer warrant a prudent

man in believing that an offense has been committed.") Commonwealth v. Galendez, 2011 PA Super 180, 27 A.3d 1042, 1046 (Pa.Super. 2011)(en banc) (emphasis in original).

Commonwealth v. Weaver, 76 A.3d 562, 565 (Pa. Super. Ct. 2013). After Hansen made contact with Defendant, he detected a strong odor of alcohol emitting from his breath. He observed Defendant's eyes to be glassy and bloodshot in appearance. Defendant was unsteady on his feet. Field sobriety tests indicated to Hansen that Defendant was over the legal limit and Defense Counsel stipulated to the results of the field sobriety test.

ORDER

AND NOW, this _____ day of October, 2016, based upon the foregoing Opinion, the Motion to Suppress is GRANTED in part and DENIED in part: In conformity with Birchfield v. North Dakota, 136 S. Ct. 2160 (U.S. 2016), the results of Defendant's Blood Alcohol Test are hereby SUPPRESSED. In all other respects, the Motion is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Anthony Ciuca, ADA
Pete Campana, Defense Counsel
Gary Weber, Lycoming Law Reporter
Work file (law clerk)