IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-418-2017**
	:	
COREY BRADFORD,	**:**	
Defendant	**:**	

OPINION AND ORDER

This matter came before the court for a hearing and argument on Defendant's Omnibus Pre-trial Motion, which seeks suppression of his blood test results. The relevant facts follow.

On October 30, 2016, Officer Zachary Taylor and Corporal Zachary Schon were dispatched to a motor vehicle accident at 335 West Third Street. When they arrived, they observed a silver Ford F150 pickup truck that had struck a parked car and crashed into the front of a building, but there was no one inside the truck. Residents of the building came outside and told the police officers that they saw the driver walking north on Elmira Street. The police went north on Elmira Street, and Corporal Schon located Defendant hiding behind the Nappa Auto Parts Building. Defendant was identified as Corey Bradford from his driver's license. Defendant's speech was very slurred; a very strong odor of alcohol was emanating from his person; he had red, glassy eyes; and he had trouble standing. Although Defendant claimed that he was injured, the police officers did not observe any injuries. Nonetheless, the officers did not ask Defendant to perform field sobriety tests due to his injury claims and the fact that Defendant was not stable on his feet. Corporal Schon arrested Defendant for driving under the influence (DUI) because he was clearly incapable of safely

operating a motor vehicle. Corporal Schon helped Defendant walk to the ambulance because Defendant was not stable enough to walk without his help. Corporal Schon then rode with Defendant to the hospital.

Defendant was wheeled into the hospital on a gurney. Corporal Schon had the phlebotomist paged. He read the modified, DL-26B form to Defendant. Defendant read the form, but refused to sign it. The phlebotomist arrived, and Corporal Schon asked Defendant if he was going to give blood or not. Defendant agreed to permit the phlebotomist to conduct the blood draw. Officer Schon signed the DL-26B form twice – once on the portion indicating that he read the form to the operator and gave him an opportunity to submit to the blood test and again under the statement "Operator refused to sign, after being advised."

Corporal Schon did not force or coerce Defendant to submit to the blood test; he did not even raise his voice. The phlebotomist also did not force or coerce Defendant into taking the blood test. Defendant was cooperative with the phlebotomist; he did not pull his arm away from her. The phlebotomist took blood from Defendant's inner elbow and left the room. Corporal Schon told Defendant to expect to see charges in the mail and then he left Defendant in the hospital's care.

Defendant filed a motion to suppress, in which he asserted that the blood test violated his constitutional rights because the police did not have a warrant, there were no exigent circumstances, and he did not knowingly, intelligently, and voluntarily consent.

At the hearing on Defendant's motion, Officer Taylor and Corporal Schon testified regarding their observations of Defendant at the scene. Corporal Schon also

testified that, consistent with the above, Defendant refused to sign the DL-26B form but he voluntarily consented to the blood test.

Defendant also testified at the hearing. He stated that he was in a wreck. He got out of the vehicle. He knew he "messed up." He kept trying to call his wife, but could not reach her. He must have strayed too far from the scene. An officer showed up, put him in the ambulance, and took him to the hospital. Defendant did not recall any other officers being present at or near the scene.

At the hospital, Defendant kept trying to call his wife. He told the officer he would not sign anything until his wife got there. According to Defendant, the officer kept asking him to sign and told him if he didn't sign he would go to jail.

Defendant did not remember giving blood. He could not recall any treatment that he received at the hospital other than an IV in his arm. He indicated that he did not remember that night. He just remembered waking up at his house.

Defendant had a previous DUI and he knew that if he refused to take the blood test that he would get the maximum charge. In the past, family and friends told him if he refused a blood test, he'd get more jail time and more fines. Defendant acknowledged that the officer never read to him anything that indicated he would get the maximum charges. According to Defendant, the officer just told him that if he didn't sign the form he would go to jail. However, Defendant did not remember seeing the form and did not remember much of what the officer was saying. He remembered the officer telling him he was under arrest but he did not remember the officer requesting the blood test or telling him that his license

would be suspended for 12 months if he refused.

Defendant's wife, Kimberly Bradford, also testified at the hearing. She testified that Defendant called her and apologized. She could not understand him, and the phone cut out. She called him back and someone else told her what was going on and that Defendant was going to the hospital. She got a friend to take her to the hospital.

The hospital personnel tried to get Defendant to go to the bathroom and tried to give him pain medication but Defendant refused everything. Defendant told his wife that he did not sign or do anything until she arrived. She also testified that she signed a paper so hospital personnel could give Defendant medications to calm him down and then "he was out."

Defendant's wife admitted she was not present when Defendant's blood was drawn or when the police officer was there.

Defendant first argues that the blood test result must be suppressed because the Commonwealth failed to obtain a search warrant. He also argues that the blood test result must be suppressed because, as a matter of law, the consent was coerced in that the statutory law at the time regarding refusals was different than what was read to the defendant. Finally, Defendant argues that his consent was not knowing, intelligent or voluntary.

