

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 99-11,227

VS. :

ROBERT E. HAMPTON :

OPINION AND ORDER

Before the Court are Defendant's Motion to Suppress and Motion to Dismiss. The Defendant is charged with driving under the influence as a result of an incident that occurred on February 5, 1999. On that date, Officer Fred Miller of the Williamsport Bureau of Police observed the Defendant's vehicle fail to stop at a red light at Market and Fourth Streets. Officer Miller pulled the Defendant's vehicle over, and initiated contact with the Defendant as he stumbled out of his vehicle. Officer Miller observed an odor of an alcoholic beverage on the Defendant's breath, and observed the Defendant fumble to retrieve his operator's license and registration. Officer Miller requested that the Defendant perform field sobriety tests. The Defendant consented. Officer Miller administered one test, after which, the Defendant declined to go any further and requested that he be taken to the hospital to get a blood sample. The Defendant was taken to the hospital, and blood was drawn. The blood test revealed that the Defendant's blood alcohol concentration was 0.20 percent.

Motion to Suppress

The Defendant first argues that the results of the field sobriety test and blood alcohol test should be suppressed, as they are fruit of an illegal stop of the Defendant's vehicle. The Defendant argues that the stop of his vehicle was unlawful as Officer Miller did not

have probable cause to believe that the Defendant had been driving under the influence to the extent that he was incapable of safe driving. The Court disagrees. The Defendant's vehicle in this case was stopped for a violation of the Motor Vehicle Code, permissible under 75 Pa.C.S.A. § 6308. Commonwealth v. Elliott, 376 Pa. Super. 536, 546 A.2d 654 (1988), see also Commonwealth v. Rodriguez, 695 A.2d 864 (Pa. Super. 1997).

Additionally, the Court finds that Officer Miller had probable cause to arrest Defendant for drunk driving. Officer Miller saw the Defendant run a red light, then after stopping the Defendant, Officer Miller noticed the heavy smell of alcohol on the Defendant's breath and the difficulty with which the Defendant completed the simple task of locating his driver's license and registration. These facts would lead a prudent man to believe that the Defendant was driving under the influence in violation of 75 Pa.C.S.A. § 3731. See Commonwealth v. Rehmeier, 349 Pa. Super. 176, 502 A.2d 1332, (1985) (court found there was probable cause to arrest the defendant where the officer saw him run a red light, he noticed the smell of alcohol on his breath, and he observed his difficulty in locating his driver's license). The Court therefore finds the Defendant's argument without merit.

#### Motion to Dismiss

The Defendant next argues that the charges against him should be dismissed, as the complaint was not filed against him within five days as is required under Pa.R.Crim.P. §102. Under Rule 102, when a Defendant has been released from custody, a complaint shall be filed against him within five days of the Defendant's release. Instantly, the Defendant was arrested on February 5, 1999. The complaint was not filed against him until June 23, 1999. Although the complaint was not filed within the time frame of Rule 102, the

violation of the Rule does not mandate a dismissal of the charges against the Defendant without inquiry into prejudice suffered by the Defendant. See Commonwealth v. Revati, 516 Pa. Super. 53, 532 A.2d 1 (1987). Rule 102 is subject to Rule 150, which prohibits dismissal based on a procedural defect in form or content of complaint, summons or warrant unless the defect is prejudicial. Instantly, the Defendant alleges that he is prejudiced because the blood sample drawn from the Defendant was destroyed before the complaint was filed, therefore making it impossible for him to obtain independent testing of the blood.

