

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

COMMONWEALTH OF PENNSYLVANIA

vs.

MONICA MATULA

Defendant

:  
:  
:  
:  
:  
:  
:  
:

No. CR 142-2015

Jean A. Engler, Esquire

Matthew J. Mottola, Esquire

Counsel for Commonwealth  
District Attorney

Counsel for Defendant  
Monica Matula

---

MEMORANDUM OPINION

Matika, J. - September 26, 2016

Before this Court is a Petition for Writ of Habeas Corpus filed by Defendant, Monica Matula. Defendant seeks dismissal of the charges based upon the Commonwealth's failure to establish a prima facie case. For the reasons stated within this Opinion, upon consideration of Defendant's "PETITION FOR WRIT OF HABEAS CORPUS," and after a hearing held thereon, and after reviewing Defendant's Brief in Support and the Commonwealth's Brief in Opposition, Defendant's Petition is **DENIED**.

**FACTUAL AND PROCEDURAL BACKGROUND**

At 12:40 a.m. on October 8, 2014, Officer Richard J. Reis of the Lansford Police Department was on patrol. He was dispatched to 43 East Abbott Street, a residential area, in response to a complaint that someone was in a vehicle playing

[FM-40-16]

loud music and drinking alcohol. Upon his arrival to that address, Officer Reis observed a silver Chrysler Crossover parked on the opposite side of the street. The manner in which the vehicle was parked did not appear to be out of the ordinary. Officer Reis observed one female occupant, identified as Defendant, sitting in an upright position in the driver's seat of the vehicle; no other individuals were inside. The driver's side door of the vehicle was closed with the window down. The engine was running and loud music was playing.

Upon approaching the vehicle, Officer Reis smelled an odor of alcohol and observed that Defendant was slurring her speech and had glassy eyes. Officer Reis requested for Defendant to exit the vehicle. As she did so and while she was being questioned, Defendant was staggering and unsteady on her feet. Officer Reis asked Defendant if she had been drinking in the vehicle, to which she responded she had not. He asked for her consent to search the vehicle, which Defendant granted. Officer Reis searched the vehicle, but did not find any alcohol containers or other illegal items.

Upon request, Defendant provided Officer Reis with a Pennsylvania photo ID, which listed a home address in an area outside of Lansford. Officer Reis ran the license plate of the vehicle and learned the vehicle was registered to Defendant. He asked Defendant how the vehicle had arrived at the present

**[FM-40-16]**

location, to which Defendant provided multiple answers. She first stated that the vehicle had been there all night, then she stated she had been at her grandmother's house, and lastly that she had been driven there by a friend named "Jen." Defendant did not provide a last name or a description for Jen. When Officer Reis asked Defendant where Jen was at that time, Defendant responded that Jen was somewhere else. Defendant never indicated where her grandmother's house was located, and Officer Reis had no knowledge of who resided at the house in front of which Defendant was parked.

Officer Reis asked Defendant to submit to three field sobriety tests<sup>1</sup>. Defendant failed the first of these tests and declined to perform the second and third tests, claiming she had a foot injury that prevented her from performing them. Officer Reis subsequently placed Defendant under arrest for suspicion of Driving Under the Influence. Defendant was transported to St. Luke's Miners Memorial Hospital in Coaldale, where she consented to a blood draw and where her blood was drawn at 1:48 a.m. The results indicated Defendant had a BAC of 0.213%.

Defendant was charged with Driving Under the Influence of Alcohol or Controlled Substance-General Impairment<sup>2</sup> and Driving Under the Influence of Alcohol or Controlled Substance-Highest

---

<sup>1</sup> Specifically, Defendant was asked to touch the tip of her nose, do a one-legged stand, and walk heel-to-toe for a number of steps.

<sup>2</sup> 75 Pa.C.S.A. § 3802 (a) (1) (2006).

Rate of Alcohol<sup>3</sup>. A preliminary hearing was held on February 4, 2015 in front of Magisterial District Judge Casimir T. Kosciolk, where the charges were bound over against Defendant. Defendant subsequently filed this Petition for Writ of Habeas Corpus.

### **DISCUSSION**

Defendant has filed a writ of habeas corpus claiming the Commonwealth does not have sufficient evidence to establish a prima facie case on the charges against her. Specifically, Defendant avers that the Commonwealth has not established she was in actual physical control of the movement of a vehicle under the DUI statutes<sup>4</sup>.