Defendant's motion is similar to many other motions filed in many other cases subsequent to the decision of the United States Supreme Court in ***Birchfield v. North Dakota***, 136 S. Ct. 2160 (2016). Contrary to then existing Pennsylvania law, the Supreme Court held that a motorist could not be criminally punished for refusing to submit to a blood

test based on implied consent to submit to such. One of the well-established exceptions to a warrantless search, however, is the consent exception. ***Commonwealth v. Evans***, 153 A.3d, 323 (Pa. Super. 2016). Since ***Birchfield***, the Pennsylvania appellate courts have had an opportunity to address consent in the context of giving a blood sample. Further, this court has addressed many of Defendant's claims.

As with other cases, Defendant's initial set of arguments is based in absolutes. These absolutes have been clearly eschewed by our courts.

Contrary to what Defendant first argues, there is no requirement whatsoever that the Commonwealth always obtain a search warrant prior to seizing an individual's blood. As previously noted, one long-recognized exception to obtaining a warrant is valid consent. ***Evans***, supra. Furthermore, in ***Commonwealth v. Bell***, 2017 Pa. Super. LEXIS 545 (July 19, 2017), the Superior Court concluded that ***Birchfield*** does not provide that an individual has a constitutional right to refuse a warrantless blood test. ***Bell***, supra. at *13 As the court in ***Bell*** explained, the right to refuse a blood test is not one of a constitutional dimension but rather is simply a matter of grace bestowed by the legislature. ***Id.*** at *9 (citing ***South Dakota v. Neville***, 459 U.S. 553, 565, 103 S. Ct. 916 (1983)).

Defendant next argues that the blood test must be suppressed because, as a matter of law, the consent was coerced in that the statutory law at the time regarding refusals was different than what was read to Defendant by Corporal Schon. This per se argument clearly ignores the holdings of numerous appellate court decisions that reject such arguments. In ***Evans***, supra, for example, the defendant consented to the warrantless blood

draw after the police informed him that if he refused and he was convicted of an incapable offense, he would be subject to more severe penalties. In light of ***Birchfield***, this was not the law and the defendant's consent was based on "partially inaccurate" advice. Accordingly, the judgment of sentence was vacated but the case was remanded to the trial court to "reevaluate defendant's consent based on the totality of the circumstances and given the partial inaccuracy of the officer's advisory." ***Evans***, 153 A.3d at 331 (citing ***Birchfield***, supra. at 2186); see also ***Commonwealth v. Haines***, 2017 Pa. Super. LEXIS 585 (August 2, 2017).

Defendant next argues that his consent must be knowing and intelligent as well as voluntary. Again, the defendant's assertion is not correct. The courts continue to use a voluntariness standard in addressing consent issues. ***Schneckloth v. Bustamonte***, 412 U.S. 218 (1973); ***Commonwealth v. Cleckley***, 738 A.2d 427 (Pa. 1999).

As noted previously by this court, the Commonwealth bears the burden of establishing that consent is a product of an essentially free and unconstrained choice – not the result of duress or coercion, express or implied, or a will overborne – under the totality of the circumstances. ***Evans***, supra; ***Haines***, supra.

The Pennsylvania Supreme Court has rejected arguments in support of per se rules that for consent to be valid, an individual must be advised of his or her rights to refuse or that the results of the test may be used against them in a criminal prosecution. ***Commonwealth v. Smith***, 621 Pa. 218, 77 A.3d 562 (2013)(results may be used in a criminal prosecution); ***Cleckley***, supra (right to refuse); ***Evans***, supra (partially inaccurate advice results in remand).

Considering the totality of the circumstances, the court finds that Defendant voluntarily consented to the blood test. The court rejects Defendant's claims that Corporal Schon told him that if he refused to sign the form he would go to jail. Defendant never signed the form, but he did not go to jail; he went home from the hospital. Defendant admitted that he did not remember much of the night in question. Defendant knew he "messed up." He was trying to avoid getting caught for DUI by leaving the crash scene and hiding between the air handlers at Nappa Auto Parts. He claims that he didn't recall the other officer at the scene; any mention of a license suspension; or what, if any, treatment was provided to him at the hospital. The only thing he allegedly remembers is Corporal Schon telling him that if he refused to sign the form, he would go to jail. This testimony is too convenient. It is merely another attempt by Defendant to avoid the consequences of his choice to drink and drive.

The court finds credible the testimony of Corporal Schon that, although Defendant refused to sign the form, he consented to the blood draw. In fact, in his testimony, Defendant never claimed that he did not agree to the phlebotomist taking his blood; he only claimed that his consent was coerced by Corporal Schon telling him he would go to jail if he refused to sign the form.

ORDER

AND NOW, this ___ day of December 2017, the court DENIES Defendant's Omnibus Pre-trial Motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Brian Manchester, Esquire/Greg Davidson, Esquire
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Work File
Gary Weber, Esquire (Lycoming Reporter)