

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-702-2020
v.	:	
	:	
VANESSA WEAVER,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Vanessa Weaver (Defendant) was charged on June 8, 2020 with Aggravated Assault by Vehicle while DUI¹, Aggravated Assault by Vehicle², Endangering the Welfare of Children³, Simple Assault⁴, and other related offenses. The charges arise from an incident that occurred on May 7, 2020 wherein Defendant’s daughter suffered severe, life-threatening injuries. Defendant filed this Omnibus Pretrial Motion on October 20, 2020. This Court held a hearing on the motion on December 4, 2020. In her 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

At the preliminary hearing, Officer Andrew Stevens (Stevens) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On May 7, 2020 at approximately 7:30 p.m., Stevens was dispatched to the intersection of Washington Boulevard and Packer Street in Williamsport, Lycoming County for an accident involving a vehicle and an unresponsive pedestrian. N.T. 6/18/2020, at 4-5. Upon arrival, Stevens saw a Buick sedan had come to a stop in the westbound lane of Washington Boulevard. Id. at 5. Its front right tire was

¹ 75 Pa.C.S. § 3735.1(a).

² 75 Pa.C.S. § 3732.1(a).

³ 18 Pa.C.S. § 4304(a)(1).

⁴ 18 Pa.C.S. § 2701(a)(1).

worn down to the rim and tire material had been “gouged into the macadam of the street.” Id. at 9. Stevens also saw a female, later identified as the Defendant’s daughter, Aubrey Moon (Moon), laying on the road near the crosswalk on Packer Street. Id. at 5. While Emergency Medical Services began rendering aid to Moon, Stevens approached the car from the driver’s side and observed Defendant in the driver’s seat as the sole occupant of the vehicle. Id. at 8. The car was still running and sitting in reverse gear. Id. at 8-9. Stevens could smell a strong chemical odor consistent with phencyclidine (PCP) coming from Defendant and the general area of the driver door. Id. at 10. Stevens attempted to talk to Defendant and asked her to get out of the vehicle. Id. at 9-10. Defendant had a blank stare on her face and did not respond to Stevens. Id. at 9. Defendant continued not to respond to Stevens despite his repeated attempts to speak with her, so he tugged on her t-shirt to get her out of the car. Id. at 10. In response, Defendant clutched on to the steering wheel and froze. Id. Stevens eventually had to physically remove her from the vehicle. Id. A cigarette was recovered from the driver’s side door and tested positive for PCP. Id. at 15-16. Defendant was handcuffed and placed in a police car for Stevens and Officer Bonnell to transport her to the Williamsport Bureau of Police in order to conduct a drug influence evaluation. Id. at 17. During transport to City Hall, Stevens had to roll down his window to keep from being sick due to the heavy chemical odor typically associated with PCP emanating from Defendant. Id. Defendant was very confused during the twelve-step sobriety drug influence evaluation and performed poorly on all tests. Id. at 17-20. Following the evaluation, Defendant was asked to submit to a blood draw which she refused. Id. at 22. Stevens obtained a search warrant for her blood and took Defendant to UPMC Susquehanna where she complied with the warrant and gave two (2) vials of blood that tested positive for alcohol and PCP. Id. at 20, 22, 24.

Alexis Wagoner (Wagoner) was one of the passengers in the car at the time of the accident and approached Stevens while he was still on scene to explain what happened. Id. at 11. She also spoke to Officer Bonnell following treatment at the hospital and provided a written statement of the events leading to the accident. Id. at 28. Wagoner stated that Defendant had driven her and Moon to Burger King to get food and Defendant was drinking a beer in the car while doing so. Id. at 12. When they left Burger King, Defendant backed into a utility pole. Id. They stopped in the area of Firetree Place where Defendant met up with a man. Id. Wagoner believes that Defendant bought PCP in that area. Id. at 12. Defendant took the girls to the Family Dollar where Moon and Wagoner observed Defendant smoking a cigarette that had been dipped in PCP. Id. Moon told Defendant to stop smoking and Defendant eventually put it out and placed the dipped cigarette in the driver's door pocket. Id. Wagoner said Defendant's driving was all over the road and she observed Defendant begin to "seize up" at the wheel while driving. Id. at 12-13.

