

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-788-2023
	:	
vs.	:	
	:	CRIMINAL DIVISION
BENJAMIN STEVEN FULLER,	:	
Defendant	:	

OPINION AND ORDER

This matter is before the Court on a Motion for Habeas Corpus Relief filed by the Defendant on August 1, 2023. For the reasons set forth below, the Motion is denied.

I. Introduction

The charges herein arose from an incident on April 7, 2023, when Pennsylvania State Police (“PSP”) Troopers were dispatched at approximately 1:27 a.m. to Mifflin Township, Lycoming County, for a report of a single vehicle crash. PSP requested the assistance of the Lycoming Regional Police Department in securing the scene due to a delayed response time. Officers from the Lycoming Regional Police Department related to PSP Trooper Bryan Carlson that they had to heavily knock on the window of the Defendant’s Toyota Corolla to wake him up and he appeared “extremely intoxicated.” When Trooper Carlson made contact with the Defendant, it appeared as though a crash did not occur, but rather that Defendant pulled off the roadway.

Trooper Carlson interviewed the Defendant in front of his vehicle at approximately 2:07 a.m., and observed him to be disheveled with a strong odor of alcohol emanating off his person. His eyes appeared bloodshot and glassy and his breath had a strong odor of alcohol.

Standard Field Sobriety Tests were attempted, and the HGN indicated signs of impairment. However, additional tests were not conducted due to Trooper Carlson's belief that the Defendant would not be able to safely conduct the tests without falling. The Defendant submitted to a preliminary breath test which indicated the presence of alcohol.

At approximately 2:25 a.m. the Defendant was transported to Geisinger Jersey Shore for chemical testing. However, hospital staff related they were unable to find the DL-26B paperwork and equipment required for chemical testing and, after approximately 40 minutes, informed Trooper Carlson that the requested testing could not be conducted. At approximately 3:02 a.m., the Defendant was transported to UPMC Williamsport where he was read the DL-26B verbatim, and he willingly submitted to a chemical test. A sample was taken at approximately 3:55 a.m. The lab results determined the Defendant's BAC was .288% at the time of testing.

The Defendant was charged with Count I, DUI, Highest Rate of Alcohol, First Offense pursuant to 75 Pa.C.S. §3802(c); Count II, DUI, General Impairment/Incapable of Safe Driving, First Offense pursuant to 75 Pa.C.S. §3802(a)(1), as well as two summary offenses. A preliminary hearing was held on June 14, 2023, after which all charges were held for court. The Defendant waived his arraignment.

Defendant filed a Petition for Habeas Corpus on August 1, 2023, arguing that the evidence was insufficient to demonstrate that he was operating the motor vehicle, or was in actual physical control of the movement of the motor vehicle as required under Count I and Count II. Additionally, the Defendant further alleges that the Commonwealth failed to establish a BAC greater than .16 or higher within 2 hours after the individual has driven,

operated, or been in actual physical control of the movement of the motor vehicle as required under 75 Pa.C.S. §3802(c). Argument was held on October 2, 2023.

II. Facts Established at Habeas Corpus Hearing

On or about April 7, 2023, Officer Kenneth Bowers of the Lycoming Regional Police Department was requested to assist the Pennsylvania State Police with securing the scene of a motor vehicle accident due to the delayed response time of PSP. Upon arrival at approximately 1:47 a.m. he found the vehicle in question had been driven off the roadway and into a ditch. There were no occupants other than the Defendant. Officer Bowers was there solely to secure the scene and did no testing of the Defendant. His involvement in the matter concluded upon the arrival of PSP troopers.

Trooper Bryan Carlson testified that at 12:07 a.m. on April 7, 2023, they received an advisement regarding a green sedan driving erratically in his area. He was subsequently dispatched at approximately 1:20 a.m. to a single vehicle crash with unknown injuries, but did not arrive on site until 2:03 a.m., after Lycoming Regional Police Department had arrived and secure the scene. Tpr. Carlson further testified that the vehicle involved in the reported crash matched the description of the car in the earlier advisement.

Tpr. Carlson testified that he could smell alcohol on the Defendant, who first told him he consumed 2 beers and later said he consumed 1.5 beers. The Defendant first told Tpr. Carlson he consumed the beverages at home, but later indicated he consumed them while he was driving home. The Defendant needed physical assistance to get from his car to the patrol vehicle where he was to perform standard field sobriety tests. Tpr. Carlson testified that he performed the HGN test and began the Walk and Turn test but the Defendant was

unable to maintain the starting position, staggered heavily, and fell onto the ground, at which time the test was discontinued due to safety concerns. A preliminary breath test conducted on the Defendant showed a blood alcohol content of .294%.

Tpr. Carlson testified that he transported the Defendant to Geisinger Jersey Shore Hospital for a blood draw. He did not call the hospital to advise them they were coming, as dispatchers typically make that call. After waiting approximately 40 minutes, Tpr. Carlson was informed that the hospital could not perform the blood draw. The dispatcher contacted UPMC Williamsport while Tpr. Carlson transported the Defendant and a blood draw was conducted at 3:55 a.m. When lab results were returned on April 24, 2023, the Defendant's blood alcohol content at the time of testing was determined to be .288%.

