

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-982-2020  
:   
vs. :   
:   
MATTHEW BOWER, :   
Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

Defendant is charged by Information filed on August 13, 2020 with two counts of homicide by vehicle while DUI and numerous related offenses. These charges arise out of an incident that occurred on July 18, 2020 on or near the Arch Street Bridge and Hiawatha Boulevard Intersection in Williamsport, PA in which the vehicle that Defendant was driving was involved in an automobile accident with a motorcycle and another vehicle both traveling in the opposite lane of traffic.

Defendant is alleged to have been drinking, to have been driving his vehicle at a high rate of speed and while under the influence of alcohol, north over the Arch Street Bridge into Williamsport in the wrong lane of travel striking the motorcycle resulting in the death of both the operator of the motorcycle and its passenger.

Defendant filed an Omnibus Pretrial Motion on September 14, 2020. Due to this Court's unavailability, the hearing could not be scheduled until February 8, 2021. An earlier hearing, however, was held on February 5, 2021 to take the testimony of Officer Chris Salisbury, who would be unavailable for the February 8, 2021 hearing.

In his Omnibus Pretrial Motion, Defendant concedes that he was involved in a motor vehicle collision on July 18, 2020 on the Arch Street Bridge in Williamsport

(Omnibus Pretrial Motion, Paragraph 78). Defendant also concedes that he was operating a Buick Century Sedan that impacted with a Honda motorcycle and then with a Toyota Corolla Sedan (Omnibus Pretrial Motion, Paragraph 79).

Defendant's Omnibus Pretrial Motion consists of several motions. Many of the motions were addressed in this Court's Order dated February 12, 2021. The motions to be addressed in this Opinion and Order include Defendant's Petition for Writ of Habeas Corpus on Count 6 and Count 8 of the Information, Defendant's Motion to Suppress Defendant's Statements to the Police, Motion to Suppress blood drawn at the direction of the Williamsport Police Department; Motion to Suppress blood seized without a valid search warrant; and Motion to Suppress blood seized without an explanation of the right to refuse testing, an opportunity to refuse testing or valid consent.

Officer Salisbury's testimony was taken on February 5, 2021 and the remaining testimony was taken on February 8, 2021. Upon stipulation of the parties, a transcript of the preliminary hearing was admitted as Commonwealth's Exhibit 4. This was admitted in evidence in connection with Defendant's Petition for Habeas Corpus. A briefing schedule was set forth although on February 18, 2021, the Commonwealth filed a motion to reopen the record. The motion was granted and subsequent testimony was taken on March 9, 2021. The record was then closed except for Commonwealth's Exhibit 9, Geisinger Medical Center's "hold" policy, which was admitted under seal by Order of Court dated March 30, 2021. Defendant submitted his original Brief on February 12, 2021 and an amended Brief on April 5, 2021. The Commonwealth submitted its Brief in Opposition on April 26, 2021.

The court will first address Defendant's Petition for Habeas Corpus with respect to Counts 6 and 8. Count 6 charges Defendant with aggravated assault by vehicle while DUI, a felony of the second degree with the victim being identified as a "13 year old juvenile." Count 8 charges the defendant with aggravated assault by vehicle, a felony of the third degree with the victim being identified as a "13 year old juvenile." Defendant argues that the Commonwealth has failed to set forth sufficient prima facie evidence to establish the serious bodily injury element for Counts 6 and 8.

A pretrial habeas corpus motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a prima facie case. *Commonwealth v. Starry*, 196 A.3d 649, 655 (Pa. Super. 2018), *aff'd* 224 A.3d 312 (Pa. 2020).

The Commonwealth bears the burden of proving a prima facie case which is met when it "produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense." *Commonwealth v. Wroten*, 2021 PA Super 124, 2021 WL 2460790, \*4 (June 17, 2021), citing, *Commonwealth v. Montgomery*, 234 A.3d 523, 533 (Pa. 2020).

