

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

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CP-41-CR-713-2019

v.

JOSHUA KAPP,
Defendant

MOTION TO RECONSIDER

OPINION AND ORDER

On September 24, 2019, this Court entered an Opinion and Order granting in part and denying in part Joshua Kapp's (Defendant) Motion to Dismiss and, in the Alternative, to Suppress. That Opinion and Order effectively suppressed the physical evidence obtained as a result of a search of Defendant's vehicle and denied suppression of the results of Defendant's blood draw. Defendant subsequently filed a Motion for Reconsideration asking this Court to suppress the results of the blood draw as Officer Ryan Travepiece (Travepiece) instructed emergency medical services personnel to have the hospital conduct a blood draw prior to his obtaining a warrant. As the issue was not raised in Defendant's original Motion but subsequently arose during testimony at this suppression hearing, the Court scheduled another hearing to allow the Commonwealth to present additional testimony. *See* Order 12/2/19; Order 1/7/20. On February 21, 2020, the time scheduled for additional testimony, the Commonwealth rested upon evidence already presented.

As no additional testimony was presented by the Commonwealth, the Court must rely solely upon the facts presented at the time of the suppression hearing on September 16, 2019.

Those underlying facts as previously stated by this Court are:

[Travepiece] of the Hughesville Borough Police Department testified on behalf of the Commonwealth. The Commonwealth also submitted the Application for a Search Warrant used to obtain the blood results taken from Defendant as an exhibit. Based on this evidence the following was established. On March 14, 2019 at approximately 7:22 p.m., Travepiece was acting in his official capacity as a law enforcement officer when he came upon a black station wagon stopped

in the area of State Route 220 and Reservoir Road. Defendant was being assisted by emergency personnel. Travelpiece approached the vehicle as Defendant was still in the driver's seat being assisted. Travelpiece was familiar with Defendant and aware that he was not licensed to be operating a vehicle. When Defendant was asked why he was driving when he knew he was not supposed to, he stated "huh?" and muttered unintelligibly. Travelpiece observed that Defendant was lethargic, slurring his speech, and had blood coming from his mouth. Travelpiece also observed two young children sitting in the back of the vehicle. After some time, Travelpiece asked Defendant if he could look inside the vehicle. Travelpiece stated Defendant was answering emergency personnel's questions more definitively, but was still lethargic. However in the Affidavit of Probable Cause in the Application for a Search Warrant (Affidavit), Travelpiece noted "[Defendant's] heart rate was still 155, his pupils were still very constricted, and he did not know what day it was. [Defendant] was still very lethargic, and had very low speech" before he was taken away by emergency personnel. Affidavit 3/26/19, at 2-3. Travelpiece requested emergency personnel to have the hospital take a blood draw from Defendant. On cross examination, Travelpiece admitted he does not know if the responses emergency personnel were receiving from Defendant were factually accurate. After Travelpiece spoke with Smith, who stated Defendant never had seizures before, he asked Smith for the keys, at first she refused, but then finally gave him the keys and consented. A search of a jacket in the vehicle yielded prescription bottles with Defendant's name on them and Bic straw pen with white residue on it. A field test of the residue came back positive for Methamphetamine. Based on Travelpiece's observations, experience, and conversing with Patrolman Andrew Stevens, a drug recognition expert, regarding the incident, Travelpiece secured a search warrant to retrieve the results of Defendant's blood test on March 26, 2019.

Opinion and Order 9/25/19, at 2-3.

This Court finds that because no evidence was presented showing the blood draw was conducted pursuant to an independent medical purpose or pursuant to an applicable statute, the results of the blood test must be suppressed. A chemical test conducted pursuant to implied consent statute, 75 Pa. C.S. § 1547(a), "is exempt from the warrant requirement only if consent is given voluntarily under the totality of the circumstances." "If as a result of a motor vehicle accident," a driver requires medical treatment in a hospital and probable cause that the driver was driving under the influence in violation of 75 Pa. C.S. § 3802, then hospital personnel "shall promptly take blood samples from those persons and transmit them within 24 hours for

testing.” 75 Pa. C.S. § 3755(a). Those results are not subject to the warrant requirement and must be turned over to law enforcement at their request. *Id.*; see also *Commonwealth v. March*, 154 A.3d 803, 813 (Pa. Super. 2017). When implied consent is not obtained and § 3755 is not applicable, officers may still retrieve the results of blood draws taken for an independent medical purpose pursuant to a search warrant. *Commonwealth v. West*, 834 A.2d 625, 633 (Pa. Super. 2003) (“because the blood draw was conducted for medical purposes, and the results of this blood test were obtained after the proper execution of a search warrant, the results of the blood draw were properly admitted into evidence”).

In the present case, although Travepiece obtained a search warrant, the blood draw was taken at his request prior to his obtaining of a search warrant. Also § 3755 is inapplicable as there was no evidence of a “motor vehicle accident.” Instead the affidavit of probable cause for the search warrant states “[Defendant] was driving the vehicle . . . when he started to convulse and have a seizure . . . [he] then put the car in park.” Affidavit 3/26/19, at 2. The evidence would still be admissible if there was a showing of an independent medical purpose, but since no evidence of such a purpose was established by the Commonwealth the blood draw must be suppressed.

ORDER

AND NOW, this 5th day of March, 2020, based upon the foregoing Opinion, Defendant's Motion for Reconsideration is hereby **GRANTED**. Suppression of Defendant's blood draw results is **GRANTED** and therefore the evidence **SHALL BE SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MS)
Matthew Zeigler, Esquire

NLB/kp