

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**CURTIS EUGENE WOOTEN, JR.,
Defendant**

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CP-41-CR-0001135-2017

SUPPRESSION

OPINION AND ORDER

On August 15, 2017, Defendant's Counsel, filed a Motion to Suppress Evidence. A hearing was held December 11, 2017.

Background

Curtis Eugene Wooten Jr. (Defendant) is charged with Driving Under the Influence of Alcohol or Controlled Substance¹, second offense, an ungraded misdemeanor and Driving Under the Influence of Alcohol², least 0.08% but less than 0.10%, second offense, an ungraded misdemeanor. The charges arise out of two encounters Defendant had with Pennsylvania State Police in the early morning hours of March 5, 2017.

Testimony of Phlebotomist

Jessica Weaver (Weaver), phlebotomist, testified on behalf of the Commonwealth. UPMC Susquehanna Health has employed her since June 2016. Her job responsibilities include in-patient blood draws. She also works in the DUI Center and takes the blood of individuals that are potentially under the influence. The Commonwealth submitted as Exhibit #1 "Susquehanna Health Forensic Blood Alcohol and/or Drug Screen Testing Request Form" signed by Trooper Jolley and

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(a)(2).

Weaver memorializing the blood draw of Defendant at 3:10 am on March 5, 2017.

Weaver identified Defendant in the courtroom. She denied forcing Defendant to give blood. She did not raise her voice and testified that Defendant followed the instructions that she gave to obtain the blood.

Testimony of Trooper Jonathan R. Thompson

Trooper Jonathan R. Thompson (Thompson) testified on behalf of the Commonwealth. He is presently employed at Pennsylvania State Police (PSP), Montoursville barracks. He has been employed with PSP since August 2014. He received training in field sobriety testing at the academy. He has also received SHIELD (safe highways interdiction) training and ARIDE (advanced roadside impairment) training. At the time of the March 2017 incident, he had been involved in at least 40 driving under the influence investigations in 2017 and an estimated 100 or more in his career.

At 2:40 am on March 5, 2017, Thompson with Trooper Jolley at Williamsport Regional Medical Center with an individual in custody for DUI attempting to release her. They were in full uniform and parked in the emergency room area.

During a previous stop at 1:40 am, the troopers had stopped a blue Chevy Trail Blazer, operated by Defendant's sister. Defendant was one of the two passengers in the vehicle. Defendant's sister was taken into custody on suspected driving under the influence. The troopers questioned the passengers to see if they could drive the Chevy Trail Blazer home. Thompson testified that the two passengers were visibly impaired and stated that they had consumed alcohol as well that evening. The determination was made that they could not safely operate the vehicle.

The passengers called an "Uber" to leave the scene. Thompson testified that he instructed Defendant specifically that he was not to come to the emergency room to provide transportation home for the sister after her blood had been drawn.

Defendant arrived at the hospital at ER entrance even though he had been instructed not to do so. He was operating a green Oldsmobile Aurora. He was with the same male passenger he was with at the earlier stop of his sister. Thompson estimated that there was a one hour period of time from initial stop of Defendant's sister to Defendant's reappearance at the hospital. Thompson observed Defendant operating the vehicle, driving up to the ER; Thompson observed no other traffic violations.

When Defendant pulled up, Thompson approached the side of the vehicle. He made contact Defendant who was inside the vehicle. Thompson recalled Defendant opening the driver's side door. He smelled of alcohol and Thompson asked him why he drove there. Thompson could not recall Defendant's response. The troopers asked Defendant to step out of the vehicle. Thompson testified that Defendant had glassy eyes, slurred speech, and smelled like alcohol. The troopers did not inquire as to when Defendant had last consumed an alcoholic beverage.

Thompson testified that he was present during Defendant's blood draw but that he did not perform field sobriety tests on Defendant and that Trooper Jolley would have read the DL26B warnings to Defendant. The Commonwealth submitted as Exhibit #2 Defendant's signed DL26B form consenting to the blood draw.

