

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :
: :
: :
Vs. : No. CR-142-2015
: :
MONICA MATULA, :
: :
Defendant :
:
Brian Gazo, Esquire Counsel for Commonwealth
Matthew Mottola, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - March 29, 2018

Monica Ann Marie Matula (hereinafter "Matula") has taken this Appeal from the Order of Sentence dated March 2, 2018. This Court files this Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), and recommends that the Superior Court affirm that Order for the reasons stated herein.

FACTUAL AND PROCEDURAL BACKGROUND

On or about November 15, 2014, Matula was charged by Officer Richard Joseph Reis of the Lansford Police Department for Driving Under the Influence in violation of two sections of the Vehicle Code, namely 75 Pa.C.S.A. §§ 3802(a)(1) and (c).

On May 20, 2016, Matula filed a Petition for Writ of Habeas Corpus. The gist of Matula's argument centered around the perceived inability to prove that she "drove, operated or was in

actual physical control of a vehicle while under the influence." After conducting a hearing on this Petition and allowing both Matula and the Commonwealth an opportunity to lodge briefs in support of their respective positions, this Court rendered an Opinion and Order¹ on September 26, 2016 finding that the Commonwealth had established a prima facie case against Matula on both counts, and consequently denied the Petition.

On October 11, 2016, Matula filed a separate suppression motion in which she claimed that the search and seizure of her blood was unconstitutional based upon the *Birchfield* case.² A hearing on that Motion was scheduled and it was subsequently determined that the Commonwealth had failed to establish that Matula voluntarily consented to the blood draw in question.³ Accordingly, the Motion was granted and the Commonwealth was not permitted to offer at trial any evidence of the blood draw or the resulting toxicology reports.

Thereafter, on November 15, 2017, a non-jury trial was scheduled. Prior to that proceeding, by agreement of the parties, the criminal information was amended to reflect the correct

¹ A copy of this Opinion and Order is attached to the present Opinion, and further details the facts surrounding Matula's conduct on October 8, 2014, the date of the incident.

² *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

³ The affiant failed to appear at this hearing and the Commonwealth's other witness, Officer Joshua Tom, could not present testimony on the consent/voluntariness issue.

location of the alleged incident, namely Abbott Street, Lansford, Carbon County, Pennsylvania. As a result of the non-jury trial, the Court found Matula not guilty of violating 75 Pa.C.S.A. § 3802(c), but guilty of violating Pa.C.S.A. § 3802 (a)(1). The testimony presented at trial mirrored that which was presented at the hearing on Matula's Habeas Petition, with the exception of the evidence precluded by the Order dated February 17, 2017 pertaining to the *Birchfield* issue.

At trial, both Officer Richard Reis and Detective Joshua Tom testified. The totality of the testimony revealed that the Officers, at 12:40 a.m. on October 8, 2014, were called to East Abbott Street, Lansford, Carbon County, Pennsylvania in response to a complaint that someone was in a vehicle playing loud music. Upon arriving, Officer Reis observed a silver Chrysler Crossover parked on the opposite side of the street, in which he found Matula sitting in the driver's seat. He saw no other occupants in the vehicle. He noticed loud music was playing and that the engine was running.

Upon approaching Matula, he detected an odor of alcohol on her and noticed she had glassy eyes and slurred speech. During questioning, he testified that he did not observe anything in or around the vehicle indicative of alcohol use or consumption. Matula was asked to exit the vehicle and Officer Reis noticed that

she was swaying from side to side and stumbling as she walked. When asked how the vehicle arrived at that location, Reis testified that Matula gave four (4) different explanations, including that "Jen" [who was not present] had driven the vehicle there. Officer Reis had Matula perform several field sobriety tests which, in his opinion, Matula performed poorly. Reis also testified that Matula admitted to drinking. Detective Tom corroborated most of this testimony.

