

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**WILLIAM HAINES,
Defendant**

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CP-41-CR-1148-2017

MOTION TO SUPPRESS

OPINION AND ORDER

Before the Court is the Defendant, William Haines' timely filed Omnibus Pretrial Motion. Hearing was held on the Motion on March 19, 2018.

Defense counsel raises one issue in his Motion to Suppress. Defendant alleges that his blood was taken from him in violation of his rights under Article 1 Section 8 of the Pennsylvania Constitution and under the Fourth Amendment to the United States Constitution. The Defendant alleges that he was never advised by the police officer that he had a constitutional right to refuse a blood draw unless a warrant was first obtained. He also challenges that since he was not permitted to speak to counsel or anyone else before deciding whether or not to consent to a blood draw, under the circumstances his consent to the blood draw was not knowing, intelligent or voluntary.

Testimony of Patrolman Robert Cochran

Patrolman Robert Cochran (Cochran) testified that he was working patrol on April 16, 2017 for the Old Lycoming Township Police Department. At about 6:09 AM he was dispatched to the area of Pleasant Valley Road and Rose Valley Road for a vehicle that had been in the roadway for about two hours. When he approached the vehicle he observed the operator of the vehicle, the Defendant, behind the wheel with the vehicle still running and the car in drive. After some time, Defendant followed

Cochran's instructions and turned the vehicle off. Defendant responded to Cochran's questions appropriately. He told him that he had been drinking six Miller Lights and was on his way home to Muncy. Cochran testified that he was satisfied that Defendant understood the questions he was being asked.

Shortly thereafter, Cochran asked him to exit his vehicle to perform field sobriety tests. Although he was able to follow Cochran's instructions, he failed the field sobriety tests and was placed under arrest. Cochran transported Defendant to the hospital for a blood alcohol test. Cochran testified that on the way to the hospital he did not threaten, coerce or force Defendant to take the blood test.

Once at the hospital, Cochran read Defendant his chemical test warnings as they are set forth on the DL 26B form. He would have read each section separately and asked him if he understood each of the sections. Cochran would also have given him the chance to ask any questions about anything that was read to him. When the Defendant did not have any questions, Cochran would have asked him to sign the DL 26B form. Defendant signed it on the proper line and Defendant dated it correctly. Defendant then consented to having his blood drawn for testing purposes. Cochran reaffirmed that he did not raise his voice at the Defendant or do anything to coerce him into consenting to the draw of his blood.

Cochran stated that he would have made contact with the Defendant at 6:21 AM, went en route to the hospital at 6:43 AM, and arrived at the hospital at 6:52 AM. He didn't really recall whether or not the Defendant became more alert as he was with him; Cochran felt that since he was talking to him the whole time he believed he was alert.

Discussion

Under both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution, a search such as the one at issue here, which is conducted without a warrant, is deemed to be per se unreasonable.

Commonwealth v. Williams, 547 Pa. 577, 692 A.2d 1031 (1997). Certain specifically established exceptions, one of which is a valid consent may, however, render an otherwise illegal search permissible. *Commonwealth v. Slaton*, 530 Pa. 207, 608 A.2d 5, 8–9 (1992). It is the state's burden to prove consent. *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968);

In *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 20, 36 L.Ed.2d 854 (1973), the Court held that a consent search is valid if it meets the test of “voluntariness.” That test involves consideration of whether the confession was the product of an essentially free and unconstrained choice. 412 U.S. at 225, 93 S.Ct. 2041. According to the Court, “voluntariness” is a question of fact to be determined from the totality of the circumstances and while knowledge of the right to refuse consent is a factor to consider in determining whether consent to search was voluntarily and knowingly given, it is not dispositive. *Commonwealth v. Cleckley*, 738 A.2d 427, 430 (Pa. 1999). In fact, in the most recent cases of *Commonwealth v. Robertson* 2018 W.L. 205700 (Pa.Super. 2018), the Superior Court held that there is no affirmative duty for police to inform defendant that they had a right to refuse a blood test without risking harsher criminal penalties. See also *Commonwealth v. Smith*, 177 A.3d 915, 921-922. (Pa. Super. 2017).

A trial court must consider the totality of the circumstances when determining if a defendant's consent to a blood draw was voluntary. In the recent case of *Commonwealth v. Miller*, 2018 W.L. 2057002 (Pa. Super. 2018) the Court affirmed the factors which must be considered:

- 1) the defendant's custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant's knowledge of his right to refuse to consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel.

Here, Cochran had the Defendant in custody which would weigh against the Defendant's voluntariness. However, it is clear from Cochran's testimony that the Defendant was fully cooperative with the officer, was advised of his rights under the law which included the right to refuse, and appeared to understand everything that was happening to him as he was being processed. There is also no evidence that Cochran threatened him or forced him to consent to the blood draw.

As to the issue raised by Defendant that he should have been permitted to speak with counsel the Court relies on *Commonwealth v. McCoy*, 601Pa. 540,975 A.2d. 586, 591 (Pa. 2009). There is no 6th Amendment or Article 1 Section 9 right to counsel prior to the submission of a chemical test pursuant to a DUI stop.

Defendant's last issue raises the failure of Cochran to have advised Defendant that he had a constitutional right to refuse a blood draw without a warrant. While the Court finds that Cochran did advise Defendant of the legal consequences he will face

if he refuses consent to the blood-draw, he has no obligation to enlighten Defendant as to the full details of federal constitutional law; he only needed to tell Defendant the current, legal consequences of refusing to consent to the blood-draw. See *Commonwealth v. Johnson*, 2018 W.L. 2295895 (Pa. Super. 2018). Since Cochran did just that, Defendant's consent was voluntary.

Since the Court finds that the Defendant's consent was given voluntarily, the motion will be denied.

ORDER

AND NOW, this 7th day of June, 2018, after hearing, it is ORDERED and DIRECTED the Defendant's Omnibus Pretrial Motion to Suppress Evidence is DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Peter T. Campana, Esq.