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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	NO. 1240-CR-2015
	:	
RICHARD S. FAILLA,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire — Counsel for the Commonwealth
First Asst. District Attorney

Matthew W. Quigg, Esquire — Counsel for the Defendant

MEMORANDUM OPINION

Serfass, J. - June 30, 2017

Richard S. Failla, (hereinafter "Defendant") brings before this Court "Defendant's Omnibus Pre-Trial Motions" seeking to suppress the following evidence: 1. His blood, and the toxicology analysis thereof, as an unconstitutional search and seizure; 2. His refusal to consent to having his blood drawn after he was read the O'Connell and implied consent warnings as an un-*Mirandized* statement; and 3. Evidence seized from his vehicle because the affidavit of probable cause filed in support of the search warrant application did not establish that a crime had occurred. Because we find that the results of Defendant's blood testing and his blood alcohol concentration (hereinafter "BAC") were the result of inevitable discovery, that Defendant was read the O'Connell warnings, and that the affidavit of probable cause contained

sufficient facts indicating that a crime had occurred, we will deny "Defendant's Omnibus Pre-Trial Motions".

FACTUAL AND PROCEDURAL HISTORY

On August 31, 2014, at approximately 2:15 a.m., Officer Frank Buonaiuto of the Franklin Township Police Department responded to a call he had received from dispatch concerning a motor vehicle accident on Forest Street in Franklin Township. Upon arriving at the scene of the accident, the officer observed three occupants in an overturned white Jeep Grand Cherokee. He approached Defendant who was walking around the vehicle. During their conversation, Defendant admitted to being in the Jeep at the time of the accident, but stated that Christopher Mattera was the driver of the vehicle. Defendant also admitted to being intoxicated. Officer Buonaiuto observed Defendant display several signs of impairment including slurred speech, glassy eyes, and leaning against the officer's patrol vehicle. Defendant then identified the remaining occupants of the vehicle. Brian McGovern was determined to be in the front passenger seat, Christopher Mattera was located in the right rear passenger seat, and Matthew Friant was unconscious, laying inside on the roof of the overturned vehicle. Both Brian McGovern and Christopher Mattera were suspended by their seat belts.

Officer Buonaiuto also talked to other individuals at the scene of the accident. Two bystanders, Pawel Zaluska and Dominik

Mystkowski, each assisted Defendant out of the driver's seat of the Jeep. When Defendant's wife arrived, she informed Officer Buonaiuto that the four men in Defendant's vehicle had been at the Old School House Tavern prior to the accident.

Emergency medical services (hereinafter "EMS") then transported Defendant to Lehigh Valley Hospital and Officer Christopher Lekka followed. While transporting Defendant, EMS personnel cut Defendant's clothes off and the Jeep key fob fell out of his front left shorts pocket. Upon arrival at the hospital, Officer Lekka read Defendant his O'Connell and implied consent warnings, but Defendant refused to sign the PennDOT DL-26 form consenting to a blood draw. After advising hospital staff that Defendant had been involved in a motor vehicle accident and had refused to consent to a blood draw, the staff informed the officer that it was hospital policy to perform a blood draw regardless of consent. The hospital staff then proceeded to perform a blood draw at 3:54 a.m. A second blood draw was performed at Officer Lekka's direction at 4:51 a.m. to determine Defendant's position in the car at the time of the accident, not to determine Defendant's blood alcohol level. [1]

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[1] At the hearing held before this Court on September 9, 2016, counsel for Defendant suggested that a third blood draw may have been performed at 3:49 a.m. because the hospital report notes that the time of collection of the first blood draw occurred at 3:49 a.m. (Suppression Hearing, Commonwealth Exhibit No.3). However, we are convinced that only two blood draws occurred on August 31, 2014, because Officer Lekka testified that he was present for two blood draws, and the search warrant used to obtain Defendant's blood from the hospital identifies the items to be searched for and seized as, "[b]lood

On September 1, 2014, Officer Buonaiuto applied for a search warrant seeking Defendant's medical records including any blood alcohol test results. Two days later, Officer Buonaiuto applied for a second search warrant seeking Defendant's blood samples. Both warrants were issued on September 3, 2014 by Magisterial District Judge Michael J. Pochron. Later that day, Officer Buonaiuto seized two grey capped vials of human blood and the test results performed on that blood by Health Network Laboratories. The records seized indicate that one test was performed but they do not indicate which vial of Defendant's blood was tested.

