

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-673-2018**
 v. :
 :
 KEVIN PAUL FOX, : **SUPPRESSION**
 Defendant :

OPINION AND ORDER

On February 18, 2018, Kevin Fox (Defendant) was arrested for Driving under the Influence of Alcohol¹ and related summary offenses. Defendant was involved in a crash on State Route 442 in Muncy Creek Township, Lycoming County.

On June 13, 2018, Defendant filed an Omnibus Pretrial Motion in the form of a Motion to Suppress Evidence. Defense Counsel raises one issue in his Motion to Suppress. Did Defendant knowingly intelligently and voluntarily agree to give a blood sample to the State Police. A hearing on the issue was held July 19, 2018.

Testimony of Trooper Robert Williamson

Trooper Robert Williamson (Williamson) of the Pennsylvania State Police testified that he was working in full uniform in a marked unit on February 11, 2018. He was riding with his partner Trooper Capobianco when they were dispatched to a crash in the 3300 block of SR 442, Muncy Creek Township. As they arrived on scene, they observed a 2001 blue Dodge truck which had apparently driven off the roadway and sheared off a utility pole. Troopers were directed to the back of an ambulance where Defendant was being treated. Upon approach of

¹ 75 Pa.C.S. § 3802(c).

Defendant the troopers observed him to be conscious, but very emotional and crying. As they got closer, they noticed he also had a very strong odor of alcohol around him. He had glassy and bloodshot eyes along with a very slurred speech. Defendant confirmed that he was the operator of the 2001 Dodge truck. However when asked by Williamson as to why his truck went off the roadway Defendant appeared unable or unwilling to give an explanation. Defendant indicated to Williamson that he wished to be arrested for driving under the influence. Defendant was transported by ambulance to the Muncy Valley Hospital emergency room. Troopers again spoke with Defendant. He was still very emotional. Williamson then attempted to go over the DL 26 form with Defendant however he had indicated that he needed to go to the bathroom really badly. Williamson assured him he could go as soon as they completed the DL 26 with him. However Defendant did not sign the form after it was completed. Once Defendant returned from going to the bathroom, blood was drawn and the results indicated after testing that he had a .172 blood alcohol level. Williamson was certain that Defendant consented to talking with the police. He kept asking the troopers if they would arrest him for DUI. He also showed no signs of wanting to refuse to sign the DL 26 form. Defendant did not want the trooper to go over the form with him and he appeared to be focused on going to the bathroom. Defendant never verbalized that he understood the document but did consent to agree to give a blood alcohol test. Williamson did indicate that it was his error that he failed to get Defendant to acknowledge the reading of the form by signing it.

Defendant also testified at the hearing. He recalls being in an accident, but does not remember drinking. He also does not remember crashing or remember anything from the time he was operating his vehicle. The only thing he recalls is that there was a flash and two troopers

came to the hospital in the emergency room. He doesn't remember crying and being upset or requesting that the police arrest him for DUI.

Discussion

Did Defendant knowingly intelligently and voluntarily give his consent to the blood draw

Generally police are required to obtain a search warrant before conducting a Fourth Amendment search unless an exception applies. Exceptions to the warrant requirement include when the individual consents to the search. Our Supreme Court has applied the following standard to determine whether an individual has validly consented to a chemical test:

In determining the validity of a given consent, the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice—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. Such evaluation includes an objective examination of the maturity, sophistication and mental or emotional state of the defendant. Gauging the scope of a defendant's consent is an inherent and necessary part of the process of determining, on the totality of the circumstances presented, whether the consent is objectively valid, or instead the product of coercion, deceit, or misrepresentation.

Commonwealth v. Smith, 77 A.3d 562, 573 (Pa. 2013) (internal citations and quotation marks omitted); *see also Commonwealth v. Ennels*, 167 A.3d 716, 723 (Pa. Super. 2017).

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 Court must look to the totality of the circumstances to determine whether Defendant's consent to the blood draw was voluntary. *Commonwealth v. Haines*, 168 A.3d 231, 235 (Pa. Super. 2017). There are factors in support of an involuntary blood draw. Defendant was under arrest at the time. He was handcuffed and transported to the Muncy Valley Hospital in a police cruiser. His handcuffs would have been removed during his time in the hospital. Additionally, Defendant was advised that if he did not consent to the blood draw, his driver's license would be suspended for 12 months at least, if not more, depending on whether he had other driving under the influence convictions from the DL 26. He was also told that if he remained silent or asked for an attorney that it would be deemed to be a refusal. However, Defendant was not advised that there would be criminal consequences to his refusal, as this information is no longer a part of the DL 26.

The Court finds Williamson credible in his testimony that Defendant was cooperative during the entirety of their exchange. The Court need only believe that Defendant was not coerced into consenting to the blood draw and that his submission to the draw was voluntary. The Court accepts the testimony of Williamson and determines that the choice to consent to the blood test was Defendant's and Defendant's alone. Viewing the evidence objectively, Defendant repeatedly asked to be charged with DUI. He also was given the opportunity to decline the test and he did not. The Court does not believe that Defendant was coerced and therefore will not suppress the blood draw and the evidence obtained as a result.

ORDER

AND NOW, this _____ day of October, 2018, based upon the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA (AG)
Paul Petcavage, Esq.