The Commonwealth cites Commonwealth v. Tillia, 359 Pa. Super. 302, 518 A.2d 1246 (1986) in support of their position that the Defendant has not been prejudiced by the destruction of the blood sample, as the Commonwealth did not have a duty to preserve the blood sample for the Defendant's independent testing. In Tillia, the defendant was involved in an automobile accident on October 16, 1983. The blood sample drawn on that date found the defendant's blood alcohol level to be .15 percent. Pursuant to state policy, the blood sample was destroyed either the same day or the next day. A warrant was issued for the defendant's arrest on December 9, 1983. The defendant argued that because the rules do not allow discovery of evidence until after the information is filed, it would have been impossible for him to request that the blood sample be preserved for independent analysis, as the sample had already been destroyed. The defendant also argued that because a test result of .10 percent or greater is a per se finding of intoxication, the Commonwealth should be required to take reasonable steps to preserve the blood sample for independent testing. The court set out the standard whereby evidence is constitutionally required to be preserved for disclosure. "Such evidence must '(1) (possess) an

exculpatory value that was apparent before the evidence was destroyed, and (2) also be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonable means'... Further, there must be no indication that the authorities destroyed the evidence in order to circumvent the disclosure requirements of *Brady v. Maryland* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963)." California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d. 413 (1984), see also Commonwealth v. Gamber, 352 Pa. Super. 36, 506 A.2d.1324 (1986) (when the same issue was presented, the court found that the due process protections of Pennsylvania Constitution required no more than those afforded by the federal constitution.)

The Court in Tillia found that there was no evidence in the record that the police had consciously destroyed the defendant's blood sample in order to prevent discovery of exculpatory matter. Additionally, the court noted that the statute does not require that the Commonwealth preserve test samples for independent analysis. They are only required to make the test *results* available to a defendant, and permit them to request that his or her own physician perform the test. The Court agrees, that according to Tillia, where there is no indication that the results of the Defendant's blood test were exculpatory, the Commonwealth is not required to preserve the blood sample for independent testing. Since there was no requirement to preserve the blood sample, the Court finds that the Defendant was not prejudiced by its destruction.

Although the defense argued that the more recent Supreme Court decision in Commonwealth v. Deans, 530 Pa. 514, 610 A.2d 32 (1992) should apply to the instant case, the Court finds the Deans case distinguishable from the case at bar. In Deans, the defendant tried to claim \$75,000 prize money from a lottery ticket. A review of the ticket in

April of 1984 by the state police laboratory revealed that the ticket had been forged. In June of 1984 the ticket was returned to the Revenue Department and was lost. In August of 1987, a criminal complaint was filed against the defendant charging him with forgery. The defendant argued that his due process rights under the Federal Constitution required the exclusion of opinion testimony by the prosecution expert as to the tests he performed prior to the loss of the ticket. The court held that the admission of the prosecution's expert report and testimony would violate the appellant's due process. The court reasoned that the authenticity of the lottery ticket in that case was somewhat subjective, and conclusions with regard to it are more likely to be inconsistent and contradictory. The Court distinguished the circumstances in that case from the situation presented in the case at bar. The Court noted that the holding:

that expert testimony in this case would violate appellant's due process rights is, of course, based on the specific facts of this record. Loss of evidence need not preclude expert records or testimony in every case. *Results of tests conducted on different types of evidence will produce differing degrees of probability, sometimes amounting almost to a certainty. Chemical analyses of blood, breath, and narcotic substances produce consistent, highly reliable results.* By contrast, psychiatrist examination pertaining to the existence, nature, duration, causes, and effects of alleged mental disease or defect may produce opinions which are much more subjective and conclusions which are much more likely to be inconsistent or contradictory.

Deans, 610 A.2d at 35. (emphasis added)

The Court would agree that the results of tests performed on a blood sample has a higher degree of probability and certainty than the results of tests performed on other evidence, and is clearly distinguishable. The Court therefore finds the Defendant's argument to be without merit.

ORDER

AND NOW, this \_\_\_\_ day of March, 2000, based upon the foregoing opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress and Motion to Dismiss are DENIED.

BY THE COURT,

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Nancy L. Butts, Judge

xc: Daniel Holmes, Esquire  
Marc Lovecchio, Esquire  
CA  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire