

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 99-11,574</b>
	<b>:</b>
<b>vs.</b>	<b>: CRIMINAL DIVISION</b>
	<b>:</b>
<b>DONALD BOWER,</b>	<b>:</b>
<b>Defendant</b>	<b>: Omnibus Pretrial Motion</b>

**OPINION AND ORDER**

This matter came before the Court on the Defendant's Omnibus Pretrial Motion. The relevant facts are as follows:

Officer Mark Giza of the South Williamsport Police Department received a radio communication on June 18, 1999 at about 7:35 p.m. involving a possible "hit and run" accident at Descano's Restaurant on West Central Avenue. The officer was informed that a white male driver of a two-tone blue GMC truck struck a parked vehicle with its rear bumper and was last seen heading east on West Central Avenue. He was not told whether the parked vehicle was an attended or unattended.

Officer Giza believed the defendant could be the driver of the vehicle in question based on his knowledge of the defendant's vehicle and because of past contacts with him. Since the suspect vehicle was last seen heading in a direction consistent with how one would drive from Descano's toward the defendant's home, the officer decided to drive by the defendant's home.

The defendant's home is located off Route 15 and Main Street in South Williamsport and has a long driveway several hundred yards long. This driveway or lane intersects Main Street. The driveway leads up to an attractive log home with an upper and

lower level. There is a parking area in front and back of the home. The house also has a rear entrance. Near the start of the driveway or lane, the defendant's property is posted with signs which state "private property" and "no trespassing."

When Officer Giza drove up the driveway to the defendant's home, he did not see the defendant's vehicle parked at the residence. The officer knocked on the front door and had a brief conversation with the defendant's son, who informed him that the vehicle was not there. The officer then left the defendant's home to look for the vehicle. After driving around for five minutes or so looking for the vehicle, the officer again drove to the defendant's home to see if the vehicle was there. The officer then observed the vehicle parked in the parking area at the rear of the residence. This vehicle matched the description of the vehicle which came over the radio transmission. The officer also observed the defendant standing outside near the door of the house with a hoagie sandwich in his hand.

The officer exited his vehicle and approached the defendant. The officer explained that he was investigating a hit and run incident and asked the defendant to produce his license and registration. The defendant complied quickly, denying any involvement in a hit and run accident. While talking to the defendant, the officer noticed what appeared to him to be damage to the rear bumper of the defendant's parked vehicle. The officer mentioned this to the defendant and the defendant denied there was any damage to his rear bumper. The officer then told the defendant he suspected that he was involved in the hit and run incident. The defendant then acknowledged that he was involved in an incident at the location in question where his vehicle hit another vehicle, but he

claimed that he had made contact with the owner of the other vehicle.

At about this time, the officer began to notice a strong odor of alcohol emanating from the defendant. He also noted that the defendant's speech appeared to be slurred and his eyes were red and glassy. The officer asked the defendant whether he had been drinking alcohol and the defendant acknowledged that he had. The defendant then became somewhat agitated. When the officer asked the defendant if he would perform field sobriety tests, the defendant said he would not and announced that he was going back into his home. The officer told the defendant he was still investigating the matter and he asked the defendant to cooperate. The defendant made it clear that he was not going to cooperate further. The officer then announced to the defendant that he was placing him under arrest for hit and run and driving under the influence of alcohol.<sup>1</sup>

Although there was some initial difficulty with the defendant submitting to the arrest, the defendant did finally submit to the arrest and he was handcuffed and placed in the officer's police cruiser. After being placed under arrest, the defendant initiated some conversation with the officer by informing the officer he drank alcohol in his vehicle after he returned home but before the officer arrived. The defendant claimed there were liquor bottles in his truck and he wanted the officer to search the truck for the liquor bottles. The officer went over to the truck and looked inside, but did not see any bottles.

The officer drove to the scene of the alleged hit and run with the defendant in the police cruiser and then transported the defendant to the Lycoming County DUI

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<sup>1</sup>The criminal complaint charges the defendant with DUI, incapable of safe driving and .10 percent or above, accident involving damage to unattended property and careless driving.

processing center. Blood was drawn for a blood alcohol test and the result of the blood test was .19%.

The defendant, Donald Bower, also testified at the suppression hearing. He acknowledged that he was driving his vehicle and that he bumped into a parked vehicle at the aforementioned location. However, he claimed that he looked at the vehicle and did not see any damage so he left the scene. The defendant also testified that after he got home he consumed alcohol from a bottle of Jack Daniels which was in his truck. He claimed he kept this bottle in his truck because he was having a problem with alcohol at that time and he drank in a way so his wife would not be aware of the problem.

