

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-551-2017  
 :  
 JAMI WHITMOYER, :  
 :  
 Defendant : Motion to Suppress

**OPINION AND ORDER**

By Information filed on April 7, 2017, Defendant is charged with Driving Under the Influence (DUI) of controlled substances and related offenses. Officer Chris Herb of the Montoursville Police Department was working a countywide DUI enforcement detail on December 4, 2016. He was partnered with Officer Hockman, also of the Montoursville Police Department.

They observed a green color Dodge pickup truck at the intersection of Route 15 south and Route 54 operating without one headlight. They activated their emergency lights and stopped the vehicle. Upon stopping the vehicle, they identified the operator as the defendant.

Based upon several observations including the smell of marijuana coming from inside the vehicle and Defendant's admission that she was smoking marijuana "earlier in the evening," the fact that Defendant gave to the officers a marijuana pipe and a small amount of marijuana, and the fact that Defendant appeared to be under the influence of marijuana by displaying slow, lethargic movements and having red glassy eyes, Officer Herb placed Defendant under arrest for suspected DUI.

Officer Herb transported Defendant to the Williamsport Hospital for

processing. Officer Herb took Defendant into a private room at the hospital. He removed her handcuffs. He read to her a “revised” DL-26B form, which did not include the increased criminal penalties for refusing a chemical test. He read it to her in a “conversational” tone. Following the reading of the form, Defendant consented to the blood draw. She was asked if she was willing to submit to a chemical test of her blood and she responded “yes.” According to Officer Herb, Defendant’s consent was given freely and there was no coercion. There were no promises. Defendant was given the opportunity to refuse but voluntarily chose to give blood.

Soon after Defendant signed the form consenting to the draw, the phlebotomist arrived. Defendant complied with the phlebotomist’s instructions. Defendant held her arm out and allowed the phlebotomist to take her blood. According to Officer Herb, Defendant was “completely cooperative” during the entire process. The blood testing results were eventually received and indicated the presence of THC metabolites in her blood.

Defendant filed a motion to suppress on May 31, 2017. The first hearing was held on August 15, 2017. Unfortunately, the second hearing was not scheduled until November 21, 2017. There were a handful of continuance requests due to varied reasons.

Officer Hockman testified, as set forth above, at the August 15, 2017 hearing. Officer Herb and Defendant testified at both hearings.

Among other things, Defendant testified that Officer Hockman was arrogant and “absolutely” intimidating. Officer Herb told her that he was not going to administer any field sobriety tests. Rather, he was taking her to “give blood.” Officer Herb told Defendant

that if she didn't give blood, she would possibly be facing further charges and automatically lose her license. He then transported her to the hospital.

She denied that Officer Herb read the DL-26 B form to her. He only briefly explained it to her "after" she gave blood. She signed it but "did not know what she was signing." She "felt" that she did not have a choice because if she refused, she would face a license suspension and "more penalties."

Upon getting to the hospital, she was taken to a room. While in the room, Officer Herb and Defendant had a brief conversation. Two phlebotomists arrived. Defendant knew that they were there to take blood. During the entire time, she was crying and upset. She allowed her blood to be taken because she believed she had no choice. She extended her arm for the blood to be drawn. When the phlebotomist first tried taking blood, the draw was unsuccessful. The phlebotomist "blew a vein." The blood was drawn successfully the second time.

Defendant argues, consistent with her written motion, that her blood results must be suppressed for varied reasons. First, Defendant argues that the Commonwealth did not prove that Defendant provided "actual, voluntary, knowing and intelligent consent to the search." Next, Defendant argues that the Commonwealth failed to apply for and receive a warrant for the blood test. Finally, Defendant argues that because the arresting officer did not obtain a search warrant, the consent was coerced.

This court has had the opportunity to specifically address some of Defendant's legal issues in other recent Opinions. See *Commonwealth v. Garms*, [CR-762-2017](#)

(September 25, 2017); *Commonwealth v. Daniel Diehl*, CR-642-2017 (September 27, 2017), *Commonwealth v. DeSciscio*, CR-1943-2016 (September 1, 2017); *Commonwealth v. Littlejohn*, CR-1199-2017 (September 7, 2017). For the reasons set forth in those Opinions and based on the appellate authority cited in said Opinions, Defendant's arguments related to the necessity of a search warrant and coercion fail.

Defendant's written argument with respect to exigent circumstances also fails. The Court notes that Defendant did not orally argue this issue. The Commonwealth does not allege that the blood was drawn as a result of exigent circumstances. Instead, the Commonwealth alleges that Defendant consented to the blood draw.

