IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-762-2017**
	:	
LANNETTE GARMS,	**:**	
Defendant	**:**	**Motion to Suppress**

OPINION AND ORDER

The defendant faces Driving Under the Influence (DUI) charges and a related summary offense. According to the August 30, 2017 testimony of Officer Tyler Bierly, of the Tiadaghton Valley Regional Police Department, he was on patrol on March 5, 2017 and at approximately 8:51 p.m., he observed a Ford Explorer vehicle being driven in an erratic manner almost striking a guardrail. As a result, he initiated a traffic stop of the vehicle.

Officer Bierly approached the vehicle and identified the defendant as the driver. The defendant's driver's side window was down. Officer Bierly has extensive training in the detection, investigation, arrest and prosecution of DUI offenses. He immediately detected the odor of an "intoxicating beverage." He engaged the defendant in conversation. The defendant's speech was "thick and slurred." In response to Officer Bierly's claim to the defendant that he smelled the odor of an intoxicating beverage, defendant claimed she had previously spilled some alcohol in the vehicle. After being asked "several times," the defendant eventually produced to Officer Bierly her driver's license.

Officer Bierly asked the defendant to step out of the vehicle to perform some standard field sobriety tests. Although the defendant's performances on the tests indicated to Officer Bierly that the defendant was "under the influence," the defendant told Officer Bierly

that she understood his instructions and appeared to Officer Bierly to have understood the instructions. The defendant then agreed to perform a preliminary breath test (PBT). After the test indicated the presence of alcohol, the defendant turned her back to Officer Bierly, put her hands behind her back so as to be handcuffed, and said "you got me."

Officer Bierly told the defendant that she was under arrest for suspicion of driving under the influence of alcohol and that she would be taken to the hospital for a blood test. The defendant was taken into custody, placed in the back of Officer Bierly's patrol unit, and transported to the Jersey Shore Hospital. Upon arriving at the hospital, the defendant was escorted into the front lobby and was directed to a seat. Upon being seated, Officer Bierly read to the defendant a Pennsylvania Department of Transportation DL-26 form. The form was admitted into evidence as Commonwealth Exhibit 1.

The form is actually an amended DL-26 form, otherwise known as an Amended Chemical Testing Warnings form, which deletes any and all references to criminal penalties or criminal enhancements should the defendant refuse the blood test. After reading the amended DL-26 form in its entirety, Officer Bierly asked the defendant if she had any questions. The defendant indicated that she had no questions. Officer Bierly then asked the defendant if she understood what was read to her. The defendant indicated that she understood and then signed the form under what was printed as: I have been advised of the above. Then after being asked by Officer Bierly if she would consent to the test, the defendant said yes and agreed to take the test.

Officer Bierly then escorted the defendant to the hospital's lab. The defendant

took a seat in the lab. Once the phlebotomist arrived, the defendant followed the phlebotomist's instructions. The defendant placed her arm out and allowed the phlebotomist to take the blood. All of the exchanges between Officer Bierly and the defendant throughout the evening were pleasant, not threatening, non-coercive and agreeable. Officer Bierly described the defendant as being "very cooperative" at the hospital.

The defendant testified on August 30, 2017 as well. She testified that she consented to the blood draw "because [she] thought it was the law." She explained further that she thought that if she refused, she would "automatically go to jail" and lose her license for 18 months. Her "thoughts" were based on her general knowledge of the law and the fact that she was previously prosecuted for a DUI offense in 2011.

Regarding the amended DL-26 form, the defendant denied it being read to her or signing it as indicated by Officer Bierly. Instead, the defendant testified that it was not read to her until after she left the hospital and went to police headquarters. She stated that she first gave blood at the hospital and then after she left, the form was read to her and she signed it.

Before the court is the defendant's motion to suppress the blood test results. The defendant first argues that the blood test result must be suppressed because the Commonwealth failed to obtain a search warrant. She next 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 by Officer Bierly. Finally, the defendant argues that her consent was not knowing, intelligent or

voluntary.

The 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, the 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)).

The 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 the defendant by Officer Bierly. This per se argument clearly ignores the holdings of numerous appellate court decisions that reject such arguments. In ***Commonwealth v. Evans***, 153 A.3d 323 (Pa. Super. 2016), 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).

The defendant next argues that her 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); *see also* ***Commonwealth v. Myers***, 2017 Pa. LEXIS 1689 (July 19, 2017); ***Commonwealth v. Smith***, 621 Pa. 218, 77 A.3d 562 (2013); ***Evans***, supra; ***Commonwealth v. Zander***, 14 A.3d 171 (Pa. Super. 2011).

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. ***Smith***, supra (results may be used in a criminal prosecution); ***Cleckley***, supra (right to refuse); ***Evans***, supra (partially inaccurate advice results in remand).

In this particular case, the court finds that the defendant's consent to the blood test was entirely voluntary. It was not the result of duress or coercion, express or implied. The defendant made a conscious choice to take the test. The defendant's alleged "thoughts" as to the law, provide little, if any, mitigation. The defendant is presumed to know all of the laws governing driving under the influence. The defendant's consent was not tainted by any misinformation whatsoever. In fact, the defendant was read a form which was entirely consistent with present Pennsylvania law with respect to refusing blood tests.

The defendant was taken into custody and transported to the hospital. She was read the amended DL-26 form, indicated she understood it and signed it. She then went to the lab and provided blood. She sat down, placed her arm out and voiced no objections whatsoever. She was entirely cooperative, and there is zero evidence that her consent was not the product of an essentially free or unconstrained choice. The defendant had the maturity, sophistication and mental state to decide to take the test, which she was well aware of, even prior to being placed under arrest.

What is somewhat concerning to the court, however, is that the defendant's testimony mirrors the factual predicate for her legal arguments. Unfortunately for the defendant, her testimony is far too convenient and simply not credible.

Dennis Diderot was a famous French philosopher and writer from the 1700's. What he wrote about the truth appears starkly evident in this case. "We swallow greedily any lie that flatters us, but we sip only little by little at a truth we find bitter."

The bitter truth for the defendant is that she voluntarily consented. The lie is that, despite presuming the law and despite what was read to her, she allegedly thought that she would "automatically go to jail."

ORDER

AND NOW, this ___ day of September 2017, following a hearing and argument, the defendant's motion to suppress is **DENIED**.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
Brian Manchester, Esquire
124 West Bishop St.
Bellefonte, PA 16823
George Lepley, Esquire
Gary Weber, Lycoming Reporter
Work File