"The evidence supporting a prima facie case need not establish the defendant's guilt beyond a reasonable doubt, but must only demonstrate that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to proceed to a jury." *Wroten, id.*, citing *Montgomery, id.*

Moreover, inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect in determining prima facie, and the

evidence must be read in the light most favorable to the Commonwealth's case. *Wroten, id.* at 5, citing *Commonwealth v. Perez*, 249 A.3d 1092, 1102 (Pa. 2021). The “more likely than not” test must be applied to assess the reasonableness of inferences relied upon in establishing a prima facie case of criminal culpability. *Wroten, id.*, citing *Perez, id.*

As Defendant correctly points out, both of the charges at issue require the Commonwealth to prove serious bodily injury. 75 Pa. C.S. § 3735.1 (a); 75 Pa. C.S. § 3732.1 (a).

Further, and as Defendant correctly points out, serious bodily injury is defined as “any bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.” 75 Pa. C.S. § 102.

At the preliminary hearing in this matter on July 28, 2020, Crystal Smith testified that on July 18, 2020 she was involved in a motor vehicle collision. As she was approaching the Arch Street Bridge, she saw another car drive over the yellow line into her lane of traffic and hit the motorcycle traveling ahead of her. The motorcycle popped in the air and the passing car impacted or collided with the front of her car. As a result of the collision, her car went off the side of the road and traveled down an adjacent embankment.

Madison Kimble, 13 years old at the time of the incident, was a passenger in the vehicle being driven by Ms. Smith. She too testified at the preliminary hearing. Immediately following the collision and after the vehicle came to rest at the bottom of the embankment, she indicated that her foot hurt “a little bit like where it [was] broken.”

She suffered four broken bones in the top of her foot requiring surgery. The bones in her foot were repaired in part by the placement of two pins and wires.

The accident occurred on July 18, 2020. At the time of the preliminary hearing on July 28, 2020, her foot was in a brace and she required crutches to ambulate. According to her testimony, she would be on crutches “anywhere from two to four weeks” from the date of the preliminary hearing. As for the brace, it was going to need to stay on for “about six weeks.”

Contrary to Defendant’s claim, the court finds that the Commonwealth has established for prima facie purposes the element of serious bodily injury. The victim suffered four broken bones in her foot which required emergency medical attention, a subsequent surgery involving securing the bones via wires and pins and requiring a brace to walk for several weeks as well as crutches for a handful of weeks. The accident was of sufficient force to cause extensive and serious injuries to a vital part of the victim’s body.

Accordingly, Defendant’s petition for habeas corpus shall be DENIED.

The court will next address Defendant’s Motion to Suppress his statements to police. Defendant contends that when he was questioned by Officer Trafford while in the vehicle, Defendant was undergoing custodial interrogation without the requisite Miranda warnings.

If an individual is not advised of his Miranda rights prior to custodial interrogation by law enforcement officials, evidence obtained through the interrogation cannot be used against him. *Commonwealth v. Cruz*, 71 A.3d 998, 1103 (Pa. Super. 2013).

The Miranda safeguards are designed to vest a suspect in custody with an added member of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. *Commonwealth v. Whitehead*, 629 A.2d 142, 145 (Pa. Super. 1993).

As Defendant points out, the standard for determining whether an encounter with the police is deemed custodial is an objective one based on the totality of the circumstances with due consideration given to the reasonable impression conveyed to the person interrogated. *Commonwealth v. Johnson*, 42 A.3d 1017 (Pa. 2012). The totality of the circumstances include factors such as the basis for the detention, the duration, the location, whether the suspect was transferred against his will, how far, and why, whether restraints were used, the show, threat or use of force, and the methods of investigation used to confirm or dispel suspicion. *Cruz*, 71 A.3d at 1104.

The ultimate question is whether the defendant is physically denied his freedom of action in any significant way, or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation. *Commonwealth v. Sherwood*, 982 A.2d 483, 499 (Pa. Super. 2009).

Officer Thaddeus Trafford of the Williamsport Bureau of Police, testified at the February 8, 2021 hearing. He was employed by the Williamsport Bureau of Police as a police officer. He was dispatched to the scene of the accident and arrived at approximately 10:00 p.m. Officer Chris Salisbury was already on scene along with emergency services personnel.