Thompson denied threatening or yelling at Defendant. Thompson testified that Defendant followed the instructions of the phlebotomist. Thompson said Defendant

did not have any difficulty understanding the instructions or the request that he submit to a blood draw. He understood instructions that were provided to him and attempted to comply to the best of his ability

Law enforcement do not allow people who have been arrested for suspected driving under the influence and brought to the hospital for a chemical test of their blood to walk away from the hospital. A responsible adult must transport them. The troopers take the information of the arriving responsible adult, just like in any incident, and make sure he/she is not impaired. The troopers determined in this case that Defendant was too impaired to take responsibility for his sister. The troopers in this case courtesy transported Defendant and his sister because

Testimony of Trooper Luke Jolley

Trooper Luke Jolley (Jolley) is employed at Pennsylvania State Police, (PSP) Laporte barracks. He has been employed with PSP for two years. He received standardized field sobriety testing at the academy and has been involved in approximately fifteen (15) DUI investigations.

At 2:40 am on March 5, 2017, he was on midnight patrol with Trooper Jonathan Thompson, in full uniform operating a marked unit and parked in the ER parking lot.

Jolley identified Defendant in courtroom. Jolley testified that he and Thompson were at the hospital with Defendant's sister. While in the ER lobby, he observed vehicle pull up and Defendant's sister said that was her ride. Jolley and Thompson walked to the driver's side door and encountered Defendant.

Defendant had been present earlier at the arrest of his sister. Jolley testified that Defendant's sister asked the troopers to take her keys to her vehicle and to lock it as she did not want the keys going to her boyfriend or her brother. At the time of the initial stop, Jolley observed that Defendant had blood shot eyes and his speech slurred. All occupants admitted they were at the Imbibe nightclub that night but they did not remember the time of last alcohol beverage consumed.

Jolley confirmed the standard operating procedure before releasing an individual. The troopers asked Defendant to step out of the vehicle to perform standardized field sobriety tests. Jolley testified that Defendant was not able to complete the tests to satisfaction. Jolley testified that Defendant did not appear confused and attempted to complete tests as explained to him. The Commonwealth refreshed Jolley's memory with his report from that evening however, the report was not submitted into evidence. From the report, Jolley recalled that Defendant missed heel to toe, that he could not keep his balance, and he was unable to perform a proper turn and stepped off the back line. During the one leg stand, Defendant showed two signs of impairment: he swayed and he restarted three times.

Jolley testified to dealing with intoxicated people on a weekly basis – at work and in his personal life. He formed the opinion was that Defendant was intoxicated. He placed Defendant into custody and walked him back into hospital. Jolley denied threatening Defendant.

Jolley read the Defendant the DL26B form and Defendant and Jolley signed the form. Jolley read the form into the record. Jolley testified that Defendant appeared to understand the contents of the form and that it was Jolley's belief that

Defendant signed the form voluntarily. Jolley denied yelling, forcing or threatening the Defendant in any way to obtain consent to draw blood. Obtaining a warrant was never discussed.

Discussion

I. Reasonable Suspicion to Perform Field Sobriety Tests

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 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).

In the particular circumstances of this case, Defendant had already been involved in a suspected driving under the influence one and one half hours earlier. At that time it was determined that Defendant was not safe to drive home. Defendant also admitted to drinking. The Court finds Thompson credible in his statement that Defendant was told not to come to the hospital to pick up his sister. Rather, Defendant did not follow law enforcement instructions and arrived at the hospital. Thompson testified that Defendant had glassy eyes, slurred speech, and smelled like alcohol at the time of his re-contact with Defendant. Officers observed Defendant operating a motor vehicle. The blood was drawn one and one half hours after the initial stop where Defendant stated that he had been drinking and the officers determined he could not safely operate the Chevy Trail Blazer. The Court finds that under the totality of the circumstances, the officers had reasonable suspicion to believe that Defendant was operating a vehicle under the influence of alcohol when they encountered Defendant approximately one hour later at the Williamsport Regional Medical Center.

II. Consent to Blood Draw

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 Dakota³, 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 Jolley and the phlebotomist establish that Defendant willingly consented to the blood draw. 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 Jolley to acquire a search warrant approving a chemical search of Defendant's blood.

³ 136 S. Ct. 2160, 2185 (2016).

ORDER

AND NOW, this 6th day of February, 2018, based upon the foregoing Opinion, the Motion to Suppress Evidence is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole M. Ippolito, Esquire, ADA
Peter T. Campana, Esquire, Defendant's Counsel
Gary Weber, Esquire