On March 2, 2018, Matula was sentenced to pay the costs of prosecution, a fine of three-hundred dollars (\$300.00), and to a period of incarceration of not less than ten (10) days nor more than six (6) months. Matula was allowed to serve this sentence on consecutive weekends effective March 9, 2018. Multiple conditions of that sentence were also imposed as outlined in the written Order of Sentence.

On March 9, 2018, Matula filed a Notice of Appeal to that sentence. The Court thereafter issued an Order directing Matula to file a Concise Statement of Matters Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). On March 19, 2018, Matula filed her Concise Statement, which alleges the following as the sole issue for the Appellate Court to consider: "The evidence was insufficient to establish the offense of DUI-General Impairment (75 Pa.C.S.A. § 3802(a)(1)) because the

evidence did not establish that Ms. Matula was driving, operating, or in actual physical control over her vehicle."

LEGAL DISCUSSION

In order to prove Matula guilty of the offense of Driving Under the Influence of Alcohol pursuant to 75 Pa.C.S.A. § 3802(a)(1), the Commonwealth was required to prove beyond a reasonable doubt all elements of the offense charged, including the present issue that Matula was in "actual physical control" of the vehicle.

"When reviewing a sufficiency of the evidence claim, the appellate court must review all of the evidence and all reasonable inferences drawn therefrom in the light most favorable to the Commonwealth, as the verdict winner." *Commonwealth v. Teems*, 74 A.3d 142, 144 (Pa. Super. Ct. 2013)(citation omitted). "Evidence will be deemed to support the verdict when it establishes each element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt." *Id.* It is not necessary, however, for the Commonwealth to preclude every possibility of innocence or prove the defendant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa. Super. Ct. 2005)(citation omitted).

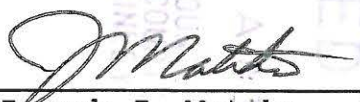
As stated, the sole issue raised on appeal by Matula is that the evidence presented by the Commonwealth was insufficient to prove beyond a reasonable doubt the element of "actual physical

control." The determination of whether the evidence is sufficient to establish this element is based on the totality of the circumstances. In our Opinion denying the Petition for Writ of Habeas Corpus, the Court explained that the evidence presented at that time was sufficient to establish a prima facie case. As stated earlier, that same evidence was presented at trial but now proves Matula's guilt beyond a reasonable doubt. This Court also explained and justified in that Opinion our determination that Matula was in "actual physical control" of the subject vehicle in accordance with applicable case law.⁴

CONCLUSION

For the foregoing reasons, this Court finds no merit to Defendant's Appeal and recommends affirmance of its verdict and sentence.

BY THE COURT:



Joseph J. Matika, J.

⁴ The Court refers to pages 4 through 11 of that Opinion as the basis and support it proffers to the Appellate Court in its recommendation of affirmance without extensively duplicating it in its entirety here.

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MONICA MATULA	:	
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Defendant	:	
Jean A. Engler, Esquire		Counsel for Commonwealth
		District Attorney
Matthew J. Mottola, Esquire		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

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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

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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 tests¹. 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 Impairment² and Driving Under the Influence of Alcohol or Controlled Substance-Highest

¹ 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.

² 75 Pa.C.S.A. § 3802 (a)(1) (2006).

Rate of Alcohol³. 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 statutes⁴.

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

³ 75 Pa.C.S.A. § 3802 (c) (2006).

⁴ 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)⁵.

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

⁵ 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 residences⁶, 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.

⁶ 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 higher⁷. 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

⁷ 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 Impairment⁸ and Driving Under the Influence of Alcohol or
Controlled Substance-Highest Rate of Alcohol⁹.

Accordingly, the Court enters the following order:

* 75 Pa.C.S.A. § 3802 (a) (1) (2006).
* 75 Pa.C.S.A. § 3802 (c) (2006).

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No. CR 142-2015

Jean A. Engler, Esquire

Matthew J. Mottola, Esquire

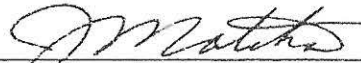
Counsel for Commonwealth
District Attorney

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.