After Officer Trafford parked his unit near the scene, he began assisting EMS with the one victim. As he was doing so, he was approached by a witness named Samantha Morgan. She said that she saw all of it. She pointed to a silver Buick, eventually identified as Defendant's vehicle, and explained that it was traveling over the Arch Street Bridge "going like 90 miles per hour", crossed the double yellow lines into the other lane of traffic, and hit the motorcycle head-on.

Officer Trafford approached the vehicle and observed Defendant sitting in the passenger seat. The passenger door was open, no one else was in the vehicle. The vehicle had sustained heavy damage to the driver's side, windshield and front end. The interior damage to the driver's side was significant. It was "crushed in" to a few inches between the driver's side and interior console. (Commonwealth Exhibits 6, 7, 8; Defense Exhibits 6, 7). Officer Trafford spoke to Defendant.

Officer Trafford first asked Defendant if he was okay to which Defendant responded that he was "fine." Defendant was not in any visible distress, nor did he make any complaints or expressions of pain or discomfort. Officer Trafford observed a cut above Defendant's eye and assured Defendant that EMS would soon be there.

As indicated, Defendant was seated in the passenger seat. Officer Trafford stood between the opening of the door and Defendant. Officer Trafford next asked Defendant how fast he was going to which Defendant answered "really fast." Defendant estimated that he was going approximately 40 mph. Officer Trafford then asked the defendant if he remembered how the accident happened. Defendant replied that he passed a car and hit a

motorcycle.

During these initial questions, Officer Trafford observed an odor of an alcoholic Beveridge coming from Defendant. He also observed Defendant to have bloodshot and glassy eyes, as well as thick and slurred speech. Because of these observations, Officer Trafford asked Defendant if he had drank any alcoholic beverages. Defendant responded that he had four or five. Officer Trafford followed up by asking Defendant what Defendant was drinking. Defendant answered: “vodka, tequila, I don’t know, I just call them alcoholic beverages.”

While Officer Trafford was asking Defendant questions, he observed that Defendant’s mental state was “typical” of other intoxicated drivers that he had previously encountered. The conversation lasted about two minutes. It had a conversational tone. While Officer Trafford was in uniform, he did not restrain Defendant, demonstrate or use force, display his firearm, physically restrain Defendant, ask Defendant to perform any field sobriety tests or tell Defendant that he was being detained. On the other hand, Officer Trafford did not tell Defendant that: he was free to leave; he did not have to talk with Officer Trafford; or he could talk with an attorney.

According to Officer Trafford, his purpose in asking the questions was to “figure out” how the accident happened and whether Defendant needed any emergency medical care. He had the version from one witness but did not know if there were alternative causative factors such as mechanical failure. Officer Trafford admitted that he never Mirandized Defendant prior to questioning.



EMS personnel soon arrived and attended to Defendant. They assisted Defendant out of the vehicle and onto a gurney. Defendant was then taken to the ambulance and transported to the hospital.

In considering the totality of the circumstances, the court agrees with the Commonwealth that Defendant was not subjected to custodial interrogation. The totality of the circumstances did not constitute the functional equivalent of an arrest. The basis for the detention was for Officer Trafford to determine what happened and it was designed to gather information to determine whether Defendant was involved in criminal activity. While Defendant is correct that Officer Trafford had strong evidence that criminal activity occurred, Officer Trafford was obligated to further investigate.

With respect to the length of the detention, it lasted approximately two minutes. As the Commonwealth argues, the amount of time and inconvenience to Defendant was minimal and not of the character associated with an arrest.

With respect to the location of the questioning, clearly Defendant had been in a significant traffic accident which resulted in substantial damage to the vehicle. Defendant was on scene in his vehicle. However, when Officer Trafford first enquired whether Defendant was “okay”, Defendant responded that he was “fine.” Moreover, and despite the significance of Defendant’s injuries as documented by his medical records, Officer Trafford was not aware of them and Defendant was not in any visible distress, nor did he make any complaints or expressions of pain or discomfort. All that Officer Trafford observed was a cut above Defendant’s eye.

Officer Trafford assured Defendant that emergency personnel would soon be there and then proceeded with his questioning. As indicated previously, Officer Trafford did not transport Defendant nor did he restrain him through any use of force or authority whatsoever.

