

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA : No. 00-10,880

VS. :
JEFFREY D. HILL :

OPINION AND ORDER

Before the Court are Defendant's Motion to Suppress Statements and the Commonwealth's Motion to Exclude Testimony and Report of Defendant's Expert Witness. The Defendant is charged with driving under the influence as a result of an incident that occurred on January 15, 2000. On that date, Officer Mark Giza, of the South Williamsport Police, was on routine patrol when he observed the Defendant's vehicle pull out onto East Southern Avenue, accelerate rapidly, make a wide turn, and almost strike the curb. As the vehicle approached the intersection at Charles Street and East Second Avenue, the vehicle failed to come to a complete stop at a posted stop sign. Officer Giza executed a stop of the Defendant's vehicle. Upon making contact with the Defendant, Officer Giza detected a strong odor of alcohol emanating from the vehicle. There were four occupants in the vehicle. The Defendant stated that he had consumed approximately 5-6 beers, and admitted that his vehicle had not come to a complete stop at the sign. Officer Giza asked the Defendant to perform field sobriety tests, which were not performed satisfactorily. Based on his observations of the Defendant's driving, the detection of the odor of an alcoholic beverage, and the Defendant's performance on the field sobriety tests, Officer Giza developed the opinion that the Defendant was under the influence of alcohol to a degree that rendered him incapable of safe driving.

The Defendant was arrested and placed in the police cruiser to be transported to the DUI Processing Center. While in the cruiser, before being informed of his Miranda rights, Officer Giza and the Defendant engaged in a conversation that was recorded by the video recorder located in the cruiser. The relevant portions of the taped conversation was substantially as follows:

Officer Giza: Do you have any questions at this time that I can help you with?

Defendant: I just...I mean what did I fail, really?

Officer Giza: It's not really a pass or fail, It's just performance.

...

Officer Giza: O.K., At this time you are being placed under arrest for driving under the influence.

Defendant: I know.

Officer Giza: and I'll request that you submit to the chemical test of blood.

Defendant: I know. . .

Officer Giza: I just have to explain.

Defendant: I have been through all of this.

...

Officer Giza: You don't seem like a bad guy just...

Defendant: No, I'm not.

Officer Giza: made a little mistake here.

Defendant: You know, I've been through one of these, I mean, I was not trying to go through two of them. That's why I drove, I did not drink more. I was at a party where there was a keg and I did not drink.

Officer Giza: What did you say, you had five beers?

Defendant: yea, I was at the Valley Inn at 8:30 . . .

Officer Giza: And then you had beers there too . . .?

Defendant: yea, but that was at 8:30. . .

Officer Giza: and then you had some beers at ____ (inaudible)

Defendant: I had four or five there...then I didn't drink any more until 11:30p.m. I drank three, four, maybe five beers there. . . I figured five beers would put me at .10.

. . .

A blood alcohol test taken at the DUI Processing Center revealed a BAC of .12 %.

Motion to Suppress

The Defendant first argues that the statements made to Officer Giza in the police cruiser should be suppressed, as they were elicited by Officer Giza without the benefit of a Miranda warning. The Commonwealth agrees that the portion of the tape concerning the Defendant's prior arrest for DUI would be inadmissible, and has indicated that they would not be using that portion of the tape at trial. The issue, therefore, is whether the statements made with regard to where the Defendant had been and how many beverages he had consumed should be suppressed, since they were made before the Defendant had been informed of his Miranda rights. Miranda warnings need be given only when one is subjected to custodial interrogation. [Miranda v. Arizona](#), 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); [Berkemer v.](#)

[McCarty](#), 468 U.S. 420, 428- 29,104 S.Ct. 3138, 3144, 82 L.Ed.2d 317 (1984). In order to determine whether the responses made by Defendant before he received his Miranda warnings should be suppressed, we must decide whether they were elicited during custodial interrogation. In the instant case, the tape indicates that the Defendant had been placed in the back of the police cruiser. Additionally, the Defendant had been placed under arrest by Officer Giza immediately prior to the conversation in which the statements were made. The Court would find, and the Commonwealth has not contested that these circumstances are sufficient to establish that the Defendant was in custody at the time the statements were made.