Tpr. Carlson testified that he was with the Defendant from the time he arrived on the scene until the time he was released to the medical staff on the night of the incident, and the Defendant did not consume any alcohol during that time.

III. Analysis

When a Defendant chooses to test whether the Commonwealth has sufficient evidence to establish a *prima facie* case that he or she has committed a crime, the proper means is a motion for habeas corpus. *Dantzler*, 135 A.3d at 1112, citing *Carroll*, 936 A.2d at 1152. “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein” and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Com. v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case "that a crime has been committed and that the accused is probably the one who committed it." *Id.*; Pa.R.Crim.P. 141(d). Additionally, the weight and credibility of the evidence are not factors for the Court to consider. *Com. v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Com. v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that "[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury"). "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." *Com. v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

The Defendant was charged with two counts of driving under the influence pursuant to 75 Pa.C.S. §3802. Both subsections require that a defendant's blood alcohol concentration be above the stated limit within two hours of driving or being in control of a motor vehicle. The Defendant argues that there is insufficient evidence to demonstrate that he was operating the motor vehicle or was in actual physical control of the movement of the motor vehicle as required in Counts 1 and 2. Additionally, the Defendant argues the Commonwealth failed to establish a BAC of .16 or higher within 2 hours after the Defendant drove or was in control of the motor vehicle as required under 75 Pa.C.S. §3802(c), as the Defendant's blood was not drawn within two hours after he was suggested to have been operating the vehicle.

With regard to the Defendant's contention that there was insufficient evidence to prove he was driving or operating the motor vehicle, "the term 'operate' requires evidence of actual physical control of either the machinery of the motor vehicle or the management of the vehicle's movement, but not evidence that the vehicle was in motion." *Commonwealth v. Toland*, 995 A.2d 1242, 1246 (Pa.Super. 2010) (quoting *Commonwealth v. Brotherson*, 888 A.2d 901, 904 (Pa.Super.2005)). "The Commonwealth can establish through wholly circumstantial evidence that a defendant was driving, operating or in actual physical control of a motor vehicle." *Id.* (quoting *Brotherson*, 888 A.2d at 905). Courts review "a combination of the following factors" to determine "whether a person had 'actual physical control' of an automobile: the motor running, the location of the vehicle, and additional evidence showing that the defendant had driven the vehicle. *Id.* (quoting *Brotherson*, 888 A.2d at 904). "A determination of actual physical control of a vehicle is based upon the totality of the circumstances." *Id.* (quoting *Brotherson*, 888 A.2d at 905).

Here, there was testimony at the hearing on the Petition for Habeas Corpus that the Defendant's vehicle had left the roadway in a rural area and there were no other occupants. Additionally, at the Preliminary Hearing, the Affidavit of Probable Cause was stipulated to, and said affidavit indicated that EMS related to officers that they had to heavily knock on the window to wake the Defendant up. This evidence presented by the Commonwealth is sufficient to establish that the Defendant operated the motor vehicle as is required in Count 1, 75 Pa.C.S. §3802(c), and Count 2, 75 Pa.C.S. §3802(a)(1).

With regard to the Defendant's contention that the Commonwealth has failed to establish a BAC greater than .16 within 2 hours after he operated the vehicle, as required in

Count 1, 75 Pa.C.S. §3802(g) provides an exception to the two-hour rule where evidence of such alcohol or controlled substance concentration more than two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle is sufficient to establish that element of the offense under the following circumstances:

- (1) where the Commonwealth shows good cause explaining why the chemical test sample could not be obtained within two hours; and
- (2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

Here, there was testimony that the PSP troopers responded promptly to the call, and any delay in arrival was attributed to the large geographic coverage area and nonemergency nature of the call. Upon arrival, Tpr. Carlson attempted to perform field sobriety tests and a preliminary breath test and, upon the Defendant's inability to safely complete the field sobriety tests, Tpr. Carlson immediately transported him to the nearest hospital to perform a blood draw. After a 40 minute wait and multiple inquiries, Tpr. Carlson was informed by hospital staff that there was no phlebotomist available to draw blood from the Defendant. Tpr. Carlson immediately transported the Defendant to UPMC Williamsport where his blood was drawn at approximately 3:55 a.m., which was more than 2 hours but less than 3 hours from the initial dispatch. Tpr. Carlson testified that he was with the Defendant from the time he arrived on the scene of the reported accident until the time of the blood draw, and the Defendant did not imbibe any alcohol during that time.

The Court finds that the Commonwealth has established both good cause for the delay in obtaining the sample of the Defendant's blood and that the Defendant did not imbibe any alcohol between the time he was arrested and the time the sample was obtained. Furthermore, the delay was neither unduly lengthy nor unreasonable and the Defendant's BAC was well in excess of .16% at the time the test was conducted.

Based on these facts, and accepting all evidence as true, the Commonwealth has established a *prima facie* case on both counts of Driving Under the Influence. Accordingly, the Court will enter the following Order:

ORDER

AND NOW, this 8th day of **November, 2023**, for the reasons set forth above, it is **ORDERED AND DIRECTED** that Defendant's Petition for Habeas Corpus is hereby **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel
CC: DA (PY)
Bradley Hillman, Esq.
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