In his testimony, Mr. Bower substantially corroborated the thrust of Officer Giza's testimony about what happened leading up to his arrest. The Court notes in particular that the defendant testified that he felt free to go back into his home during the confrontation with the officer until the time he was told he was under arrest. The defendant also acknowledged that he never asked the officer to leave the property prior to his arrest.

The defendant seeks to suppress all observations made by Officer Giza and all subsequent evidence such as the blood alcohol test result. The basic argument made by the defense in support of suppression is that the officer, in coming to the defendant's home, invaded his zone of privacy, including the curtilage of defendant's home, without probable cause or a search warrant. The defendant cites the cases of Commonwealth v. Shannon, 467 A.2d 850 (Pa.Super. 1983) and Commonwealth v. Rood, 686 A.2d 442 (Pa.Cmwlt. 1996) in support of his argument.

In Shannon, police responded to a radio report of a fight in progress. A

police officer drove into the defendant's driveway pursuant to the report. The officer observed two men fighting through a kitchen window and entered the home through an open back door. The defendant sought to suppress the evidence, contending the officer's entry into his private driveway violated his reasonable expectation of privacy with respect to the curtilage of his home. The Superior Court, in fact, disagreed with the defendant's position. While the Superior Court noted that a person's reasonable expectation of privacy may include the curtilage of his home, the Court noted that the police may approach that area to investigate a report of an ongoing fight.

467 A.2d at 852.

The Court believes the defense in the instant case mistakenly concludes that Officer Giza's conduct in driving onto the defendant's property to talk with him was a search of the curtilage of the defendant's property. Logically, the police have a right and obligation to investigate potential crimes. They, of course, may approach individuals in furtherance of their investigative efforts. It would not be reasonable to expect officers to have probable cause or a search warrant when they approach individuals for investigative purposes. Therefore, the Court does not find that Officer Giza was engaged in a search of the defendant's property, but rather, he was trying to make a contact with the defendant pursuant to a legitimate investigative matter. If this contact would have indicated the defendant had no involvement or knowledge of the investigated matter, the contact would have ended quickly and the officer would have investigated other leads or possibilities. However, in the case at bar, the contact with the defendant soon led to comments and observations which indicated that the defendant was the driver involved in the hit and run

incident. Moreover, the brief contact the officer had with the defendant soon led the officer to conclude the defendant had been driving a vehicle, he had consumed alcohol and he had been driving under the influence of alcohol. The defendant's claim that he consumed alcohol after driving only came after the defendant was placed under arrest for DUI. Certainly, all logical inferences point to consumption of alcohol at the time frame when the defendant was driving since the officer promptly went to the defendant's home after the reported hit and run and the defendant and his vehicle were not at the residence on the first occasion that the officer went there. The officer thus developed a legitimate basis to conclude that he had probable cause to arrest the defendant for the offense of driving under the influence based on the totality of the facts and circumstances known to him.

Likewise, the Court does not believe the case of Commonwealth v. Rood, supra, cited by the defense controls this matter. In Rood, like Shannon, the Court extends the Fourth Amendment to the curtilage of one's home. However, as previously stated, the Court finds the officer did not conduct a search, but rather, had a legitimate encounter with a citizen, which developed into probable cause for an arrest.

The Court believes the concept discussed here is akin to a decision of the Lycoming County Courts in the case of Commonwealth v. Daniels, No. 96-II,926 Opinion and Order (July 24, 1997, Butts, J.). In Daniels, the state police followed a trail of evidence from a vehicle accident scene to the defendant's driveway. In the driveway, they observed a damaged pick up truck. When the troopers exited their vehicle they were approached by the defendant who said, "How did you guys find me?" The trooper then noted signs of visible intoxication and arrested the defendant, who had admitted he was

driving the vehicle. Judge Butts, citing Commonwealth v. McKeirnan, 337 Pa.Super. 403, 487 A.2d 7 (Pa. Super. 1985), noted that police officers were permitted to enter private land to investigate a possible crime. This is exactly what Officer Giza was doing in the instant case. Therefore, the Court finds that the defendant's expectation of privacy was not violated by the officer's conduct in this case.

The next argument made by the defense is that Officer Giza did not have probable cause to arrest him in this matter. As previously stated, the Court finds there was ample cause to arrest the defendant for the offense of driving under the influence.

Accordingly, the Court enters the following Order:

**ORDER**

AND NOW, this 7 day of April 2000, based upon the forgoing opinion, it is ORDERED and DIRECTED that the defendant's Motion to Suppress Evidence is DENIED.

By The Court,

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Kenneth D. Brown, J.

cc: Peter Campana, Esquire  
District Attorney  
Gary Weber, Esquire (Lycoming Reporter)  
Work File