

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-777-2017
v.	:	
	:	
BRADLEY DWAYNE HOUSEKNECHT,	:	SUPPRESSION
Defendant	:	

OPINION AND ORDER

On June 12, 2017, the Defendant filed a Motion to Suppress Evidence. A hearing on the motion was scheduled for August 10, 2017. At the time set for hearing, Defense Counsel presented no testimony or evidence and relied on legal argument alone.

Background

Defendant is charged with two counts of Driving Under the Influence of Alcohol¹, an ungraded misdemeanor; and Driving Under the Influence with Highest Rate of Alcohol², second offense, a misdemeanor of the first degree; and various summary offenses. The charges arise out of an incident that occurred on January 7, 2017, in Lycoming County, Pennsylvania.

Testimony

No testimony was presented at the hearing. The Commonwealth submitted into evidence, without objection by Defense Counsel, the video recording of the blood draw from the DUI Processing Center³ and the DL26B form signed by Defendant⁴.

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(c).

³ Commonwealth's Exhibit #1.

⁴ Commonwealth's Exhibit #2.

The video was taken at the DUI Processing Center on January 7, 2017, at approximately 10 pm. At 0:53, Officer Miller (Miller) of the DUI Processing advises Defendant he is being recorded. At 0:32 Miller reads the Chemical Test Warnings from the DL26B form. Warning #1 is that Defendant is under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Motor Vehicle Code. Miller confirms Defendant's understanding of Warning #1 and he nods his head in agreement. Warning #2 is that Miller is requesting that Defendant submit to a chemical test of his blood. Warning #3 is that if Defendant refuses to submit to the requested test his Drivers' license will be suspended for 12 months. If Defendant previously refused a chemical test of the blood or was previously convicted of driving under the influence the suspension will be for up to 18 months. Warning #4 advises Defendant that he has no right to speak to an attorney before deciding whether to consent to the blood test and that if he requests to speak to an attorney after being provided the warnings or remains silent after being asked to submit to the test, it will be a refusal of the test.

At 5:05 after the completion of the blood draw, Miller reads Defendant his Miranda rights and the Defendant makes a statement.

Discussion

Was Defendant's consent to blood draw knowing, voluntary, and intelligent?

Defendant's consent to blood draw did not have to be knowing, voluntary, and intelligent. It only needed to be voluntary. Commonwealth v. Gordon, CP-41-CR-0000393-2017, (decision of Court Sep. 27, 2017); Commonwealth v. Wilt, CP-41-CR-0000251-2017, (decision of Court Oct. 18, 2017).

Was the Defendant so under the influence of alcohol that he could not intelligently determine whether he should consent to the test?

Voluntariness "must be shown by a preponderance of the credible evidence." Commonwealth v. Kuhn, 475 A.2d 103, 105 (Pa. Super. 1984). In order to meet this burden, "the Commonwealth must demonstrate that the proper warnings were given, and that the accused manifested an understanding of these warnings." Commonwealth v. Eichinger, 915 A.2d 1122, 1136 (Pa. 2007).

The video recording shows that Defendant was given the proper warnings as required by law and that the Defendant manifested an understanding of the warnings. The Court viewed the recording and finds that the Defendant was not so under the influence of alcohol that he could not voluntarily consent to the blood draw. He is awake and alert during the video recording. He is able to follow both the directions of Miller and the phlebotomist and asks appropriate follow up questions as to the procedure. At 2:38 he asks a question of the phlebotomist as to whether he should remove his shirt. He even has the presence of mind to joke with the phlebotomist due to the length of the blood draw, quipping "I am not giving blood, am I?" At 4:10 he states "I am done drinking; I know that." He is calm and cooperative throughout the entire exchange and Miller's demeanor is calm and matter of fact. Though he was under arrest for suspected driving under the influence of alcohol, he appears to have the mental capacity to understand what is being said to him and the Court finds that he knew that he was consenting to the blood draw and that he intended to consent to the blood draw.

Was Defendant's consent voluntary when he had been told that he his drivers' license would be suspended if he did not consent to the test, and that he had no right to speak to an attorney?

Being told the civil consequences of not consenting to the blood draw and that the Defendant has no right to speak to an attorney does not vitiate voluntary consent as a matter of law. Gordon, *supra*; Wilt, *supra*.

Did Defendant have a constitutional right to refuse and were Miranda type warnings required?

The Court does not reach whether Defendant has a constitutional right to refuse as he has a statutory right to refuse. Commonwealth v. Eicher, 235, 249 (Pa. Super. Ct. 1992) (courts should not decide constitutional questions unless absolutely required to do so); Commonwealth v. Myers, 164 A.3d 1162, 1170 (Pa. 2017) (Subsection 1547(b)(1) confers upon all individuals under arrest for DUI an explicit statutory right to refuse chemical testing, the invocation of which triggers specified consequence.)

Miranda⁵ warnings were not required at the time of the blood draw as they only attach at the time of custodial interrogation. Also See Gordon, *supra*; Wilt, *supra*. (explaining the difference between waiving a 4th Amendment versus a 5th amendment right).

⁵ Miranda v. Arizona, 384 U.S. 436 (1966).

ORDER

AND NOW, this 20th day of October, 2017, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Peter Campana, Esq.
Martin Wade, Esq.
Gary Weber, Esq.