With respect to Defendant's consent argument, and contrary to the Defendant's assertion, Defendant's consent need not be voluntary, knowing and intelligent; it only needs to be an actual, voluntary consent. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Commonwealth v. Cleckley*, 558 Pa. 517, 738 A.2d 427 (Pa. 1999); *see also Commonwealth v. Myers*, 164 A.3d 1162 (Pa. July 19, 2017); *Commonwealth v. Smith*, 621 Pa. 218, 77 A.3d 562 (2013); *Commonwealth v. Evans*, 153 A.3d 323 (Pa. Super. 2016); *Commonwealth v. Xander*, 14 A.3d 174 (Pa. Super 2011).

In determining the validity of a given consent, the Commonwealth bears the burden of establishing that it is the product of an essentially free and unconstrained choice and not the result of duress or coercion express or implied, or a will overborne under the totality of the circumstances. The standard for measuring the scope of a person's consent is based on an objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent.

*Evans*, *supra* at 327 (quoting *Smith*, 77 A.3d at 573 (internal quotations, citations and

corrections omitted)).

Further, and as this court noted in *Littlejohn* as well as *Commonwealth v. Daniel Diehl*, CR-642-2017 (September 2017), the Pennsylvania Supreme Court has eschewed per se rules and has clearly held that no one fact or circumstance can be talismanic in the evaluation of the validity of a person's consent. *Smith*, 77 A.3d at 572. As a result, the Pennsylvania Supreme Court has rejected arguments in support of per se rules that for a consent to be valid, an individual must be advised of his or her right to refuse or that the results of the test may be used against them in a criminal prosecution. *Cleckley*, supra (right to refuse); *Smith*, supra (results may be used in a criminal prosecution).

Considering the particular circumstances of this case, the court concludes that Defendant's consent was voluntary. Defendant's "understanding" of the law regarding refusal, that she would face more penalties, albeit incorrect, is certainly not determinative. Indeed, and as this court has previously held, Defendant is presumed to know all of the laws governing driving under the influence including those laws that have determined that the statute is unenforceable and that one who refuses a blood test cannot be punished more harshly because of such refusal.

Moreover, Defendant's consent was not "tainted" in this case, because she was never informed of the enhanced criminal penalties for refusal which have since been declared unconstitutional. Defendant was taken into custody and transported to the hospital to give blood. Defendant was read an amended DL-26B form, given an opportunity to review it and then signed it. The court does not accept as credible Defendant's assertions that the

form was not read to her, it was only briefly explained, and she did not know what she was signing. The court does accept as credible the testimony of Officers Hockman and Herb.

Defendant's testimony was contradictory, vague and confused. She claims that she gave blood because she had no choice. She was told that she was going to be taken for a blood test and that if she didn't take it she would be facing "higher penalties." Once she was taken to the hospital, she was escorted to a room and, following a very brief conversation with Officer Herb, the phlebotomist came in and took her blood. Nothing at all was explained to her. After her blood was taken, Officer Herb showed her the DL-26 B form and said: "This is the form. I need you to sign this for you to get out of here." She wasn't quite aware of what she was signing.

Yet Defendant admitted that she did have a choice. Specifically, she was made aware and agreed that she knew that she could refuse to give blood, but if she did so, she would suffer the consequence of a suspended license.<sup>1</sup> Neither the form nor the officers advised Defendant that she would be subject to enhanced criminal charges or penalties if she refused. Moreover, her version of events is contrary to the written documentation. The DL-26 B form clearly indicates that Officer Herb read it to the Defendant at 1:08 a.m. It can be reasonably inferred that Defendant signed it immediately thereafter as testified to by Officer Herb. The Susquehanna Health Blood Alcohol and/or Drug Screen form clearly indicates that Defendant's blood was taken at 1:11 a.m., after she was read her rights and not before as she claims.

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<sup>1</sup> Although Defendant also testified that she believed she would face "possible" further charges if she refused,

Officer Herb read the DL-26B form to Defendant. She verbally agreed to give blood and signed the form. When the phlebotomist arrived, she held her arm out and allowed the phlebotomist to draw blood. In fact, even after the first draw was unsuccessful, she allowed the phlebotomist to stick another needle in her arm and draw blood a second time. At no time did she object through conduct or words. In fact, as Officer Herb testified, Defendant was “entirely cooperative.”

Defendant’s voluntary consent could not be more evident. Her consent was a product of a clear and essentially free and unconstrained choice. It was not the result of duress or coercion, express or implied.

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of November 2017, following a hearing and argument, Defendant’s motion to suppress is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)  
Paul Petcavage, Esquire  
Gary Weber, Esquire, Lycoming Reporter  
Work File

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the court does not find this portion of her statement credible.