

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 474 CR 2013
	:	
ERIC SCOTT BAKER,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire	Counsel for Commonwealth Assistant District Attorney
Cynthia S. Yurchak, Esquire	Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - November , 2013

Before the Court is an omnibus pretrial motion filed by Defendant, Eric Scott Baker (hereinafter "Defendant"), praying to this Court to dismiss the criminal charges filed against him, or alternatively, suppress various pieces of evidence that have lead to the filing of those criminal charges. Defendant requests in this motion that this Court suppress the field sobriety tests results and any testimony referencing such tests, preclude the Commonwealth from introducing at trial any incriminating statements made by the Defendant, both oral and written, and alternatively grant a habeas corpus request. For the reasons stated within this Opinion, Defendant's motion is **GRANTED in part and DENIED in part.**

FACTUAL AND PROCEDURAL BACKGROUND

The facts leading to the charges being filed against Defendant are not complex nor in dispute. On December 27, 2012, at around 9:15 P.M., Police Officer Matthew Williams, in full uniform and in a marked patrol vehicle, was on duty patrolling traffic at the intersection of Broad and Dean streets in the Borough of Beaver Meadows. As the officer was observing traffic, he noticed a gold Pontiac Sedan traveling southbound on Broad Street with what appeared to be burned out license plate lamps. After witnessing what the officer believed to be a motor vehicle violation, he pulled out from his location and began to follow the Pontiac Sedan and eventually conducted a traffic stop of the vehicle. No other traffic violations were noticed between the time the officer observed the burned out license plate lamps and the time Defendant brought the vehicle to a stop.

Subsequent to stopping the vehicle, Officer Williams approached the driver of the car who identified himself as the defendant in this case, and informed the Defendant as to why he was being pulled over. Upon engaging the Defendant, the officer noticed Defendant's eyes were red and glossy with dilated pupils.¹

¹ The officer acknowledged on cross-examination at the preliminary hearing before the Honorable Magisterial District Judge Homanko that Defendant's eyes

Thereafter, the officer asked Defendant to produce his registration and insurance cards for the vehicle. Upon making such request, the officer observed the Defendant to seem confused. After about a few seconds, Officer Williams repeated his request to the Defendant, to which Defendant produced the necessary documentation. Based upon Defendant's glossy and red eyes and his perceived confused state, Officer Williams asked Defendant if he had consumed any alcohol or taken any illegal drugs earlier in the night. After Defendant informed the officer that he had not, Officer Williams asked Defendant to exit the vehicle and perform standardized field sobriety tests. The officer however, did acknowledge at the preliminary hearing, that prior to exiting the vehicle, Defendant's speech was not slurred nor was there any odor of alcohol or marijuana.

Subsequent to exiting his car, and after a subjective determination by Officer Williams that Defendant had failed the various standardized field sobriety tests, Defendant was placed under arrest for suspicion of driving under the influence and escorted to the rear of the patrol vehicle. While sitting in the back of the police vehicle, the officer once again inquired of the Defendant if he had been drinking or whether he had taken any illicit drugs earlier that night. The Defendant in response

were red and glossy but not bloodshot. (N.T., Preliminary Hearing, 5/08/13, pg., 36).

admitted to smoking marijuana at a friend's house three hours prior. Upon such admission, the officer read the Defendant his "O'Connell Warnings,"² which the Defendant acknowledged, and thereafter consented to having his blood drawn for chemical testing purposes.

The result of such blood test revealed that Defendant had Tetrahydrocannabinol (THC) in his blood at the time of his arrest and accordingly was charged with Driving Under the Influence of a controlled substance, 75 Pa.C.S.A. § 3802(d)(2).³

After a preliminary hearing where a *prima facie* case was found on both charges, Defendant filed this omnibus pretrial motion.⁴

DISCUSSION

Defendant, in his omnibus pretrial motion, requests the Court to suppress all evidence in this case, or in the alternative, preclude the Commonwealth from introducing at trial

² The phrase "O'Connell Warnings" is a shorthand expression for the duty imposed upon a police officer to inform a motorist who has been asked to submit to a chemical test, that the *Miranda* rights are inapplicable to the request for chemical testing under the Implied Consent Law. *Commonwealth, Department of Transportation, Bureau of Traffic Safety v. O'Cnnell*, 555 A.2d 873 (Pa. 1989).

³ Defendant was also charged with the summary offense of operating a vehicle upon a highway or trafficway of this Commonwealth without proper rear lighting system, a violation of 75 Pa.C.S.A. § 4303(b).