Defendant argues that Officer Trafford effectively restrained Defendant by standing at the open door of Defendant's vehicle blocking Defendant's means of egress. However, and as argued by the Commonwealth, this was the only possible position Officer Trafford could have taken to discuss his concerns with Defendant, including whether Defendant was in need of treatment.

Finally, and consistent with the Commonwealth's argument, the circumstances in this case mirror those circumstances in *Commonwealth v. Grimes*, 648 A.2d 538 (Pa. Super. 1994) as well as *Commonwealth v. Gonzalez*, 546 A.2d 26 (Pa. 1988). Miranda warnings are not required "where general on-the scene investigatory questioning is conducted to determine whether a crime has been committed or is in progress." *Grimes*, 648 A.2d at 541, citing *Miranda v. Arizona*, 384 U.S. 436, 477-78, 86 S.Ct. 1602, 1629-30 (1966). Because Defendant was not subjected to custodial interrogation, Miranda warnings were not necessary and Defendant's motion to suppress on those grounds will be DENIED.

Defendant next argues that the blood drawn at Geisinger Medical Center (GMC) should be suppressed because it was drawn at the direction of the Williamsport Police.

As Defendant properly notes, the taking of a blood sample at the direction of

a police officer is a search subject to the Fourth Amendment to the United States Constitution and is constitutionally impermissible without a warrant, absent an applicable exception to the Fourth Amendment's general requirement that a warrant be obtained. *Commonwealth v. Bell*, 211 A.3d 761, 769 (2019); *Commonwealth v. Johnson*, 188 A.3d 486, 489 (Pa. Super. 2018).

Defendant argues that the evidence establishes that the Williamsport Bureau of Police communicated with Geisinger medical staff through EMS personnel to arrange for Defendant's blood to be drawn prior to obtaining a valid search warrant. Defendant argues that the communications establish an attempt to "manipulate the medical care provided" and "taint any suggestion" that Defendant's blood would have been drawn without said intervention.

The Court cannot agree. Officer Trafford testified that while he spoke with EMS personnel, he did not talk with them about preserving any blood or taking any blood draw. On scene, he spoke with his supervisor who directed him to draft and obtain a search warrant for Defendant's blood. He was also directed not to travel with Defendant to GMC.

In accordance with his supervisor's directives, the following day, Officer Trafford drafted and obtained a search warrant for Defendant's blood. (Commonwealth's Exhibit 2). The warrant was obtained on July 19, 2020 at 2:00 p.m. It was executed on July 21, 2020 at 10:42 a.m. when Defendant's medical records were obtained and at 11:47 a.m. when the blood sample was obtained.

Officer Chris Salisbury of the Williamsport Bureau of Police testified on February 5, 2021. On July 18, 2020 at approximately 10:00 p.m. while on duty at City Hall,

he was dispatched to a vehicle accident on the Arch Street Bridge. He arrived at the scene shortly thereafter and started assisting EMS with the victims. From immediate appearances, one individual was dead and the other was seriously injured.

He continued to assist at the scene with the investigation. While he did not speak with Defendant, he did talk with other officers as well as the drivers and passengers of the third vehicle involved in the crash.

While on scene, he found out that Defendant was transported to GMC for treatment. He also spoke with Officer Trafford who advised him that Defendant appeared to be under the influence of alcohol.

After discussions with Corporal Steven Schmidt, Officer Salisbury contacted GMC. According to his cell phone records, he had various conversations with GMC representatives from 11:08 p.m. on July 18 to 1:02 a.m. on July 19. He called to put a "hold" on the medical blood draw.

He explained that he eventually spoke with a lab representative or technician, identified himself as an officer and asked them to put a hold on Defendant's medical blood and not to dispose of it because he would be obtaining a search warrant to seize it. He explained that he did not know their protocol and did not know if they had already taken blood or were intending to take blood, but if so, not to destroy it.

He denied directing any EMS personnel or anyone from GMC to take Defendant's blood. He simply wanted GMC to not destroy any blood taken by GMC prior to the search warrant being executed. He was told by a GMC representative that they would put

a note in the system to hold the blood.

While Officer Trafford was on the scene and while speaking to his supervisor, they discussed Officer Salisbury going to GMC, reading Defendant his DL-26 warnings and requesting blood, but decided against that. Instead, they would obtain Defendant's blood through a search warrant.