On September 4, 2014, Officer Buonaiuto submitted at least one vial of Defendant's blood to Wyoming Regional Laboratory to determine Defendant's BAC on the night of the accident. However, these records also do not specify which vial of Defendant's blood was tested.

Defendant was ultimately charged with the follow offenses:

1. Homicide by Vehicle, 75 Pa. C.S.A. §3732(a);
2. Homicide by Vehicle, 75 Pa. C.S.A. §3732(a);
3. Homicide by Vehicle while Driving Under the Influence of Alcohol, 75 Pa. C.S.A. §3735(a);

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sample or samples and blood results of samples on Richard S. Failla". (Suppression Hearing, Commonwealth Exhibit No.2). Since the search warrant would have also seized the blood from a third blood draw had one been performed, we are satisfied that either Officer Lekka or the nurse performing the blood draw, or both, misread the precise time when the first blood draw occurred. Therefore, we are only concerned with two blood draws, one of which occurred between 3:49 a.m. and 3:54 a.m., and one of which was performed at 4:51 a.m.

4. Homicide by Vehicle while Driving Under the Influence of Alcohol, 75 Pa. C.S.A. §3735(a);
5. Aggravated Assault by Vehicle While Driving Under the Influence of Alcohol, 75 Pa. C.S.A. §3735.1(a);
6. Aggravated Assault by Vehicle While Driving Under the Influence of Alcohol, 75 Pa. C.S.A. §3735.1(a);
7. Aggravated Assault by Vehicle While Driving Under the Influence of Alcohol, 75 Pa. C.S.A. §3735.1(a);
8. Involuntary Manslaughter, 18 Pa. C.S.A. §2504(a);
9. Involuntary Manslaughter, 18 Pa. C.S.A. §2504(a);
10. Recklessly Endangering Another Person, 18 Pa. C.S.A. §2705;
11. Recklessly Endangering Another Person, 18 Pa. C.S.A. §2705;
12. Recklessly Endangering Another Person, 18 Pa. C.S.A. §2705;
13. DUI: General Impairment/Incapable of Driving Safely - 1st Offense, 75 Pa. C.S.A. §3802(a)(1);
14. DUI: Highest Rate of Alcohol (BAC .16+) - 1st Offense, 75 Pa. C.S.A. §3802(c);
15. Careless Driving, 75 Pa. C.S.A. §3714(a);
16. Reckless Driving, 75 Pa. C.S.A. §3736(a); and
17. Driving at Safe Speed, 75 Pa. C.S.A. §3361

On September 11, 2014, Officer Buonaiuto filed an application for a warrant to search Defendant's vehicle and a search warrant was issued on that date by Magisterial District Judge Edward M. Lewis.

Defendant filed several suppression motions on December 7, 2015, seeking to suppress all physical evidence and statements made by Defendant which were gained as a result of Defendant's alleged unconstitutional arrest. A hearing on Defendant's motions was held on September 9, 2016 during which Officer Lekka testified that he witnessed both blood draws performed by hospital staff. (Suppression Hearing, 9/9/2016). He explained that the first blood draw was performed by hospital personnel pursuant to hospital policy, rather than at his direction. Id. The second blood draw, however, was performed at his direction despite Defendant's refusal to consent. Id. Officer Lekka directed hospital staff to perform this blood draw to identify where Defendant had been seated in the Jeep at the time of the accident based upon blood stains found in the vehicle. Id. Officer Buonaiuto testified that he later prepared an affidavit of probable cause and obtained a search warrant to acquire the two vials of Defendant's blood and the hospital's records related thereto. Id. He then sent one or both of the vials to Wyoming Regional Laboratory where one of the vials was tested to determine Defendant's BAC. Id.

During the same hearing, counsel for Defendant framed the three issues presented for this Court's consideration as follows:

1. Whether the two blood draws must be suppressed pursuant to the 4th Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution;
2. Whether Defendant's refusal to sign the DL-26 form should be suppressed; and
3. Whether the affidavit submitted in support of the warrant obtained to search Defendant's vehicle lacked sufficient facts to establish probable cause that a crime had occurred.

