

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-556-2020
v.	:	
	:	
JEFFERY DAUBER,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Jeffery Dauber (Defendant) was charged on February 26, 2020 with DUI: General Impairment¹, DUI: Highest Rate of Alcohol², and the summary offenses of Driving an Unregistered Vehicle³, Careless Driving⁴, and Accident Damage to Unattended Vehicle or Property⁵. The charges arise from a hit-and-run accident with an unattended car in the parking lot of the Venture Inn in Lycoming County. Defendant filed this Omnibus Pretrial Motion on September 24, 2020. This Court held a hearing on the motion on November 9, 2020. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the charges should be dismissed.

Background and Testimony

The Defendant provided a copy prepared by defense counsel of the transcript from the preliminary hearing. At the preliminary hearing, Trooper Aaron Brown (Brown) of the Pennsylvania State Police testified on behalf of the Commonwealth. On January 26, 2020, at approximately 7:19p.m., Brown was dispatched to the parking lot of the Venture Inn located at 1896 North State Route 44, Watson Township, Lycoming County for an alleged hit-and-run

¹ 75 Pa.C.S.A. § 3802(a)(1).

² 75 Pa.C.S.A. § 3802(c).

³ 75 Pa.C.S.A. § 1301(a).

⁴ 75 Pa.C.S.A. § 3714(a).

⁵ 75 Pa.C.S.A. § 3745(a).

accident. N.T. 5/20/2020, at 1. Shortly after 8 o'clock that evening, Brown conducted an interview with a witness regarding the incident. Id. The witness explained that a black Dodge pickup truck pulled into the Venture Inn's parking lot to turn around. Id. While attempting to do so, the driver of the Dodge hit an unattended parked car. Id. After hitting the car, the witness saw the driver get out of their vehicle, urinate in the parking lot, return to their car, and drive away from the scene. Id. The witness relayed a registration number of the Dodge truck to Brown as well as a physical description of the driver. Id. at 2-3. Brown was able to run the registration number through a search. Id. at 2. That search of the truck's registration showed Defendant's name and address as well as an indication that the registration on the truck was expired. Id. Defendant's picture also came up and Brown showed this picture to the witness and the witness identified Defendant as the driver. Id. at 3. After writing an incident report, Brown left the Venture Inn to make contact with Defendant at his home. Id. Upon arrival, Defendant's mother answered the door and let Brown into the house. Id. Once Brown began talking with Defendant, he could smell the alcohol coming from Defendant's person. Id. Brown was also able to see the Defendant's truck matched the witness' description and had damage on the front consistent with a crash. Id. at 3. Brown arrested Defendant and took him to UPMC Williamsport where Defendant submitted to a blood test. Id. at 2. Defendant's results showed he had a blood alcohol content of .215%. Id.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each

of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant challenges the sufficiency of the evidence on four out of the five charges brought against him. To begin, Defendant argues that the Commonwealth failed to show a *prima facie* case for Count 1, DUI: General Impairment. An individual “may not drive, operate or be in actual physical control of the movement of a vehicle” after drinking to the point that “the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.” 35 Pa.C.S.A. § 3802(a)(1). Next, Defendant argues that the Commonwealth did not present enough to satisfy their burden on Count 4: Careless

Driving. An individual “drives a vehicle in careless disregard for the safety of persons or property...” is considered to have committed this offense. 75 Pa.C.S. § 3714(a). Defendant also argues that the Commonwealth did not meet the *prima facie* burden on Count 5: Accidents Involving Damage to Unattended Vehicle or Property. If the driver of a vehicle is involved with a collision with an unattended car, it is that driver’s responsibility to notify the police of the incident and attempt to discern the owner or operator of the struck car or leave written notice including pertinent information to contact them. 75 Pa.C.S. § 3745(a). Defendant’s singular contention for Counts 1, 4, and 5 is that Brown never personally observed Defendant operating the truck at all, let alone in such a way as to cause damage to unattended vehicles or be incapable of driving safely. The Commonwealth argues that Defendant has not provided citations to specific legal grounds for challenging the sufficiency of the evidence at the preliminary hearing. *See* Pa.R.Crim.P. 575. The Commonwealth’s position is that Defendant merely provides a recitation of the facts without supporting case law or statutes and argues that the evidence they presented at the preliminary hearing satisfied their *prima facie* burden. This Court disagrees with Defendant’s argument on these counts. Though Commonwealth v. McClelland held that it is insufficient to rely solely on hearsay at the preliminary hearing, it does not identify how much additional evidence is required so the Court believes that the Commonwealth has provided sufficient additional evidence to substantiate the hearsay from the witness at the scene. Commonwealth v. McClelland, 233 A.3d 717 (Pa. 2020). In particular, Brown was able to see the Defendant’s truck that had damage to the front bumper consistent with the details of the crash provided to him by the witness. For this reason, the Court believes the *prima facie* burden was satisfied for the elements of each charge and the Defendant’s motion to dismiss Counts 1, 4, and 5 is denied.

Defendant also challenges Count 2: DUI Highest Rate of Alcohol. An individual is prohibited from driving a car after consuming alcohol “such that the alcohol concentration in the individual’s blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.” 35 Pa.C.S. § 3802(c). Defendant asserts that the incident is reported to have happened at approximately 6:30 in the evening. Brown did not make contact with Defendant until 8:37 p.m., and the blood draw only occurred at 10:01 p.m. According to this timeline, the blood test was about three (3) hours and thirty (30) minutes after the incident occurred. Therefore, Defendant argues, the timeframe of testing Defendant’s blood alcohol level was outside the purview of the statute. Alternatively, the Commonwealth submits that this case presents a good cause exception to the 2-hour time limit citing a few reasons. One basis in support of the exception is that the cause for the time delay between the incident and the time of the blood test was because Defendant did not remain on the scene following the collision with the parked car. Another factor to support the good cause exception is that Brown was required to perform an investigation and write a report at the Venture Inn before tracking down the Defendant, asking Defendant questions, and transporting Defendant to get the blood draw performed. The Court agrees with the Commonwealth that, in conjunction with the evidence presented to establish the other counts against Defendant, the circumstances that required the blood test to occur outside the two (2) hours satisfy the good cause exception. As a result, Defendant’s motion to dismiss Count 2 is also denied.

Conclusion

The Court finds that the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for Counts 1, 2, 4, and 5 against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

ORDER

AND NOW, this 1st day of March, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
W. Jeffrey Yates, Esq.
Law Clerk (JMH)