⁴ As Defendant properly noted, the criminal complaint lists the offense of Driving Under the Influence of a controlled substance as offenses number one and two. However, only the charges listed on the information, those being one count of Driving Under the Influence and a summary offense, were bound over to this Court. See, Pa.Crim.P. 560, 561; see also, *Commonwealth v. Morrison*, 878 A.2d 102 (Pa. Super. Ct. 2005).

the test results of the field sobriety tests and any incriminating statements Defendant made while in the custody of Officer Williams. Additionally, Defendant filed a writ of habeas corpus petition claiming the Commonwealth does not have sufficient evidence to establish a *prima facie* case. The Court will first address the suppression motion in the order of events occurring the night of December 27, 2012.

In a motion to suppress evidence, the burden is placed upon the Commonwealth to establish that the allegedly suppressible evidence was not obtained in violation of defendant's rights. *Commonwealth v. Ryan*, 407 A.2d 1345, 1348 (Pa. Super. Ct. 1979).

The Legislature of this Commonwealth has authorized a police officer to stop a vehicle for an investigatory purpose whenever the officer has reasonable suspicion to believe that a violation of the Motor Vehicle Code has occurred. 75 Pa.C.S.A. § 6308(b).⁵ The determination of whether a police officer has reasonable suspicion that criminality is afoot so as to justify an investigatory detention is an objective one that must be

⁵ Statute 75 Pa.C.S.A. § 6308(b) states in full:

(b) Authority of police officer.--Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

evaluated based upon the totality of the circumstances. *Commonwealth v. Chase*, 960 A.2d 108 (Pa. 2008) (“[r]easonable suspicion sufficient to stop a motorist must be viewed from the standpoint of an objectively reasonable police officer” (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996))). In order to establish reasonable suspicion, the police officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts in light of the officer’s experience. *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997). Accordingly, the Court must first determine whether Officer Williams, at the time he stopped Defendant, had reasonable suspicion that a violation of the Motor Vehicle Code had occurred.

Pursuant to 75 Pa.C.S.A. § 4303(b), “[e]very vehicle operated on a highway shall be equipped with a rear lighting system including, but not limited to, rear lamps, rear reflectors, stop lamps and license plate light, in conformance with regulations of the department.” The officer testified at the preliminary hearing that he observed Defendant’s rear license plate’s lamps to be burned out while traveling upon a trafficway of this Commonwealth. For that reason, Officer Williams had reasonable suspicion to suspect Defendant committed a violation of the Motor Vehicle Code and thus his traffic stop of Defendant was proper and the evidence of such violation

admissible.

The next issue the Court is tasked with determining is whether the results of the standardized field sobriety tests are admissible. Defendant's main challenge to the field sobriety tests is that Officer Williams did not possess the requisite reasonable suspicion that he, the Defendant, had been driving under the influence of alcohol or a controlled substance to the extent that it would permit him, the officer, to request Defendant to perform such tests.⁶

Similarly to when an officer conducts an investigatory stop, an officer must possess reasonable suspicion that a defendant was driving under the influence so as to allow him to request that a defendant perform a standardized field sobriety test. *Commonwealth v. Cauley*, 10 A.3d 321, 326 (Pa. Super. Ct. 2010). The test for reasonable grounds is whether, at the time, a reasonable person in the position of the police officer could have concluded that the motorist was operating the vehicle and

⁶ One of Defendant's other challenges to the results of the field sobriety tests was that the performance of such tests violates Defendant's Fifth Amendment right of self-incrimination. More specifically, Defendant argues that the performance of the field sobriety test is testimonial in nature and self-incriminating and thus Defendant should have been provided his *Miranda* warnings before performing such test. However, the Supreme Court of this Commonwealth, along with many other sister state's Supreme Courts, have determined that field sobriety tests are not considered to be testimonial or communicative. *Commonwealth v. Hayes*, 674 A.2d 677 (Pa. 1996); *People v. Boudreau*, 115 A.D.2d 652 (N.Y. 1985); *Commonwealth v. Brennan*, 438 N.E.2d 60 (Mass. 1982). Thus, field sobriety tests, but for certain exceptions that are not applicable to this case, are not self-incriminating defined in *Miranda v. Arizona*, 384 U.S. 436 (1966). Accordingly, Defendant's argument that his performance of the field sobriety tests violated his Fifth Amendment rights is without merit.

under the influence of alcohol or a controlled substance. *Banner v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 737 A.2d 1203 (Pa. 1999). This determination must be made on a case-by-case basis. *Wilson v. Commonwealth*, 417 A.2d 867, 868 (Pa. Cmwlth. Ct. 1980).

The cases deciding whether reasonable grounds existed are numerous and fact-specific. While there is no set list of behaviors that a person must exhibit for an officer to have reasonable grounds for requesting one to perform a field sobriety test, case law has provided numerous examples of what has been accepted as reasonable grounds in the past. These behaviors are: staggering, swaying, falling down, belligerent or uncooperative behavior, slurred speech, and the odor of alcohol or marijuana emanating from the driver. See, *White v. Commonwealth*, 428 A.2d 1044 (Pa. Cmwlth Ct. 1981); *Hasson v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 866 A.2d 1181 (Pa. Cmwlth. Ct. 2005); *Riley v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 946 A.2d 1115 (Pa. Cmwlth. Ct. 2008). As testified to by Officer Williams, the Defendant exhibited none of these behaviors.

Police Officer Williams did state that upon his initial contact with Defendant he observed Defendant to have red, glossy eyes. However, the cases where glossy eyes were found as an

indicator of intoxication invariably involve at least one other physical condition that would then equate to reasonable grounds. *Hasson*, 866 A.2d at 1185; *Matthews v. Commonwealth*, 540 A.2d 349, 350 (Pa. Cmwlth. Ct. 1988). Consequently, evidence of glossy, red eyes alone is insufficient to support the conclusion that Officer Williams had reasonable suspicion to believe Defendant was intoxicated or under the influence of a controlled substance at any given point. See, *Sisinni v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 31 A.3d 1254 (Pa. Cmwlth. Ct. 2011) *appeal denied*, 44 A.3d 1163 (Pa. 2012).

In addition to observing that the Defendant had red and glossy eyes, the officer buttressed his request of Defendant to perform field sobriety tests with his, Officer Williams's, observations of Defendant's "confused state"⁷ when requested to produce certain documentation.⁸

⁷ At the preliminary hearing Officer Williams portrayed the Defendant to be of a confused state. However, the Court notes that such characterization is a conclusion of Defendant's state of mind made without facts to support it. Officer Williams in actuality was describing Defendant's delayed response to his request for production of documents. Accordingly, the Court will consider Defendant's behavior as one of a delayed response and not necessarily a confused state. Nonetheless, for clarity and consistency purposes this Opinion will continue to describe Defendant's behavior as one of a confused state.

⁸ At the preliminary hearing, Defendant's counsel vehemently objected to the officer's testimony regarding his belief that the Defendant was "a little confused" when the officer asked the Defendant to produce his registration and owner's cards. This objection, although overruled, resulted in the Magisterial District Judge ruling that "the Court will ignore the word confused." (N.T., Preliminary Hearing, 5/08/13, pg., 11). In effect, this observation by Office Williams was not to be considered by the Magisterial

Confusion can be an indicator that one is under the influence of alcohol or illegal drugs. *Commonwealth, Department of Transportation v. Wysocki*, 535 A.2d 77, 80 (Pa. 1987). However, like other indicators, confusion by itself is insufficient to establish reasonable grounds and thus the Court must determine if Defendant's confused state, albeit "maybe for a few seconds," (N.T., Preliminary Hearing, 5/08/13, pg., 46), paired with red glossy eyes establishes the requisite reasonable suspicion necessary for Officer Williams to request Defendant to perform field sobriety tests.

In examining the case law, this Court concludes that such indicators as those present in this case, viewed in the light most favorable to the Commonwealth, do not suffice as reasonable grounds to ask the Defendant to perform field sobriety tests. In those cases where confusion was a factor in the officer's determination that the defendant was under the influence, there were other more determinative and prevailing factors present.

District Judge in his *prima facie* finding.

However, this Court is inclined to consider the Defendant's "confused" state based upon Defendant counsel's cross-examination of the officer where counsel inquired further into what the officer mean by "confused" state. More specifically, Defense counsel asked the officer if he can "articulate facts or things that [the officer] observed about [the Defendant] to substantiate [his] opinion that [Defendant] appeared confused? What exactly did he do?" (N.T., Preliminary Hearing, 5/08/13, pg., 45). The officer, in response, stated that "[w]hen [he] asked [Defendant] to produce his registration and insurance card, at first he just kind of sat there like he didn't really - didn't really understand what I was telling him." (N.T., Preliminary Hearing, 5/08/13, pg., 45-46). Further, Defense counsel then asked, "So that's what made you feel that [the Defendant] was confused" to which the officer replied "Yes." (N.T., Preliminary Hearing, 5/08/13, pg., 46). The Commonwealth did not object to this line of questioning.