DISCUSSION

I. Admissibility of Defendant's Blood

The United States and Pennsylvania Constitutions prohibit the government from performing unreasonable searches and seizures. U.S. Const. Amend. IV; Pa. Const. Art. I, §8. A blood draw is considered a search pursuant to the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. Birchfield v. North Dakota, 136 S.Ct. 2160, 2173 (2016); Commonwealth v. Smith, 77 A.3d 562, 566 (Pa. 2013).

Generally, a search and/or seizure is deemed unreasonable unless a valid search warrant is obtained from an independent judicial officer based on a sufficient showing of probable cause. Commonwealth v. Gary, 91 A.3d 102, 107 (Pa. 2014). Even in drunk

driving investigations where police officers can reasonably obtain a warrant before a blood draw, the Fourth Amendment mandates that they do so. Missouri v. McNeely, 133 S.Ct. 1552 (2013). Moreover, evidence seized absent exigent circumstances and without a warrant is generally excluded at trial as fruit of a poisonous tree. Mapp v. Ohio, 81 S.Ct. 1684 (1961). However, a warrantless search or seizure may still be constitutional if an established exception applies. Commonwealth v. Evans, 153 A.3d 323, 327 (Pa. Super. 2016).

One such exception arises when the search and/or seizure is not performed by the government, including when hospital personnel perform a blood draw for independent medical purposes. The Pennsylvania Supreme Court has liberally defined "independent medical purposes" as any purpose the hospital deems necessary as long as the police do not request that a blood draw be performed to determine the BAC of the defendant; and the emergency health care provider(s) who performed the blood test did so for purely medical reasons, rather than out of a perceived duty to do so under 75 Pa. C.S.A. §3755(a). Commonwealth v. Shaw, 770 A.2d 295, 300 (Pa. 2001). The Commonwealth bears the burden of proving that the blood draw was performed for independent medical purposes rather than pursuant to 75 Pa. C.S.A. §3755 or for any other purpose. Commonwealth v. Miller, 996 A.2d 508 (Pa.Super. 2010). As long as there is no evidence to suggest that the defendant's blood was

drawn for any purpose other than an independent medical purpose, then the Commonwealth has met its burden. Id at 515. For this evidence to be admissible at trial, the police must obtain the defendant's blood and the test results thereof from the hospital pursuant to a valid search warrant. Commonwealth v. West, 834 A.2d 625 (Pa.Super. 2003).

As for the first blood draw, it is clear that Officer Lekka did not direct the hospital personnel to perform this draw. Rather, hospital staff performed the draw pursuant to the hospital's internal policy. Due to the fact that the hospital personnel were not directed by the officer to perform the blood draw, and there is no evidence that they felt pressured to perform the blood draw pursuant to 75 Pa. C.S.A. §3755, the burden shifts to Defendant to prove that the blood draw was performed for some reason other than an independent medical purpose. Since the record is devoid of any evidence to suggest that Defendant's blood was drawn for any other purpose, the Commonwealth has met their burden in proving that the first blood draw was performed for an independent medical purpose. Miller, 996 A.2d 508. Subsequently, Officer Buonaiuto obtained a valid search warrant to seize Defendant's blood. Therefore, Defendant's blood gained as a result of the first blood draw is admissible. West, 834 A.2d 625.

However, we cannot reach the same conclusion regarding the second blood draw. That draw was performed at Officer Lekka's

direction, without a search warrant, absent exigent circumstances, after Defendant had refused to consent to a blood draw. While a warrantless search or seizure may still be constitutional if an established exception applies, the record is devoid of evidence of any exigent circumstances which would obviate the need for a warrant at the time of the second blood draw. Evans, 153 A.3d at 327.

While the accident occurred in the early hours of the morning and it would have been nearly impossible for the police to obtain a search warrant, the purpose of the second blood draw does not create a need for an immediate draw. If the purpose of the second blood draw was to determine where Defendant had been seated in his vehicle at the time of the accident, police could have waited to obtain a search warrant to compare Defendant's blood to any blood that may have been found on the driver's seat of the vehicle. There is no evidence to suggest that any evidence was at risk of being destroyed or lost and, as a result, there was not an immediate need to perform the second blood draw. Additionally, since the blood draw was performed at Officer Lekka's direction, the independent medical purpose exception detailed hereinabove does not apply. Therefore, the second blood draw was an unconstitutional seizure of Defendant's blood.

