IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CP-41-CR-0001136-2017**
v.	:	
	:	
EARL GERALD FINZEL,	:	**SUPPRESSION**
Defendant	:	

OPINION AND ORDER

On August 23, 2017, Defendant's Counsel, filed a Motion to Suppress Evidence. A hearing was held November 30, 2017.

Background

Earl Gerald Finzel (Defendant) is charged with Driving Under the Influence of Alcohol or Controlled Substance, second offense[1], an ungraded misdemeanor and Driving Under Influence with a High Rate of Alcohol, second offense[2], an ungraded misdemeanor. The charges arise out of two calls to 911 from the Moose Lodge on January 30, 2017.

Testimony of Officer William MacInnis

Trooper William MacInnis (MacInnis) of the South Williamsport Police Department testified on behalf of the Commonwealth. MacInnis has been a South Williamsport officer for five (5) years.

MacInnis was on duty on January 30, 2017, when he received a call from Lycoming County 911 at approximately 10:50 pm. MacInnis was in uniform and in a marked unit parked at the Santander Bank on the corner of Southern and Market watching traffic flow.

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[1] 75 Pa.C.S. § 3802(a)(1).
[2] 75 Pa.C.S. § 3802(b).

The dispatch indicated there was a fight at the Moose Lodge #145 at 1219 W. Southern Avenue in South Williamsport, Pennsylvania. The initial dispatch reported multiple injuries and unknown presence of weapons. A subsequent dispatch indicated an actor fled in a grey in color Chevy Lumina vehicle eastbound on Southern Avenue.

MacInnis departed towards the Moose Lodge and at Kane Street passed the vehicle fitting the description from dispatch. MacInnis was traveling westbound, the vehicle of interest was traveling in the opposite direction. MacInnis proceeded to follow the vehicle, radioed the license plate number to dispatch, determined the registration was current, and registered to the above named Defendant. MacInnis stopped Defendant's vehicle at the Dunkin' Donuts at 30 E. Southern Avenue.

MacInnis made contact with the vehicle operator and identified the vehicle operator as Defendant. MacInnis testified to three occupants of the vehicle. MacInnis had a conversation with the driver where he was advised that the vehicle operator and its occupants had come from the Moose Lodge. Officer Grant from Duboistown pursued in a vehicle chase the rear passenger who fled the scene. Corporal Sponhouse also provided back up at the scene.

MacInnis asked the driver to remove himself from the vehicle so MacInnis could separate him from the other front passenger to investigate the Moose Lodge incident. MacInnis could smell alcohol emanating from Defendant's breath. MacInnis asked Defendant to engage in standard field sobriety tests. As a result of the field sobriety tests, MacInnis placed Defendant under arrest for suspected Driving Under the Influence.

MacInnis testified that he read the Defendant the warnings verbatim from the DL26B form submitted into evidence as Commonwealth's Exhibit 3. MacInnis noted that the Defendant signed on the line where the Officer typically signs. MacInnis attended the blood draw. MacInnis testified to Defendant allowing the phlebotomist to draw blood. Defendant did not move around or thrash his arm. Defendant did not tell the phlebotomist to stop or say "no". To MacInnis, there were no indications verbal or nonverbal that Defendant was refusing to submit to a blood draw.

MacInnis testified that Defendant was conscious through the entire interaction and was able to respond to questions. MacInnis did not obtain a search warrant to search Defendant's blood and MacInnis did not advise Defendant that he had a constitutional right to refuse blood test.

Audio recording of dispatch - 911 radio transmissions.

Submitted into evidence as Commonwealth's Exhibit #4 are six (6) dispatches made in relation to this incident:

Call 1 – dispatch reports to MacInnis that it has received two calls from the Moose Lodge at 1219 W. Southern Avenue regarding a fight. Unknown weapon status; reported injuries.

Call 2 – dispatch reports to MacInnis that actors in the fight have departed the Moose Lodge in a gray Chevy Lumina and are traveling in the direction of the South Williamsport Police Station.

Call 4 – dispatch reports to MacInnis that caller is unsure what led up to fight but that the actor assaulted a couple of people and threw a bar stool and left. At this time, the police reported license plate to dispatch.

Call 5 – dispatch confirms that the 1993 Chevy sedan is registered to Defendant.

Call 6 – police indicate they are stopping vehicle of interest in Dunkin Donuts parking lot.

911 calls

At the time of the hearing, Commonwealth sought to introduce into evidence the 911 calls that prompted police response on January 30, 2017. Defense Counsel initially objected to the Court considering the calls but on December 4, 2017, communicated with the Commonwealth and the Court that there was no objection to the Court listening to the calls.

Call 1 – A caller who provides police her name and number calls 911 stating that there is a fight in progress at the Moose Lodge and that the 911 is to send two or three ambulances.

Call 2 – A caller who provides his name, number and home address calls regarding a fight at Moose Lodge #145 at 1219 W. Southern Avenue in South Williamsport, PA. He reports to 911 that there has been a fight and the actor hit two people with a “bar” stick. Reports two injured, one knocked down with possible head trauma. He reports one actor and two hurt. He describes the clothing the actor was wearing (green shirt, camel hat and jeans) and believes the actor’s name is “Josh”. He reports that the actor has left the Moose Lodge and is traveling in the direction of the South Williamsport police station.