See, Koutsouroubas v. Commonwealth, Department of Transportation, Bureau of Driver Licensing, 61 A.3d 349, 353 (Pa. Cmwlth. Ct. 2013)(in addition to observing defendant confuse his registration card with his insurance card, the officer observed defendant commit various motor vehicle violations, his speech was slurred, became angry and argumentative with the office after being stopped, and the officer detected a smell of alcohol emanating from the defendant); *Wysocki, 535 A.2d at 80* (besides defendant exhibiting confusion in responding to the request to produce his license, registration, and insurance cards, the officer detected the odor of alcohol).

The facts presented to this Court only establish that Defendant had red and glossy, but not bloodshot, eyes, and was in a confused state for maybe a few seconds when requested to produce documents. There was no odor of alcohol or marijuana, Defendant's speech was not slurred, his behavior was neither belligerent nor aggressive, and Defendant's driving was not erratic. Based upon such, the Court concludes that the officer did not possess reasonable grounds to request Defendant to perform standardized field sobriety tests. Consequently, the results of those tests and any testimony regarding such shall be suppressed and inadmissible at trial.

Next, the Court must determine the admissibility of

Defendant's admission to Officer Williams that he smoked marijuana three hours prior to his arrest. In view of the fact that such statement was uttered while Defendant was under arrest yet not provided his constitutionally guaranteed *Miranda* warnings, such incriminating statement must also be suppressed.

The Fifth Amendment of the United States Constitution and Article One of the Pennsylvania Constitution grant each individual the right not to self-incriminate him or herself. See, U.S. CONST. amend. V; PA. CONST. art. I, § 9. Accordingly, a person who is in the custody of law enforcement or is subject to custodial interrogation must be provided his or her *Miranda* warnings. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Commonwealth v. Meyer*, 412 A.2d 517 (Pa. 1980).

Pennsylvania's test for custodial interrogation is "whether the suspect is physically deprived of 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 such interrogation." *Commonwealth v. Marabel*, 283 A.2d 285, 288 (Pa. 1971)(citation omitted). Custodial interrogation does not require that the police make a formal arrest, nor that the police intend to make an arrest; rather the test of custodial interrogation is whether the individual being interrogated reasonably believes his freedom of action is being restricted. *Commonwealth v. Brown*, 375 A.2d 1260 (Pa. 1977).

Unmistakably, the Defendant being placed in handcuffs and escorted to the back of the patrol vehicle warranted the Defendant to reasonably believe his freedom of action had been restricted. Accordingly, once Defendant was placed under arrest, escorted to and placed in the patrol car, Office Williams was required to inform Defendant of his *Miranda* warnings before questioning the Defendant further. Having failed to do so, yet still inquiring of the Defendant if he had imbibed alcohol or ingested or smoked an illegal drug earlier in the night, the officer's actions resulted in a patent violation of Defendant's right against self-incrimination, and thus the incriminating statement made by the Defendant to Office Williams while in the backseat of the patrol car must be suppressed.

Defendant's last suppression petition addresses the issue of whether Office Williams had reasonable suspicion to believe Defendant was driving under the influence of an illegal drug or alcohol so as to require Defendant to have blood drawn for a chemical test. The test to determine if a police officer had reasonable suspicion to require a defendant to undertake a chemical test mirrors that of the test outlined above for investigatory detention. *Solomon v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 966 A.2d 640 (Pa. Cmwlth. Ct. 2009). This Court, in rendering the results of Defendant's field sobriety tests and Defendant's admission to

Office Williams that he smoked marijuana earlier that night to be evidence unlawfully obtained, the results of the chemical test must also be suppressed in accordance with the "fruit of the poisonous tree" doctrine.

The doctrine of "fruit of the poisonous tree" prohibits the admission in a criminal prosecution of evidence derived from information gained in an unlawful search or manner. *Wong Sun v. United States*, 371 U.S. 471 (1963); *Commonwealth v. Myers*, 728 A.2d 960 (Pa. Super. Ct. 1999). Officer Williams's request for Defendant to have his blood drawn for purposes of testing for illegal substances was based upon the officer's belief that Defendant failed the field sobriety tests as well as Defendant's admission. Since both of those pieces of evidence were obtained unlawfully and suppressed, accordingly, the results of the chemical test must likewise be suppressed based upon the fruit of the poisonous tree doctrine.