While this determination would generally conclude our discussion on this topic, we are confronted with additional facts

which bar upon our consideration of Defendant's suppression motion. Both the Lehigh Valley Hospital and the Wyoming Regional Laboratory tested only one of the vials of Defendant's blood and, based on the evidence of record, it is impossible for this Court to determine which vial was tested. Defendant contends that since the second blood draw was an unconstitutional seizure of his blood, the reports of Health Network Laboratories and Wyoming Regional Laboratory which indicate Defendant's BAC, must be suppressed. Conversely, the Commonwealth argues that despite the unconstitutionality of the second blood draw, Defendant's BAC would have been inevitably discovered based on the blood legally seized during the first blood draw.

The United States Supreme Court has determined that if the government can establish, by a preponderance of the evidence, that the illegally seized evidence would have ultimately been discovered by lawful means, then the deterrence rationale of the exclusionary rule has such little basis that the evidence should be admissible. Commonwealth v. Rood, 686 A.2d 442, 448 (Pa.Cmwlth. 1996) citing Nix v. Williams, 467 U.S. 431, 444 (1984). Additionally, for tainted evidence to be truly independent from the evidence that would have been inevitably discovered, both the tainted evidence and the police or investigative team which engaged in misconduct must be independent from the source which lead to, or could have led to, the legal inevitable discovery of that same

evidence. Commonwealth v. Melendez, 676 A.2d 226, 231 (1996) citing Commonwealth v. Mason, 637 A.2d 251, 256-57 (1993).

In analyzing the inevitable discovery doctrine as it relates to evidence seized outside an individual's home, the Pennsylvania Superior Court has generally held that if an established procedure or common sense would have resulted in the same search, tainted evidence is admissible. *See* Commonwealth v. Ingram, 814 A.2d 264 (Pa.Super. 2002) (where police failed to advise a defendant of his Miranda rights and the defendant's statements allowed police to discover marijuana in his pocket, the marijuana was admissible because it would have been discovered without Defendant's statement when police performed a search of appellant's person incident to his arrest upon locating the gun the defendant was unlawfully carrying in his waistband); Commonwealth v. Lehman, 820 A.2d 766 (Pa.Super. 2003) (evidence of a defendant's intoxication was admissible even though the officer who performed the field sobriety tests and arrested the defendant was out of his jurisdiction because common sense dictates that the same evidence would have been gained had the officer referred the matter to the Pennsylvania State Police). As long as the tainted evidence could have also been obtained from an independent investigation, it is admissible. Commonwealth v. Smith, 808 A.2d 215, 220 (Pa.Super. 2002).

Applying the inevitable discovery doctrine to the case at bar, we determine that had the second blood draw never been performed, Defendant's blood, Health Network Laboratories' report, and Wyoming Regional Laboratory's report would have been admissible because the first blood draw was performed for independent medical purposes. Since the two vials of Defendant's blood were obtained via two separate blood draws, the tainted evidence is significantly independent from the admissible evidence. Moreover, the investigative team who performed the legal blood draw was separate from the team which performed the tainted blood draw because Officer Lekka had no involvement in the first blood draw. The fact that the first blood draw was performed by hospital personnel for independent medical purposes, without any involvement from Officer Lekka, and the second blood draw was performed at the officer's direction, significantly distinguishes the investigative team related to each blood draw. Moreover, the individual blood draws were performed by separate hospital personnel.[2] (Suppression Hearing, Commonwealth Exhibit No.3). Based on the evidence of record and the credible testimony of Officer Lekka, we are convinced that the Commonwealth has met its burden in proving that each blood draw was independent from the other.

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[2] The first blood draw was performed by Judith Parker, RN, and the second blood draw was performed by Kassandra Dunlap, TP.

The final issue surrounding Defendant's blood concerns the question of whether Health Network Laboratories is an approved testing facility pursuant to 28 Pa. Code §5.50. "Defendant's Memorandum of Law in Support of Omnibus Pre-Trial Motions" contains a footnote which avers that Health Network Laboratories, located at 1200 South Cedar Crest Boulevard, Allentown, Pennsylvania, is only approved for non-criminal toxicological testing. However, Defendant does not cite any statute or caselaw in support of this contention. Rather, 75 Pa. C.S.A. §1547, states, in part, "Chemical tests of blood, if conducted by a facility located in this Commonwealth, shall be performed by a clinical laboratory licensed and approved by the Department of Health for this purpose using procedures and equipment prescribed by the Department of Health or by a Pennsylvania State Police criminal laboratory." A list of clinical laboratories licensed by the Department of Health are regularly published in the Pennsylvania Bulletin. Health Network Laboratories, 1200 South Cedar Crest Boulevard, Allentown, Pennsylvania, was approved for serum testing by the Pennsylvania Department of Health and such approval was published in the Pennsylvania Bulletin, Vol. 43, No. 3795.[3] Moreover, Defendant's counsel made a broad stipulation as to the records produced by