As indicated on Sunday, July 19, 2020, Officer Trafford obtained the search warrant. The next day charges were filed, and Officer Salisbury faxed a letter to the Legal Department at GMC advising them that an arrest warrant was issued for Defendant and requesting them to notify the Williamsport Police when Defendant was to be released in order that they could apprehend him. The following day, on July 21, 2020, he executed the search warrant. He first obtained Defendant's medical records, then went to Defendant's room to speak with him (Defendant refused to speak) and then went to a lab and obtained a sample of Defendant's blood. The blood was transported back to Williamsport, logged into evidence and then eventually sent out to the lab for testing.

Jennifer Sharp testified on February 8, 2021. On July 18, 2020, she was on duty working at the emergency room at GMC. The defendant arrived at the emergency room by ambulance at 11:24 p.m. She was working in the Trauma Unit as a nurse.

Defendant was designated as a Level I trauma and per policy she entered an "adult trauma order set" at approximately 11:29 p.m. about five minutes after Defendant arrived.

The trauma order set directed that certain blood be taken for particular

purposes. The tests ordered were standard for all patients suffering from similar diagnoses as Defendant. One test included a medical ethanol test. Such a test was “typical” in order to determine, among other things, the potential causes of a patient’s deficits. She explained that she was never approached by either a law enforcement officer or an EMS personnel and asked or directed to draw blood. Defendant’s blood would have been drawn “no matter what.” It would have been drawn regardless of what she was told or directed to do by law enforcement personnel or any EMT.

As for the drawing of the blood, it was done by a lab technician. Different vials have different colored caps (“rainbow blood draw”). The different vials are tested for different purposes.

As for Defendant’s injuries, he had a head injury and a likely brain bleed. He also had “metallic” objects in his “bilateral orbital region.” Testing per EMT’s suggested no neurological deficits although initial testing in the GMC emergency room suggested a slightly depleted mental status. Defendant was speaking slowly and softly and had a delayed response to questions. He was, however, oriented to person, place and time. Moreover, portions of the record suggested that later during the admission, Defendant had no “focal neurological deficits” and no obvious neurological deficits as time progressed.

As indicated, the trauma set, which included a medical ethanol test, was ordered at 11:29 p.m. on July 18, 2020. The blood was drawn shortly thereafter sometime between 11:29 p.m. and 12:02 a.m. on July 19, 2020. The results of the testing came back at approximately 12:02 a.m. on July 19, 2020, approximately 30 to 35 minutes after they were

ordered. Defendant's BAC was a .149.

On March 9, 2021, Jeanene Contreras testified. She too was employed by GMC. She was and remains employed as the Lab Manager for Clinical Pathology. She was not working on July 19, 2020.

She is familiar with the policies and procedures regarding the collection and testing of blood samples from patients. No one can place an order for blood other than a physician or a nurse directed by a physician. Once the phlebotomist receives the order, the patient is identified, the blood is drawn and transported back to the lab for testing.

Often, blood is "leftover." It is securely kept in the lab and used if need be. Sometimes the lab receives calls from law enforcement to "hold blood." When that occurs, the specimen is retrieved and placed in a "lock box" so it is not discarded. If blood is obtained for a medical ethanol test, it is usually retained for 72 hours. If a "hold" is called in from law enforcement, it is usually retained for six months if not longer.

Following up on the testimony of Ms. Sharp, Ms. Contreras confirmed that the lab adult trauma order is determined by the emergency department. The blood for medical ethanol is placed in a vial with a mint green or gold cap. Any leftover blood would be stored but then destroyed after 72 hours.

If a law enforcement officer or coroner called to put a hold on the blood, it would be honored. Otherwise, it would not be honored. The blood would not be released, however, unless the officer had a subpoena or similar court order.

The GMC policy of holding blood is in writing and was subsequently

admitted as Commonwealth's Exhibit 9.

Defendant argues that the blood sample was taken at the direction of a police officer based upon the testimony of Josh Clymans and Mark Blanchard. Their testimony, however, does not support Defendant's claim.

Josh Clymans testified on February 8, 2021. On the date of the accident, he was volunteering as an EMT for the Duboistown Fire Department. He responded to the scene. He assisted in the emergency treatment of Defendant.

