

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA**

**vs.**

**DARRELL DAVIS,  
Defendant**

**:**

**: No. CR-272-018**

**:**

**:**

**: Motion to Suppress**

**OPINION AND ORDER**

The defendant is charged by Information filed on March 2, 2018 with one count of aggravated assault by vehicle while driving under the influence, a felony two offense. The Commonwealth alleges that the defendant negligently caused serious bodily injury to Sharon Thomas as a result of committing a driving under the influence offense on May 5, 2017.

Before the court is the defendant's Motion to Suppress filed on April 2, 2018. The hearing on the defendant's motion was held before the court on June 11, 2018.

Prior to taking testimony, the parties met and agreed to a resolution of a portion of the issues raised in the Motion to Suppress. First, the Commonwealth agreed that the questioning of the defendant after he was taken into custody was without first providing to the defendant his Miranda warnings. Accordingly, the Commonwealth concedes that any statements the defendant made in response to custodial interrogation following his arrest are not admissible.

Second, the defendant concedes that his blood test was either taken within two hours after he had driven his vehicle or that there were viable exceptions to the two-hour rule. Accordingly, the defendant withdrew his Motion to Suppress the blood test as a result of allegedly "violating the two-hour rule."

Third, with respect to the defendant's Motion to Suppress the blood test as a result of the arresting officer not obtaining a warrant, while not withdrawing said motion and in

order to preserve the issue for appeal purposes if necessary, the defendant concedes that under existing law, a warrant was not necessary. The defendant also concedes that the proper implied consent form was read and his consent was not coerced.

Law enforcement officers are not obligated to obtain a warrant prior to a blood test if the defendant knowingly consents to the blood test. *Commonwealth v. Miller*, 2018 PA Super 111, 2018 WL 2057002 (May 3, 2018); *Commonwealth v. Robertson*, 2018 PA Super 110, 2018 WL 2057000 (May 3, 2018); *Commonwealth v. Evans*, 153 A.3d 323, 327-328 (Pa. Super. 2016); see also this court's prior Opinions in *Commonwealth v. Garms*, CR-762-2017 (September 25, 2017); *Commonwealth v. 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 all of the aforementioned Opinions and based upon the appellate authority cited, the defendant's arguments related to the necessity of the search warrant and coercion fail.

The remaining issue to be addressed through the testimony related to the defendant's Motion to Suppress the blood test results based upon the defendant's argument that the police lacked probable cause to arrest the defendant and request a blood test.

The Commonwealth presented the testimony of Trooper Kurtis Killian of the Pennsylvania State Police. On May 5, 2017, Trooper Killian was on duty and partnered with Trooper Doug Hoffman. He was working the 6:00 a.m. to 2:00 p.m. shift.

At approximately 5:45 a.m., prior to beginning his shift, he was dispatched to a motor vehicle accident on State Route 87 near the town of Barbours, approximately 12 miles north of Montoursville. He and Trooper Hoffman arrived at the accident scene at approximately 6:20 a.m.

He observed two vehicles that had been involved in an accident. The one vehicle was a silver Ford Taurus. At the time the trooper arrived, the driver was being extricated from the vehicle by emergency personnel. The other vehicle, a beige Toyota Camry, was on the west side of the roadway against a tree.

The evidence on scene was consistent with the accident occurring in the southbound lane. There were gouges in the road and debris from the vehicles located in the southbound lane. Furthermore, the damage to both vehicles was located at the front driver's side.

It appeared to Trooper Killian that the Camry, which was traveling northbound, drifted into the southbound lane causing a head-on collision with the Taurus vehicle. There did not appear to be any reason why the accident occurred other than as indicated by Trooper Killian.

When Trooper Killian approached the Camry, he noted that there were no occupants in it. He located a wallet and inside the wallet was the defendant's driver's license.

Volunteer firefighters searched the surrounding area for the defendant without success. Trooper Killian attempted to locate the defendant as well, but again without success.

Shortly thereafter, Trooper Killian was informed by a volunteer fire company member that a male was walking north on State Route 87 approximately one mile from the accident scene. When the male apparently spotted the fire company vehicle, he jumped the guardrail and ran away toward the adjoining creek.

When Trooper Killian arrived near the area where the defendant was seen, he saw the defendant swimming across the creek in a westerly direction. The creek was high and the water was cold.

