

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-1286-2017
	:
vs.	:
	:
	: Opinion and Order re Omnibus
MICHAEL WILLITS,	: Pretrial Motion
Defendant	:

OPINION AND ORDER

This matter came before the court on April 16, 2018 for an evidentiary hearing on Defendant’s Omnibus Pretrial Motion Nunc Pro Tunc. Three witnesses testified at the hearing: Trooper Jonathan Thompson, Denise Harrow, and Defendant, Michael Willits.

Trooper Thompson testified that at approximately 12:14 p.m. on April 28, 2017, he was on duty in a marked patrol car and in full uniform. On Third Street near Barrel 135, Trooper Thompson conducted a traffic stop on a blue-gray sedan due to a “Type F insurance cancellation.” Defendant was the driver of the vehicle. Trooper Thompson immediately noticed a strong odor of marijuana. When Trooper Thompson asked Defendant to step out of the vehicle, the Trooper noticed that Defendant was eating marijuana. When the Trooper asked Defendant why he was eating marijuana, Defendant just smiled and said he was eating a sandwich.¹ Trooper Thompson noticed that Defendant had bloodshot, glassy eyes, as well as white, fixed saliva around his mouth consistent with cotton mouth. Trooper Thompson took Defendant into custody, because he believed Defendant was driving under the influence of marijuana.

¹Due to the people out on the patio at Barrel 135, Trooper Thompson did not do anything to prevent Defendant from eating the marijuana.

Trooper Thompson transported Defendant to the hospital to request a chemical test of Defendant's blood. Trooper Thompson took Defendant into a conference room and removed his handcuffs. Defendant sat down in a chair and Trooper then read a DL-26B form to Defendant, which advised him that: (1) he was under arrest for DUI; (2) the Trooper was requesting that Defendant submit to a chemical test of his blood; (3) if Defendant refused to submit to the blood test his operating privilege would be suspended for at least 12 months but would be suspended up to 18 months if Defendant previously refused a chemical test or was previously convicted of DUI; and (4) Defendant had no right to speak to an attorney or anyone else before deciding whether to submit to the blood test, and if he asked to speak to anyone or he remained silent when asked to submit to the chemical test, such would be considered a refusal. Both Trooper Thompson and Defendant signed and dated the DL-26B form, which was admitted into evidence as Commonwealth Exhibit 1. Trooper Thompson looked at his watch and noted the time as 1409 hours (or 2:09 p.m.). Defendant consented to a chemical test of his blood.

Trooper Thompson explained that the difference between the time the phlebotomist noted the blood draw and the time that he noted the warnings was due to the use of two different time pieces. He used his watch and the phlebotomist used her "call tab" or her own watch.

Denise Harrow, a phlebotomist at the hospital, testified that she came into the room to draw Defendant's blood. Trooper Thompson completed the top third of the chain of custody form and Ms. Harrow completed the bottom two-thirds of the form. She indicated that she usually would ask the officer for the time, because she wanted them to "be in sync,"

but she could not remember in this case whether she used her Vocera or asked the trooper for the time. She does not wear a watch, because she has the Vocera around her neck. Ms. Harrow noted the time of the blood draw as 1407 hours (or 2:07 p.m.). Ms. Harrow also indicated that she could have made a typo and that the discrepancy in the times was “probably me.” She also could not remember whether she was present in the room when the trooper gave the warnings.

Ms. Harrow asked Defendant from which arm he preferred her to take his blood, and Defendant held one of his arms out. Ms. Harrow palpated Defendant’s arm to find a vein and then cleaned the arm with a substance that did not contain alcohol. She placed a tourniquet on the arm and drew two tubes of Defendant’s blood. The blood draw took maybe two to two and a half minutes. When the blood draw was complete, Ms. Harrow released the tourniquet, put pressure on the area, and applied a Band-Aid and tape. She then put evidence tape on the tubes of blood and Defendant’s name on a paper that she wrapped around the tubes. She transported the blood to chemistry and placed it in a lock box.

Defendant testified that the trooper told him he was going to impound his vehicle and take him for a blood draw. The officer drove him to the hospital where they waited 30 to 45 minutes for the blood draw. The trooper became agitated and kept asking about the delay. The trooper took Defendant back out to his vehicle so he could retrieve his cell phone. When they were outside, Defendant asked if he was going to jail; the trooper told Defendant he would not go to jail if he cooperated with the blood draw. Defendant indicated that he was under the impression he would be incarcerated if he did not give blood, and he did not know he had a right to refuse. Defendant also testified that his blood was

drawn before the trooper read the warning form to him. Once they were done at the hospital, the trooper transported Defendant to the barracks. After about a half-hour, Defendant was told to arrange for a ride home. At that point he was in a public area of the barracks and he was not in handcuffs. After Defendant was inside the barracks a total of about 45 minutes to an hour, he was released.

Trooper Thompson also testified in rebuttal. He testified that he never left the hospital to get his phone; there is a phone in the ER. When they entered the room, he removed Defendant's handcuffs. He stated that it was not his habit to parade a defendant in front of the public in cuffs. Trooper Thompson also explained that he could not release Defendant from the barracks until his ride came, because Defendant was impaired. Defendant was in the care of the police. He either had to be released to a ride or courtesy transported to his residence.

Trooper Thompson also denied ever saying anything that would imply Defendant would not go to jail if he cooperated with the blood draw. Trooper Thompson noted that "our draws take precedence." He also indicated that "the first thing we do is read and fill out the form" and he estimated that within five minutes of arrival at the hospital, the form was "out of the way." Trooper Thompson did not remember what time they arrived at the hospital. He acknowledged on cross-examination that the traffic stop occurred at approximately 12:15 p.m. and the blood draw occurred at about 2:10 p.m. He also indicated that the stop took at least an hour, if not longer.

Defendant contends that the results of his blood draw must be suppressed because the blood draw occurred before Trooper Thompson read the warnings to him and his

consent was coerced by Trooper Thompson's statements that he would not go to jail if he cooperated with the blood draw. The court cannot agree.

The court finds that the short time difference between the time noted on the warnings form and the time noted on the blood draw paperwork was due to the use of two separate time pieces that were not synchronized. The court also finds Trooper Thompson's testimony credible and does not find Defendant's testimony credible. Specifically, the court rejects Defendant's testimony that the trooper told him he would not go to jail if he cooperated with the blood draw. DUI offenders are rarely taken to jail regardless of whether they consent to or refuse the blood draw. Unless the DUI is accompanied by additional more serious charges, or the arresting officer has reason to believe that the individual will not respond to a summons or the individual poses a threat of harm to any other person or to himself or herself, the Pennsylvania Rules of Criminal Procedure **require** the arresting officer to release the defendant from custody. Pa. R. Crim. P. 519 (B)(1) and cmt. Typically, the individual is released, the officer does not file the criminal complaint until a later date, and the magisterial district judge (MDJ) issues a summons directing the individual to appear for his or her preliminary hearing. Pa. R. Crim. P. (B)(2). Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of June 2018, the court DENIES the Motion to Suppress contained within Defendant's Omnibus Pre-Trial Motion Nunc Pro Tunc.

By The Court,

Marc F. Lovecchio, Judge

cc: Scott Werner, Esquire (ADA)
Susan Roinick, Esquire (APD)
Work file