Once Defendant was placed in the ambulance, he was further treated by a medic. Mr. Clymans drove the ambulance to GMC.

He could not recall if he spoke with County Control or law enforcement about drawing Defendant's blood. He could not recall any conversations with police officers about Defendant's blood. He did recall a conversation regarding officers meeting him at GMC.

A 22-second clip from County Communications was played for Mr. Clymans. While defense counsel represented what was being said on the tape, Mr. Clymans testified that he did not recognize the voice as his and couldn't decipher what was said. The court too could not decipher what was said. The only portions of the tape recording that could be deciphered by the court were selected words and phrases of no import.

While Mr. Clymans or his partner may have told medical personnel at GMC that Defendant had been drinking (Defendant's Exhibit 9), neither he nor his partner directed GMC personnel to draw Defendant's blood.



Mark Blanchard testified as well on February 8, 2021. On the date of the accident, he was employed as a fulltime paramedic for Susquehanna Regional EMS. He responded to the scene, assisted with Defendant's medical care and continued to care for Defendant as he was being transported by ambulance to GMC.

He did not direct any GMC personnel to take Defendant's blood and confirmed that it was not his voice on the 22-second clip with Communications. He did recall hearing Mr. Clymans telling someone at GMC that Defendant had consumed alcohol. He recalled Mr. Clymans as well telling him that Defendant was drinking and had left a party.

The Court finds that the Commonwealth has sustained its burden in proving that the blood drawn from Defendant in the emergency room was not drawn at the direction of any law enforcement officer or any EMS personnel. Furthermore, the court finds that the blood was drawn for medical diagnostic purposes and would have been drawn for such purposes despite any phone calls by law enforcement or comments by EMS. Accordingly, Defendant's motion to suppress based on the alleged argument that the blood was drawn at the direction of the Williamsport Police Department will be DENIED.

Defendant next argues that his blood was seized without a valid search warrant and accordingly the blood results should be suppressed.

More specifically, Defendant argues that the Williamsport Police exercised control over Defendant's blood resulting in it being treated differently than it would have been if the Commonwealth did not act and that a seizure occurred at the moment the first phone call requesting a hold was placed.

Clearly, the Williamsport Police directed that the GMC laboratory put a “hold” on the defendant’s blood sample.

The testimony supports that once the hold was placed on the blood, Defendant’s samples were placed in a secure location in a laboratory, locked and deemed inaccessible until law enforcement came to retrieve them.

As Defendant notes in his brief, a seizure of property occurs when there is some meaningful interference with an individual’s possessory interests in property. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984).

Defendant argues that when Officer Salisbury called the GMC “he was informing the hospital and laboratory staff that they must hold a blood sample for later testing.” Defendant argues that this “demand to hold” was an exercise of control over Defendant’s personal property. Initially, however, and while not addressing the legal analysis, Defendant’s factual conclusions are in error. Officer Salisbury did not call and demand that the blood be held. He asked the lab to put a hold on Defendant’s medical blood and not to dispose of it. He did not know if blood was already taken or if hospital personnel were intending to take blood. If, however, blood was taken or to be taken, he did not want it to be destroyed.

Moreover, and as explained by Ms. Sharp, given Defendant’s trauma designation, the blood would have been drawn “no matter what.” As she explained, it would have been drawn regardless of what she was told or directed by law enforcement personnel or EMT. Further, and as explained by Ms. Contreras, while often times there is “leftover”

blood, it is not always the case. If there is “leftover” blood and the lab receives a call from law enforcement, the specimen is retrieved and not discarded. It is kept until law enforcement provides a subpoena or similar court order.

In addressing the legal ramifications of the Commonwealth’s request that GMC hold the defendant’s blood, there is no doubt that law enforcement’s exercise of dominion and control over one’s blood interferes with that individual’s expectations of privacy. *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016); *Missouri v. McNeely*, 569 U.S. 141 (2013).