A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of the crime and that the accused is the probable perpetrator of that crime. *Commonwealth v. Fountain*, 811 A.2d 24, 25-6 (Pa. Super. Ct. 2002), *abrogated on other grounds by Commonwealth v. Dantzler*, 135 A.3d 1109 (Pa. Super. Ct. 2016). The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt; rather, the

---

<sup>3</sup> 75 Pa.C.S.A. § 3802 (c) (2006).

<sup>4</sup> 75 Pa.C.S.A. § 3802 (a)(1) and (c) both state "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol." Neither party argues that Defendant's vehicle was ever witnessed in motion or that she was operating it. Thus, the issue turns only on whether Defendant was in actual physical control of the movement of the vehicle.

Commonwealth must show sufficient probable cause that the defendant committed that offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury. *Commonwealth v. Keller*, 823 A.2d 1004, 1010-11 (Pa. Super. Ct. 2003), *abrogated on other grounds by Dantzler*, 135 A.3d 1109. "In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such." *Commonwealth v. Packard*, 767 A.2d 1068, 1071 (Pa. Super. Ct. 2001), *abrogated on other grounds by Dantzler*, 135 A.3d 1109.

With regard to what constitutes "actual physical control" of a motor vehicle within the meaning of the DUI statutes, the determination is based on the totality of the circumstances. When making this determination, relevant factors include the location of the vehicle, whether the engine was running, and whether there was other evidence indicating that the defendant had driven the vehicle prior to the arrival of the police. *Commonwealth v. Wolen*, 685 A.2d 1384, 1385 (Pa. 1996) (citing *Commonwealth v. Byers*, 650 A.2d 468, 469 (Pa. Super. Ct. 1994)). In the majority of cases, the suspect location of the vehicle is a key factor in finding actual physical control. *Byers*, 650 A.2d

at 469. Further, "[a] driver has actual physical control of his car when he has real bodily restraining or directing influence or dominion or regulation over its movement or the movement of its machinery." *Wolen*, 685 A.2d at 1387 (citation omitted)<sup>5</sup>.

Additionally, in meeting its burden of proof, the Commonwealth "need not preclude every possibility of innocence . . . [it is] not required to establish [the defendant's] guilt to a mathematical certainty." *Commonwealth v. Johnson*, 833 A.2d 260, 264 (Pa. Super. Ct. 2003). With regard to establishing whether a defendant was in actual physical control of a motor vehicle, the Commonwealth can do so through wholly circumstantial evidence. *Id.* at 263.

In the present case, the only evidence before the court is the testimony of Officer Reis. Defendant has offered no testimony to refute that of Officer Reis or to provide any alternative context for Officer Reis' observations on October 8, 2014. Thus, the Court must draw its conclusions based solely on the evidence Officer Reis has provided.

It is uncontested that Defendant was found in her running vehicle in an intoxicated state. However, Officer Reis did not observe any alcohol containers when he arrived at the scene and did not find any when he searched Defendant's vehicle. 43 East

---

<sup>5</sup> The Court in *Wolen* was quoting a jury instruction given by the trial court in that case. Neither party disputed that this was a proper definition of "actual physical control."

Abbott Street is situated in a residential area. While Defendant argues that she *could have* acquired or accessed alcohol from one of the residences<sup>6</sup>, there is no evidence in the record that suggests Defendant had been visiting any of the nearby houses, nor acquired nor accessed alcohol from within one. While it is true, according to Officer Reis' testimony, the complainant on the phone had said Defendant was drinking beer in her car, the weightier evidence is what he actually found—nothing. It must also be noted that when asked if she had been drinking in the vehicle, Defendant told Officer Reis that she had not. Thus, it can be inferred that Defendant must have become intoxicated at a different location before arriving at East Abbott Street.

The question next turns to how Defendant arrived at East Abbott Street. Officer Reis testified that when asked how she had arrived at that location, Defendant provided multiple answers, including that the car had been there all night, that she had been visiting her grandmother, and that a friend named "Jen" had driven her. Markedly, Jen was "somewhere else" when Officer Reis found Defendant intoxicated behind the wheel of her vehicle. Also noteworthy is that the vehicle was registered to Defendant, and not some other individual. Since Defendant never elaborated on who or where Jen was, it is logical to conclude Defendant most likely drove her own car to East Abbott Street.

---

<sup>6</sup> Def.'s Br. 7.

Finally, Defendant argues there is no evidence to establish when she drove her vehicle to East Abbott Street, nor, specifically, that she drove her vehicle within two hours of having a BAC of 0.16% or higher<sup>7</sup>. While it is true there is no direct evidence on either of those points, there is evidence that between the initial encounter with Officer Reis and the blood draw itself, less than two hours had elapsed. Since this is an issue of "actual physical control" as opposed to "actual driving," these last arguments raised by Defendant are not relevant to this petition.