[3] A trial court may take judicial notice of whether a local hospital is approved for blood alcohol testing. Commonwealth v. Brown, 631 A.2d 1014, 1018 (Pa.Super. 1993); *see also* 45 Pa. C.S.A. § 506.

Health Network Laboratories at the suppression hearing held before this Court in the following exchange:

> Attorney Greek: I know I have no one here from Health Network Labs, will you stipulate to the results of the blood...that it was a serum...?
> Attorney Quigg: Yes, your honor. Mr. Greek and I spoke before about the fact that there's a stipulation to any medical records.

(Suppression Hearing 9/9/2016). Even if we are to assume that counsel for Defendant was merely stipulating to the veracity of the report and not to Health Network Laboratories' authorization to perform tests on Defendant's blood, we have not found any statute or caselaw which supports the delineation argued by Defendant wherein certain facilities approved by the Department of Health are only authorized to test blood in non-criminal situations. As a result, the reports generated by Health Network Laboratories are admissible.

Overall, even though we do not know which vial of Defendant's blood was tested by Health Network Laboratories and Wyoming Regional Laboratory, Defendant's blood and the tests determining his BAC would have been inevitably discovered through lawful means based on the first blood draw. Therefore, Defendant's blood and both the Wyoming Regional Laboratory's report and Health Network Laboratories' report, which analyzed Defendant's blood, are admissible.

II. Admissibility of Defendant's Refusal

Defendant argues that his statement refusing to submit to a blood draw should be suppressed because the statement was made after he was arrested without probable cause and prior to being advised of his Miranda rights. We disagree.

Initially, it is important to note that Defendant was not arrested prior to refusing to submit to a blood draw. Rather, he was transported to the Lehigh Valley Hospital by emergency medical personnel as a result of having been involved in a motor vehicle accident. Therefore, Defendant's challenge as to the admissibility of his refusal to submit to a blood draw based on an arrest which lacked probable cause is unfounded.

Turning to Defendant's second contention, that his refusal should be inadmissible because he was not properly advised of his Miranda rights prior to being asked to submit to a blood draw, we find that 75 Pa. C.S.A. §1547(e) and Commonwealth v. O'Connell, 555 A.2d 873 (1989) still govern despite the influence of Birchfield. Specifically, 75 Pa. C.S.A. §1547(e) provides:

> In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 3802 or any other violation of this title arising out of the same action, the fact that the defendant refused to submit to chemical testing as required by subsection (a) may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumptions shall arise from this evidence but it may be considered along with other factors concerning the charge.

In applying this statute, the Pennsylvania Superior Court has held that a defendant's refusal to submit to a blood test is admissible pursuant to the express terms of 75 Pa. C.S.A. §1547(e). Commonwealth v. Hipp, 551 A.2d 1086, 1093-94 (Pa.Super. 1988). The Superior Court later expounded that because a defendant does not have a constitutional right in refusing to submit to a blood draw, his or her refusal is admissible at trial especially because the defendant was warned that his or her refusal could be admitted at trial. Commonwealth v. Graham, 703 A.2d 510, 513 (Pa.Super. 1997). This principle was expanded even further to enforce 75 Pa. C.S.A. §1547(e) even in situations where police had not provided a defendant with sufficient warning prior to asking him to submit to a blood draw. Commonwealth v. Homer, 928 A.2d 1085, 1091 (Pa.Super. 2007).

Even though the implied consent aspects of 75 Pa. C.S.A. §1547 have been called into question by Birchfield and Evans, 75 Pa. C.S.A. §1547(e) remains in full effect. Merely because part of the statute's constitutionality was scrutinized, does not undermine the entire statute. In addition, Birchfield and Evans did not hold that 75 Pa. C.S.A. §1547 is unconstitutional per se nor did these rulings invalidate the holding reached in O'Connell.