At the time of the accident, the group was travelling east on Washington Boulevard when Defendant almost missed the turn onto Packer Street where she resides. Id. at 13. Defendant pulled the Buick north onto Packer street "on an angle in the middle of the northbound lane." Id. Moon got out of the front passenger seat and went inside of 47 Washington Boulevard to get Defendant's mother, Wendy, to help get Defendant out of the car or move the car off the road. Id. These attempts were not successful because Defendant remained frozen at the wheel and would not get out of the driver's seat. Id. Since she refused to move, there was not enough room for anyone else to fit in the driver's seat. Id. As an alternative solution, Moon went to the driver's side of the car with the car door open while Wagoner partially sat on Defendant's lap to try to control the car. Id. Wagoner attempted to

move the driver's seat so she could reach the pedals while Moon gave instructions on how to parallel park. Id. at 14. Wagoner's feet were not on the gas or the brake pedals at this time. Id. at 33. Wagoner stated that all she remembers is holding the steering wheel when the car went into reverse and flew backwards. Id. at 14. Wagoner fell out of the car injuring her ankle and Moon was struck by the open car door. 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 three of the charges brought against her. To begin, Defendant argues that the Commonwealth failed to show a *prima facie* case for Count 1, Aggravated Assault by Vehicle while DUI. This crime occurs when an individual

negligently causes serious bodily injury to another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 commits a felony of the second degree when the violation is the cause of the injury.

75 Pa.C.S. § 3735.1(a). Similarly, Defendant also argues that the Commonwealth did not meet their burden on Count 2, Aggravated Assault by Vehicle. This offense is defined as:

Any person who recklessly or with gross negligence causes serious bodily injury to another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic, except 3802 (relating to driving under influence of alcohol or controlled substance), is guilty...when the violation is the cause of the injury.

75 Pa.C.S. § 3732.1(a). Thirdly, Defendant challenges the Commonwealth’s evidence presented at the preliminary hearing for Count 7, Simple Assault. This challenge was not included in their omnibus motion but was briefed by defense counsel. The Commonwealth also briefed this specific charge, and so the Court will consider Defendant’s argument. A person commits Simple Assault when they “attempt[s] to cause or intentionally, knowingly or recklessly cause[s] bodily injury to another.” 18 Pa.C.S. § 2701(a)(1).

Defendant alleges that the evidence presented by the Commonwealth at the preliminary hearing does not establish the *prima facie* burden on the above charges for the same reason—

namely that Defendant was not in actual physical control of her vehicle at the specific moment Moon was injured and, as a result, was not the cause of the accident. Defendant believes that Wagoner, and not Defendant, is to blame for Moon's injuries. Defendant claims that Wagoner was in actual physical control when she grabbed the steering wheel, thus making Defendant a passenger in her own car while sitting in the driver's seat. However, Defendant suggests that Stevens' testimony at the preliminary hearing was incorrect and incomplete, namely because the Commonwealth relied on Stevens' hearsay testimony instead of a written statement from Wagoner that indicated she was the vehicle's operator at the time Moon was injured. Defendant points to the section in Wagoner's written statement that states Defendant did not park correctly so Moon used the keys to turn the car back on and told Wagoner that the gear shift was in drive. Commonwealth Exhibit 2, at 2. However, the car was not in drive so Wagoner changed the gear. Id. Wagoner then stated that when she grabbed the steering wheel the car flew backwards instead of going forward. Id. Alternatively, the Commonwealth argues that, under Pennsylvania law, Defendant was still considered to be in actual physical control of her vehicle at the time of the accident and that Wagoner's or Moon's actions were not enough to become an intervening force in Defendant's causation of Moon's injuries.

To support her argument, Defendant cites to other jurisdictions that held a passenger can be considered in actual physical control of a vehicle. *See* Lumbermen's Mut. Casualty Co. v. McIver, 27 F.Supp. 702 (S.D.Cal. 1939) (holding man had actual physical control at the time of the accident when he grabbed the steering wheel from the passenger seat); *see also* In re Queen T., 14 Cal.App.4th 1142, 1144 (1993) (rejecting minor's argument that she was not driving when she steered the car from the passenger seat while an adult operated the accelerator and brakes from the driver's seat). It should be noted that the court in In re Queen

T. specifically stated that it was not ruling on the possibility of both the driver and the passenger having actual physical control simultaneously. In re Queen T., 14 Cal.App.4th at n. 2.