The last issue the Court is left to dispose of is Defendant's motion for writ of habeas corpus. Defendant, in his petition asks the Court to dismiss the charges asserted against him based upon Defendant's anticipation that his various suppression motions would be granted. Accordingly, Defendant argues that the resulted of the field sobriety test, incriminating statement, and chemical test result being suppressed, the Commonwealth lacks sufficient evidence to

establish a *prima facie* case for the charges asserted against him.

It is well settled that a petition for writ of habeas corpus is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a *prima facie* case. *Commonwealth v. Morman*, 541 A.2d 356, 357 (Pa. Super. Ct. 1988). A *prima facie* case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes the commission of a crime and that the accused is probably the perpetrator of the crime. In criminal matters, a *prima facie* case is that measure of evidence which, if accepted as true, would justify the conclusion that the defendant committed the offense charged. See, *Commonwealth v. Scott*, 578 A.2d 933 (Pa. Super. Ct. 1990).

In this case, the Defendant is charged with two crimes; the first offense listed on the information is Driving Under the Influence of a controlled substance. Pursuant to this statute:

(d) An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. § 3802(d)(2).

Given the standard the Court must apply in a writ of habeas corpus petition, that being accepting only the evidence that the Commonwealth could present at trial as true, the Court finds there is insufficient evidence presented by the Commonwealth to establish a *prima facie* case for this charge. The Court, in suppressing the field sobriety test, Defendant's admission of smoking marijuana earlier that night, and the chemical test that ascertained that THC was in Defendant's blood at the time of his arrest avails the Commonwealth with an array of inadmissible evidence that cannot be presented at trial, along with minimal admissible evidence to establish Defendant was under the influence of a drug to a degree that rendered him incapable of safe driving. Accordingly, the Commonwealth lacks sufficient evidence to establish a *prima facie* case that Defendant was Driving Under the Influence of a controlled substance and thus Defendant's writ of habeas corpus is granted in relation of this charge.⁹

The second offense Defendant is charged with is a summary offense labeled on the information as "No Rear Lights." To violate this statute, a defendant must operate a vehicle on a highway or trafficway of this Commonwealth without proper rear

⁹ Defendant also requested that this Court quash the second identical charge of Driving Under the Influence on the complaint. However, this is unnecessary as it was not included in the criminal information which is controlling upon this Court.

lighting system. 75 Pa.C.S.A. § 4303(b). The officer testified at the preliminary hearing that he initiated a traffic stop of Defendant upon noticing Defendant driving a Pontiac Sedan in Beaver Meadows at the intersection of Dean Street and Broad Street with what appeared to be burned out license plate lamps. Accordingly, the Commonwealth has met its burden to survive a writ of habeas corpus petition and thus Defendant's request to dismiss the charge is denied.

Accordingly the Court enters the following order:

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 :
 Defendant :

Michael S. Greek, Esquire Counsel for Commonwealth
Assistant District Attorney

Cynthia S. Yurchak, Esquire Counsel for Defendant

ORDER OF COURT

AND NOW, this _____ day of November, 2013, upon consideration of Defendant's omnibus pretrial motion and accompanying brief in support thereof, it is hereby **ORDERED and DECREED** as follows:

- 1) Defendant's Motion to Suppress the results of the Field Sobriety Tests is **GRANTED**. The Commonwealth shall be precluded from introducing, at the time of trial, the results of and any testimony concerning the standardized field sobriety tests Officer Williams had the Defendant perform;
- 2) Defendant's Motion to Suppress any incriminating statement made by the Defendant to Officer Williams, both orally and written, while placed under arrest

and in the rear of the patrol vehicle is **GRANTED**;

3) Defendant's Motion to Suppress the results of the chemical test Defendant had undertaken is **GRANTED**.

The Commonwealth is prohibited from introducing the results of such blood test at the time of trial; and

4) All other suppression motions filed by the Defendant that are not expressly been granted within this Order of Court are **DENIED and DISMISSED**.

As a result, it is **FURTHER ORDERED and DECREED** that Defendant's Motion for Writ of Habeas Corpus is **GRANTED in part and DENIED in part** as follows:

1) Defendant's Writ of Habeas Corpus to count one on the information labeled "Driving Under the Influence of a Controlled Substance - Impaired Ability," is **GRANTED**. Accordingly this charge is **DISMISSED**; and

2) Defendant's Writ of Habeas Corpus as it relates to the charge of "No Rear Lights," identified as count two on the information is **DENIED**.

BY THE COURT:

Joseph J. Matika, J.