The Commonwealth's burden, as stated above, is lower than it will be for trial. The Commonwealth need not prove its case beyond a reasonable doubt, but rather must show evidence, which if presented at trial and accepted as true, would allow the case to go to the jury. *Keller*, 823 A.2d at 1010-11. This Court notes that the present case is factually similar to many other cases where actual physical control was found. *See, e.g., Commonwealth v. Bobotas*, 588 A.2d 518 (Pa. Super. Ct. 1991) (Defendant had been drinking at a different location and was later found intoxicated behind the wheel of his running vehicle in an alleyway); *Commonwealth v. Woodruff*, 668 A.2d 1158 (Pa. Super. Ct. 1995) (Defendant had been drinking beer he purchased from a convenience store but was found passed out behind the wheel of

---

<sup>7</sup> Def.'s Br. 8.



his running vehicle a distance away from the convenience store); *Commonwealth v. Wolen*, 685 A.2d 1384 (Pa. 1996) (Defendant became intoxicated earlier and was found passed out behind the wheel of his running vehicle in a fast food parking lot); *Commonwealth v. Saunders*, 691 A.2d 946 (Pa. Super. Ct. 1997) (Defendant was found passed out behind the wheel of his running vehicle in the parking lot of a convenience store where he could not have purchased alcoholic beverages); *Commonwealth v. Williams*, 871 A.2d 254 (Pa. Super. Ct. 2005) (Defendant was found passed out behind the wheel of his running vehicle in the parking lot of a restaurant that did not serve alcoholic beverages); *Commonwealth v. Brotherson*, 888 A.2d 901 (Pa. Super. Ct. 2005) (Defendant was found passed out behind the wheel of his running vehicle parked on a playground basketball court); *Commonwealth v. Toland*, 995 A.2d 1242 (Pa. Super. Ct. 2010) (Defendant was found passed out behind the wheel of his running vehicle in front of a store that did not sell alcoholic beverages).

Conversely, this Court notes that the present case is factually inapposite to cases where actual physical control was not found. See, e.g., *Commonwealth v. Byers*, 650 A.2d 468 (Pa. Super. Ct. 1994) (no actual physical control found where evidence suggested Defendant had merely walked from the bar where he had been drinking to his car in the bar's parking lot

and fell asleep); *Commonwealth v. Benson*, 2000 WL 35819973 (Lycoming Count. Ct. Comm. Pleas 2000) (no actual physical control found where trial court found credible Defendant's testimony that he had been drinking at a nearby residence and went to his vehicle to sleep overnight).

Based on the totality of the circumstances in this case drawn from the available evidence, this Court finds the Commonwealth has met its burden in establishing that Defendant was in actual physical control of the movement of her vehicle while she was intoxicated. The relevant factors—namely that the vehicle's engine was running, Defendant was sitting in the driver's seat with the door closed, the absence of any alcohol at the scene, Defendant's BAC level, the vehicle being registered to Defendant, the absence of "Jen," the lack of evidence explaining why Defendant was parked on East Abbott Street, and that 43 East Abbott Street is in a residential area—create a totality of the circumstances suggesting that Defendant became intoxicated before her arrival at East Abbott Street and then drove to East Abbott Street while intoxicated. Therefore, the Commonwealth has met its burden and established a prima facie case with regard to the two charges against Defendant: Driving Under the Influence of Alcohol or Controlled Substance—

General Impairment<sup>8</sup> and Driving Under the Influence of Alcohol or  
Controlled Substance-Highest Rate of Alcohol<sup>9</sup>.

Accordingly, the Court enters the following order:

---

<sup>8</sup> 75 Pa.C.S.A. § 3802 (a) (1) (2006) .

<sup>9</sup> 75 Pa.C.S.A. § 3802 (c) (2006) .

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

COMMONWEALTH OF PENNSYLVANIA

vs.

MONICA MATULA

Defendant

:  
:  
:  
:  
:  
:  
:  
:  
:

No. CR 142-2015

Jean A. Engler, Esquire

Matthew J. Mottola, Esquire

Counsel for Commonwealth  
District Attorney

Counsel for Defendant  
Monica Matula

ORDER OF COURT

AND NOW, this 26th day of September, 2016, upon consideration of Defendant's Petition for Writ of Habeas Corpus and accompanying brief in support thereof, the Commonwealth's brief in opposition to, and after a hearing held on this matter, it is hereby **ORDERED** and **DECREED** that Defendant's Petition for Writ of Habeas Corpus is **DENIED**.

BY THE COURT:

  
\_\_\_\_\_  
Joseph J. Matika, J.