In Pennsylvania, this possibility of a passenger being in actual physical control has been established in the context of driving under suspension but not necessarily for DUI offenses. *See Com., Depart. Of Transp., Bureau of Driver Licensing v. Hoover*, 161 Pa.Cmwth. 517 (1994) (holding that a man sitting in the passenger seat who grabbed the steering wheel causing vehicle to swerve into opposite lane was in actual physical control). The test to determine actual physical control is based on the totality of the circumstances, “including the location of the vehicle, whether the engine was running and whether there was other evidence indicating that the defendant had driven the vehicle at some point prior to the arrival of police on the scene.” Commonwealth v. Wolen, 685 A.2d 1384, 1385 (Pa. 1996). Pennsylvania courts have seen many different scenarios involving a combination of various factors to determine whether a defendant under the influence was in actual physical control⁵. Most notably, in scenarios similar to the case at hand, Pennsylvania law has held that an unconscious driver can still be found to have actual physical control of a vehicle. *See Commonwealth v. Lehman*, 820 A.2d 766 (Pa. Super. 2003); Commonwealth v. Yaninas, 722 A.2d 187 (Pa. Super. 1998); Commonwealth v. Woodruff, 668 A.2d 1158 (Pa. Super. 1995)

In this case, the Commonwealth provided evidence that Defendant drove her vehicle while high on PCP, became unresponsive and failed to bring her car out of the traffic lane. The Commonwealth is permitted to present hearsay at this stage of the proceedings and satisfied

⁵ *See Commonwealth v. Woodruff*, 668 A.2d 1158 (Pa. Super. 1995); Commonwealth v. Trial, 652 A.2d 338 (Pa. Super. 1994); Commonwealth v. Wilson, 660 A.2d 105 (Pa. Super. 1995); Commonwealth v. Bobotas, 588 A.2d 518 (Pa. Super. 1991); Commonwealth v. Crum, 523 A.2d 799 (Pa. Super. 1987); Commonwealth v. Kloch, 327 A.2d 375 (Pa. Super. 1974).

McClelland⁶ by also presenting evidence from Stevens' testimony relaying what he personally saw at the scene of the accident. Pennsylvania courts have held that it is sufficient for a driver to "operate" a car when "the operator is in actual physical control of the movements of *either the machinery of the motor vehicle or of the management of the movement of the vehicle itself.*" Commonwealth v. Kallus, 243 A.2d 483 (Pa. Super. 1968) (emphasis added). Though Wagoner had a grip on the steering wheel, Stevens testimony indicated that the girls were not able to move Defendant out of the way enough for Wagoner to get her foot on the brake or gas pedals. The evidence at the preliminary hearing showed that Wagoner was not able to touch the gas or the brake because the girls could not move Defendant out of the driver's seat. She could only shift the car's gear and hold onto the steering wheel. Even Wagoner's written statement indicated that the car "suddenly" went backwards instead of forwards. Therefore, but for Defendant's ability to control the accelerator and brakes, the car would not have been able to move even with Wagoner's interference. Rather, because the Commonwealth showed that Defendant was in the driver's seat, had control over the machinery of the car, and placed everyone in that situation because of her decision to ingest PCP, and the vehicle moved suddenly in reverse without Moon or Wagoner pressing the accelerator, the *prima facie* burden has been established. Since the vehicle's sudden movement caused both Moon and Wagoner to be thrown from the vehicle and injured, the elements of the Aggravated Assault while DUI and Simple Assault charges have been met. Therefore, the Commonwealth has satisfied their burden at the preliminary hearing for all charges to be held for court against Defendant.

Conclusion

⁶ Commonwealth v. McClelland, 233 A.3d 717 (Pa. 2020).

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

ORDER

AND NOW, this 26th day of March, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in her Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Kyle W. Rude, Esq.
Law Clerk (JMH)