

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-558-2019  
 :  
 JOHN KIESS, : Omnibus Pretrial Motion  
 Defendant :

**OPINION AND ORDER**

Before the court is Defendant's omnibus pretrial motion filed on May 24, 2019. Defendant is charged with driving under the influence with the highest rate of alcohol, a BAC of .22, and related offenses. Defendant alleges that his BAC results should be suppressed because the blood was not drawn within two (2) hours after the defendant had driven his vehicle.

Notwithstanding that a defendant's alleged BAC result is an element of the offense of DUI with a highest rate of alcohol, 75 Pa. C.S.A. § 3802(c), evidence of such a concentration more than two (2) hours after the defendant has driven or operated his vehicle, is sufficient to establish that element if the Commonwealth shows good cause explaining why the BAC sample could not be obtained within two (2) hours and the Commonwealth establishes that the defendant did not imbibe any alcohol between the time he was arrested and the time the sample was obtained. 75 Pa. C.S.A. § 3802(g).

Initially, it must be noted that Defendant's request to suppress the BAC result is limited only to the BAC highest rate count of the Information and not the general impairment count. Our courts have consistently held that the two (2) hour time limit from measuring blood alcohol level does not apply to DUI general impairment cases.

*Commonwealth v. Segida*, 985 A.2d 871, 879 (Pa. 2009); *Commonwealth v. Eichler*, 133 A.3d 775, 787 (Pa. Super. 2016).

The hearing in this case was conducted on June 20, 2019. Trooper Aaron Brown of the Pennsylvania State Police had been employed as a trooper since September of 2017. On the date of the alleged incident, he was working a regular patrol shift. He was at the barracks in Montoursville when he received a dispatch at 5:47 p.m. that there was a disabled vehicle in a ditch on Warrensville Road. Because there was no concern as to public safety such as anyone being in danger, the call was assigned the lowest priority level of a three. The area of the vehicle was determined to be a approximately twelve minutes by vehicle from the barracks.

Trooper Brown self-dispatched to the scene at 6:37 p.m. He did not recall what he was doing between 5:45 and 6:37. He arrived at the scene shortly thereafter. He observed an unoccupied F-250 truck off of the western portion of the roadway facing south in a drainage type ditch. It was stable but tilted and apparently not able to be moved without assistance. There were no vehicles or pedestrians nearby.

He investigated further by looking inside the passenger compartment. He located a cell phone on the front passenger seat. He also smelled the odor of an alcoholic beverage and located an empty beer can on the floor in the front of the back passenger seat. He located the vehicle's registration which identified the owner as the defendant with an address of 2857 Four Mile Drive, only approximately  $\frac{3}{4}$  of a mile away.

He finished investigating the scene and drove to Defendant's residence. He

arrived at the residence at 7:00 p.m. Defendant advised the trooper that he was driving the vehicle, that the crash occurred at approximately 4:00 p.m. and that he walked home. Based on the trooper's observations of Defendant, Defendant's statements and the results of standard field sobriety tests, the trooper took Defendant into custody and placed him under arrest at 7:18 p.m.

He transported Defendant to UMPC Williamsport Hospital for a blood draw. They arrived at 7:23 p.m. Defendant signed the appropriate warning and consent forms and his blood was drawn at 7:46 p.m.

The trooper confirmed that Defendant did not imbibe any alcohol between the time of his arrest and the time of his blood draw.

Assuming that Defendant last operated the vehicle at the time of the crash, 4:00 p.m., his blood draw at 7:46 p.m. is well outside of the two-hour window.

In this case, the court finds that there was good cause for the testing delay. Once the crash occurred, Defendant chose not to stay but rather to walk home. Furthermore, at no time prior to Trooper Brown arriving at his residence did Defendant contact the police or emergency personnel. It was not until a third party contacted emergency personnel at 5:47 p.m. that the police were even informed of the vehicle being disabled.

Additionally, the disabled vehicle was given a low priority because there was no information provided to the police that it was a danger to pedestrians or other vehicles or that anyone was hurt when the incident occurred. It was not until Trooper Brown arrived at the scene and conducted some preliminary investigation did he suspect that alcohol may have

been involved in the accident. Between the time Trooper Brown believed alcohol may be involved, the soonest being 6:37 p.m. and the time he took Defendant for a blood draw at 7:46 p.m., it was clearly within the two-hour window. As well, and in the alternative, the blood was drawn within two hours of the time the trooper received the initial dispatch at 5:47 and the blood was drawn at 7:46.

Similar to the facts in *Eichler*, Defendant's "flight from the accident scene and the consequential delay in finding him, constituted good cause for the failure to obtain his blood test within two hours after he stopped driving." *Eichler*, 133 A.3d at 786. Additionally, the evidence was undisputed that Defendant did not drink alcohol between the time of his arrest and the time of his blood draw.

**ORDER**

**AND NOW**, this \_\_\_\_ day of August 2019, following a hearing and argument, Defendant's motion to suppress is **DENIED**.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Thomas Burkhart, Esquire (ADA)  
Andrea Pulizzi, Esquire  
Work File  
Gary Weber, Esquire (Lycoming Reporter)