Discussion

I. Probable Cause for Motor Vehicle Stop

Defense Counsel argues that the required level of suspicion is probable cause not reasonable suspicion to justify the motor vehicle stop. Defense Counsel is correct that if MacInnis and the other responding officers were seizing Defendant's vehicle and its occupants for a violation of the motor vehicle code, than probable cause would be required, unless suspected motor vehicle violation required further investigation:

> 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) 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.
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> Commonwealth v. Feczko, 10 A.3d 1285, 1288 (Pa. Super. 2010) (petition for allowance of appeal denied July 26. 2011)

Here, MacInnis 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. MacInnis did have 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 at the Moose Lodge #145 by the driver and/or occupant of the vehicle. MacInnis was responding to 911 callers whose identities were provided and could be called as witnesses should a prosecution for

the crimes they were reporting were initiated or alternatively could be prosecuted for making false reports to law enforcement if their information was fabricated or provided for some other purpose.

The vehicle MacInnis stopped matched the description of the dispatch. The circumstances known to MacInnis at the time before the vehicle stop indicated criminal activity had occurred. The report of the conduct in the Moose Lodge #145 was sufficient to support further inquiry by police. The conduct reported to MacInnis is concomitant with the crimes of disorderly conduct, harassment and, as reported by two named 911 callers, "assault".

Though anonymous tips to police information do not establish grounds even for an investigative detention in Pennsylvania or under the Fourth Amendment[3], here the information provided to police was not anonymous, was corroborative of each other and warranted further investigation be police.

II. Reasonable Suspicion to Perform Field Sobriety Tests

MacInnis requested that Defendant perform field sobriety tests because Defendant's breath smelled of alcohol.

Reasonable suspicion that criminal activity is afoot must be present when an officer asks a motorist to perform field sobriety tests. Commonwealth v. Cauley, 10 A.3d 321, 327 (Pa. Super. 2010). Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the

[3] Commonwealth v. Jackson, 698 A.2d 571 (Pa. 1997); Commonwealth v. Kue, 692 A.2d 1076 (Pa. 1997); Commonwealth v. Hawkins, 692 A.2d 1068 (Pa. 1997); Commonwealth v. Goodwin, 750 A.2d 795 (Pa. 2000); Commonwealth v. Wimbush, 750 A.2d 807 (Pa. 2000); Florida v. J.L., 120 S. Ct. 1375, 146 L.Ed.2d 254 (2000).

circumstances. In order to justify the seizure, a police officer must be able to point to specific and articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention. The determination of whether an officer had reasonable suspicion that criminality was afoot so as to justify an investigatory detention is an objective one, which must be considered in light of the totality of the circumstances. It is the duty of the suppression court to independently evaluate whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot. Commonwealth v. Brown, 996 A.2d 473,477 (Pa. 2010).

More than the smell of alcohol on Defendant's breath supported MacInnis's reasonable suspicion that Defendant had been driving under the influence of alcohol. The vehicle Defendant was operating had just been reported as leaving a drinking establishment. MacInnis personally observed the vehicle in motion on the roadway. Though MacInnis observed no erractic driving, MacInnis knew that. at least one of the occupants of the vehicle has been reported to have been engaged in a "bar fight". Although it is certainly within the realm of possibility that the reason Defendant smelled of alcohol was not because he had been drinking but because he was just in a bar, the standard of proof for reasonable suspicion is less then beyond a reasonable doubt, preponderance of the evidence, prima facie, or even probable cause. It is an objective standard that says when a police officer has a reasonable

suspicion that criminal activity is afoot he or she may temporarily seize an individual to engage in further investigation to either confirm or dispel the suspicion. The Court finds as a matter of law that under the circumstances here, MacInnis's suspicion was reasonable and he was within his legal authority to conduct standard field sobriety tests.

III. Consent to Chemical Test of Blood

The Court remains convinced in its finding as a matter of law that the revised DL26B form comports with the requirements of Birchfield v. North Dakota[4], and the rights of the people to be free from unreasonable searches and seizures guaranteed by both the US and the Pennsylvania Constitutions. Commonwealth v. Portanova, CP-41-CR-0000200-2017 (decision of Court Nov. 16, 2017); Commonwealth v. Liberti, CP-41-CR-0001933-2016 (decision of Court Oct. 23, 2017); Commonwealth v. Wilt, CP-41-CR-0000251-2017 (decision of Court Oct. 18, 2017); Commonwealth v. Gordon, CP-41-CR-0000393-2017 (decision of Court Sep. 27, 2017).

The testimony of MacInnis establishes that Defendant was fully conscious during the entire encounter with police from the initial motor vehicle stop to the chemical draw of the blood. He was advised of what he needed to be advised under the current Pennsylvania law and consented to the blood test, removing the need for MacInnis to acquire a search warrant approving a chemical search of Defendant's blood.

[4] 136 S. Ct. 2160, 2185 (2016).

ORDER

AND NOW, this 2nd day of February, 2018, based upon the foregoing Opinion, the Motion to Suppress Evidence is hereby DENIED.

By the Court,

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Nancy L. Butts, President Judge

cc: Martin Wade, Esquire, First ADA
Peter T. Campana, Esquire, Defendant's Counsel
Gary Weber, Esquire