Since Officer Lekka testified that he read Defendant the O'Connell warning and we find his testimony to be credible, and because the holding in O'Connell and 75 Pa. C.S.A. §1547(e) remain

controlling law on this issue, Defendant's refusal to submit to a blood draw is admissible.

III. Search Warrant for Defendant's Vehicle

The third and final issue raised in "Defendant's Omnibus Pre-Trial Motions" avers that Officer Buonaiuto's affidavit of probable cause in support of the warrant to search Defendant's vehicle lacked sufficient facts to establish that a crime had occurred. In determining whether the affidavit contained sufficient facts to establish probable cause concerning criminal activity, we must employ a totality of the circumstances test. Commonwealth v. Murphy, 795 A.2d 997, (Pa.Super. 2002). Pennsylvania courts have routinely held that an affidavit must identify the items to be seized and set forth facts sufficient to establish probable cause that the search warrant will reveal evidence of a crime. Specifically, the Pennsylvania Supreme Court has held that:

> To ensure that the citizens of the Commonwealth are protected from unreasonable searches and seizures, Article I, Section 8 requires that a warrant: (1) describe the place to be searched and the items to be seized with specificity; and (2) be supported by probable cause to believe that the items sought will provide evidence of a crime.

Commonwealth v. Ruey, 892 A.2d 802, 810 (Pa. 2006) citing Commonwealth v. Waltson, 724 A.2d 289, 292 (Pa. 1998). To establish probable cause that a crime occurred, officers must relay facts

and circumstances within their knowledge sufficient to warrant a person of reasonable caution to believe a crime has been or is being committed." Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007).

Defendant argues that a search warrant could not have been properly granted based on Officer Buonaiuto's affidavit because he does not make any averments sufficient to establish probable cause that a crime occurred. However, in his affidavit of probable cause, Officer Buonaiuto states that preliminary collision reconstruction performed on August 31, 2014 revealed that Defendant's vehicle was not traveling in the proper lane of traffic, struck several rocks, left the roadway, and landed upside down and that, as a result, two people died. (Suppression Hearing, Commonwealth Exhibit No.5). While Defendant is correct in stating that traffic accidents are a common occurrence, most do not involve a vehicle leaving the roadway, landing upside down, and resulting in the deaths of two people.

The affidavit makes clear that Defendant's vehicle exited the normal lane of traffic and encountered a gravel surface. Leaving the normal lane of traffic is a common indicator used by police to identify impaired drivers. Next, Officer Buonaiuto notes that the vehicle lost contact with the road entirely after it struck several rocks. This fact alone is sufficient to establish probable cause for several summary offenses including speeding and reckless

driving, and possibly probable cause for more serious offenses such as involuntary manslaughter.[4]

Therefore, we find that an individual of reasonable caution could conclude that a crime had occurred based on Officer Buonaiuto's affidavit of probable cause, and Defendant's suppression motion will be denied accordingly.

CONCLUSION

For the foregoing reasons, we will deny "Defendant's Omnibus Pre-Trial Motions" and enter the following

[4] Involuntary manslaughter requires that the defendant engaged in a Vehicle Code violation in a reckless or grossly negligent manner and that the death of another was the direct result of the defendant's actions. 18 Pa. C.S.A. §2504. The fact that the vehicle left the lane of traffic, became airborne, and landed upside down is sufficient evidence to establish probable cause that Defendant was driving recklessly. The fact that two individuals died in this accident while they were occupants of Defendant's vehicle which was being operated in a reckless manner while they were occupants indicates that there is sufficient probable cause to believe that a crime had occurred.

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
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RICHARD S. FAILLA,	:	
	:	
Defendant	:	

Michael S. Greek, Esquire — Counsel for the Commonwealth
First Asst. District Attorney

Matthew W. Quigg, Esquire — Counsel for the Defendant

ORDER OF COURT

AND NOW, to wit, this 30th day of June, 2017, upon consideration of "Defendant's Omnibus Pre-Trial Motions", the hearing held thereon, the oral argument of counsel, and the parties' briefs, and following our review of the evidence of record, and in accordance with our Memorandum Opinion bearing even date herewith, it is hereby

ORDERED and DECREED that "Defendant's Omnibus Pre-Trial Motions" are **DENIED** and that this matter shall be scheduled for a pre-trial conference on the next available list.

BY THE COURT:

Steven R. Serfass, J.