In this case, however, law enforcement officers did not exercise control over Defendant’s blood sample. Law enforcement officers did not seize Defendant’s blood. On the contrary, law enforcement officers requested that GMC hold whatever additional blood it had in order for law enforcement officers to obtain that blood sample and have it tested in the future. It was GMC’s decision to “hold” the blood and to make it available to law enforcement. It was GMC that seized Defendant’s blood for future law enforcement purposes. It was GMC that retrieved the “leftover” blood, put it in a lock box and held it until law enforcement produced a search warrant. Law enforcement did not take custody of the blood until they had obtained a warrant and provided it to GMC.

Moreover, even if the request for a hold on the blood is deemed to be a seizure, the evidence would have been inevitably discovered.

It is clear from the testimony that regardless of any hold, the blood would have been retained for approximately 72 hours. Ms. Contreras specifically testified to this

fact. Additionally, it is without dispute that the search warrant was presented at GMC approximately 60 hours after it was drawn. Even if the hold had not been requested, the “leftover” blood would have remained in storage. It would not have been destroyed within the time period within which the search warrant was secured and served.

Finally, the Commonwealth’s arguments in opposition to Defendant’s position are compelling. The special concerns related to compelled removal of blood from one’s vein while requiring heightened scrutiny are dissimilar than the treatment of a vial of blood that had previously been obtained lawfully by a third party and was in the control of that third party. The blood in this instance had already been drawn and was stored by the hospital without Defendant’s input, access or control. As well, Officer Salisbury’s calls did not accomplish any meaningful interference in any of Defendant’s property interest or more specifically, any possessory interest in his blood. Officer Salisbury did not direct that the hospital test Defendant’s blood or even move it. He only asked that they not discard it and, for their own purposes, to better comply with the request, the hospital moved Defendant’s vials of blood from one refrigerator to another.

Accordingly, Defendant’s motion to suppress based on the failure to obtain a search warrant will be DENIED.

Finally, Defendant argues that the blood seized from him and the blood testing results should be suppressed because Defendant was not explained his right to refuse testing or given an opportunity to refuse testing or to validly consent.

Defendant argues that his blood was drawn by GMC, that the police seized

the blood with a series of phone calls and then obtained that blood via a search warrant.

Defendant asserts that at no time prior to the blood being drawn was he advised that he had a right to refuse to submit to chemical testing. Clearly, it is correct that Defendant was not advised of his implied consent warnings prior to his blood being drawn by GMC.

Defendant argues that a person arrested for a DUI is entitled to information on his right to refuse testing and the consequences of refusing the test so that his choice to take a chemical test can be knowing and conscious. *Commonwealth v. Myers*, 164 A.3d 1162 (Pa. 2017). Defendant further argues that absent the opportunity to make a knowing and conscious choice to agree to or to refuse chemical testing, consent to a blood draw is not voluntary. *Id.* at 1181. Further, Defendant argues that if any person placed under arrest for DUI is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted. *Commonwealth v. Eisenhart*, 611 A.2d 681 (Pa. 1992).

However, and as the Commonwealth cogently notes, law enforcement may obtain chemical testing pursuant to a valid search warrant. 75 Pa. C.S. § 1547(b)(3).

Moreover, one's right to refuse chemical testing flows from one being arrested for driving under the influence. As the Commonwealth notes, § 1547 explicitly allows the Commonwealth to obtain a valid search warrant for blood that was drawn pre-arrest by a private party, and seek testing of that blood, notwithstanding any of that section's other provisions.

Accordingly, Defendant's motion to suppress based on Defendant not being

given an opportunity, shall be DENIED.

**ORDER**

**AND NOW**, this 31<sup>st</sup> day of August 2021 following hearings, arguments and the submission of briefs, the Court **DENIES** Defendant's Petition for Habeas Corpus on Counts 6 and 8; **DENIES** Defendant's Motion to Suppress Defendant's Statements to the Police; **DENIES** Defendant's Motion to Suppress Blood Drawn at the Direction of the Williamsport Police Department; **DENIES** Defendant's Motion to Suppress Blood Seized without a Valid Search Warrant; and **DENIES** Defendant's Motion to Suppress Blood Seized without an Explanation of the Right to Refuse Testing, an Opportunity to Refuse Testing or Valid Consent.

By The Court,

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Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)  
Donald Martino, Esquire  
Gary Weber, Esquire  
Judge Marc F. Lovecchio