Instead of attempting to swim after the defendant, with the assistance of emergency personnel, he traveled to the other side of the creek and then traveled down a work road to the pheasant farm which adjoined the creek on the western side.

When he arrived at where the defendant was swimming, the defendant was leaning up against a gate to the pheasant farm. The defendant was obviously very cold. He was shaking and “almost in shock.”

Trooper Killian smelled a moderate odor of alcoholic beverages on the defendant. The defendant was also very talkative and argumentative.

Concerned over the defendant’s medical condition, the defendant was taken into custody and transported to the nearest hospital where he was evaluated and treated.

After being stabilized, the trooper read to the defendant the implied consent form and defendant submitted to a blood test.

Probable cause exists if the facts and circumstances within the knowledge of the police officer at the time of the arrest are sufficient to justify a person of reasonable caution in believing the suspect has committed or is committing a crime. *Commonwealth v. Goldsborough*, 31 A.3d 299, 306 (Pa. Super. 2011). The court must view the totality of the circumstances as seen through the eyes of a trained officer, and not as an ordinary citizen would view them. *Commonwealth v. Nobalez*, 805 A.2d 598, 600 (Pa. Super. 2002). It is only the probability, and not a prima facie showing, of criminal activity that is the standard of probable cause. *Commonwealth v. Thompson*, 604 Pa. 198, 985 A.2d 928, 931 (2009). Probable cause exists when criminality is one reasonable inference; and need not be the only inference. *Commonwealth v. Burnside*, 625 A.2d 678, 681 (Pa. Super. 1993).

The court finds that Trooper Killian had probable cause to arrest the defendant for DUI. First, an accident occurred which indicated that the defendant drove his vehicle in the opposite lane of traffic causing a head-on collision. There did not appear to be any reason explaining why the accident occurred. Secondly, following the accident, the defendant left the scene. He walked approximately one mile away, and when he spotted fire company officials traveling on the roadway, he jumped a guardrail and ran away. His flight took him to extreme measures, including attempting to get away by swimming across a creek which had not only a high water level but was also very cold water.

Once he was confronted by troopers, he became very talkative and argumentative. As well, they smelled the odor of an alcoholic beverage on his breath.

All of these factors when taken together support probable cause to arrest the defendant. The police need not, as the defendant claims, exclude all other possible reasons, do additional investigation or even conduct field sobriety tests.

In viewing the totality of the circumstances as seen through the eyes of a trained officer, there was a probability that the defendant was under the influence of alcohol at the time the accident occurred. There did not appear to be any reason for the accident occurring. The defendant drove his vehicle in the entire opposite lane causing a head-on collision. The defendant exhibited consciousness of guilt by first leaving the accident scene and by next trying to escape being seen by law enforcement or emergency personnel by hopping a guardrail, traveling through brush and then swimming across a cold creek to the extent of requiring subsequent medical care. The defendant was argumentative and talkative to the police officers and had a moderate odor of alcoholic beverage coming from his breath.

Probable cause does not require certainty. Probable cause does not require the police exclude all other possibilities. Probable cause only requires facts which are sufficient to justify a person of reasonable caution in believing that the suspect probably had committed a crime.

While there is certainly no bright line rule, other cases support this court's conclusion that the arrest in this case was supported by probable cause. *See Commonwealth v. Guerry*, 469 Pa. 20, 364 A.2d 700, 702 (Pa. 1976) (vehicle accident, odor of alcohol, glassy and bloodshot eyes sufficient); *Commonwealth v. Haynos*, 525 A.2d 394, 399 (Pa. Super. 1987) (vehicle accident and odor of alcohol sufficient probable cause); *Commonwealth v. Reymeyer*, 502 A.2d 1332, 1335 (Pa. Super. 1985) (drove through red light, odor of alcohol, and difficulty locating driver's license sufficient).

### **ORDER**

**AND NOW**, this \_\_\_\_ day of June 2018, following a hearing and argument, the court DENIES the defendant's motion to suppress based on the fact that a warrant was not obtained, DENIES the defendant's motion to suppress based on the allegation that the police lacked probable cause to arrest the defendant, and GRANTS the defendant's Motion to Suppress any statements he made while in custody and being interrogated without first being read his Miranda warnings. The court notes that the defendant has withdrawn his motion to suppress based on the alleged violation of the two-hour rule.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Scott Werner, Esquire ADA  
Brian Manchester, Esquire  
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Work File