

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. 1525-2017
 :
 GERALD SANDERS, : Opinion and Order re Omnibus Pretrial Motion
 Defendant :

OPINION AND ORDER

By way of background, Defendant Gerald Sanders is charged with two counts of driving under the influence of a controlled substance, careless driving, restraint systems, and improperly stopping, standing, or parking outside a business or residence district. Defendant, who was represented by private counsel at the time, waived his preliminary hearing and his formal arraignment.

Private counsel was permitted to withdraw and since that time Defendant has been represented by various assistant public defenders. The case was scheduled several times for a guilty plea, but the plea never came to fruition. On June 29, 2018, defense counsel filed an omnibus pretrial motion which consisted of a motion to dismiss the restraint systems (seatbelt) violation on the basis that Defendant was not operating his vehicle at the time he was cited for this offense and a motion to suppress the blood test results obtained pursuant to a search warrant on the basis that a warrant could not be obtained until after Defendant was arrested and refused a chemical test, which he disputes occurred in this case.

Defendant first seeks dismissal of the summary restraint systems violation because he asserts that he was not operating his motor vehicle at the time he was cited. The Commonwealth disputes these facts. Defendant contends the court can hold a hearing and

make a factual determination. The court cannot agree.

This is an issue for trial. Defendant is not entitled to an evidentiary hearing on this portion of his motion because he waived his preliminary hearing. Rule 541 of the Pennsylvania Rules of Criminal Procedure states that a defendant who is represented by counsel and waives the preliminary hearing is “thereafter precluded from raising the sufficiency of the Commonwealth’s *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.” There was no such agreement in this case. Therefore, Defendant cannot challenge the sufficiency of the evidence for any of the charges, including the summary restraint system offense.

Defendant next contends that the Commonwealth could not obtain a warrant to test Defendant’s blood (which was taken at the hospital for medical purposes) absent an arrest for DUI and a refusal to submit to a chemical test of his blood. The court cannot agree. The implied consent law expressly states that “nothing in this section shall be construed as limiting the ability of law enforcement to obtain chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania.” 75 Pa. C.S.A. §1547(b.3).

Accordingly, the following order is entered.

ORDER

AND NOW, this ___ day of January 2019, the court DENIES Defendant’s Omnibus Pretrial Motion without holding an evidentiary hearing.¹

¹The court notes that Defendant withdrew the amended motion to suppress filed on August 17, 2018. See Order

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Public Defender (EB)
Gary Weber, Esquire (Lycoming Reporter)
Work File