The Court must next determine whether the statements were made in response to police interrogation. Interrogation in this context is defined as questioning, either express or its functional equivalent " 'expected to elicit a confession or other incriminating statements.' " [Commonwealth v. Bracey](#), 501 Pa. 356, 367, 461 A.2d 775, 780 (1983) *citing* [Commonwealth v. Sero](#), 478 Pa. 440, 453, 387 A.2d 63, 70 (1978).

The Pennsylvania Supreme Court in [Commonwealth v. McGrath](#) 504 Pa 103, 470 A.2d 487 (1983) explained:

. . . the term interrogation under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police

surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.

Id., 470 A.2d at 494-495

In the instant case, the Court would find that although the initial statements in the conversation appear to be voluntary verbalizations, the statements made with regard to the number of beers consumed at various locations were made in response to questions by Officer Giza that he knew, or should have known, were reasonable likely to have elicited an incriminating response. Under these circumstances, the Court would find that the statements made by the Defendant should be suppressed.

Commonwealth's Motion to Exclude Testimony and Report of Expert

The Commonwealth has filed a motion to exclude the testimony and report of the Defendant's expert witness, Dr. Guzzardi. The Commonwealth alleges that in his report, Dr. Guzzardi states that he is unable to estimate with any scientific certainty, the Defendant's blood alcohol content. The Commonwealth argues that allowing Dr. Guzzardi to speculate would be unfairly prejudicial to the Commonwealth, and would confuse the jury. The Commonwealth adds that "the jury would be wondering what they are not able to comprehend because an expert is being presented to assist them."

There is a liberal standard in Pennsylvania for the qualification of an expert witness. As a general rule "if a witness has any reasonable pretension to specialized knowledge on the subject matter under investigation he may testify and the weight to be given to his evidence is for the [fact finder]." Commonwealth v Gonzalez, 519 Pa. 116,

546 A.2d 26 (1988), *citing* Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 319 A.2d 914 (1974). Defendant's expert, Lawrence J. Guzzardi, MD, has been an emergency room physician for 25 years. He is experienced in the examination of individuals for impairment utilizing neurological testing similar to the field sobriety tests administered in this case. Additionally, he has previously testified as an expert in Court proceedings with regard to the testing of neurologic function. The Court would find that Dr. Guzzardi has reasonable pretension to specialized knowledge in the area of neurological testing, and is qualified as an expert to testify with regard to his observations of the testing methods utilized in this case.

The second issue before the Court is whether Dr. Guzzardi's inconclusive findings with regard to the Defendant's blood alcohol level at the time of his arrest are relevant and admissible. "Evidence is relevant if it tends to make the fact at issue more or less probable." Gonzalez, supra, at 35, *citing* Gregg v. Fisher, 377 Pa. 445, 105 A.2d 105 (1954). Evidence is relevant if it in some degree is probative and advances the inquiry. Gonzalez, supra, *citing* Bowers v. Garfield, 382 F.Supp.503 (E.D.Pa., 1974). In Gonzalez, an expert witness was presented to offer relation back testimony in a DUI. The expert testified that he was unable to give an opinion with regard to the defendant's "related back" blood alcohol content without knowing when the defendant had taken his last drink. Since the evidence did not reveal when the defendant had taken his last drink, (which would indicate whether his blood alcohol level had peaked prior to the accident) there was no way of determining whether his blood alcohol level was rising or declining at the time of the accident." The Gonzalez Court determined that the testimony was relevant, in that it advanced the inquiry as to whether the defendant was

driving under the influence in violation of 3731(a)(1). The court reasoned that the testimony provided the court with information as to how the blood test result (taken three hours after the accident) could be interpreted.

The testimony was not, however, relevant and admissible on the charge of 3731(a)(4). The court's reasoning was that "since the charge under § 3731 (a)(4) requires proof that the appellant was driving with a blood alcohol percentage of .10 or greater, the testimony of [the expert] that he *could have had* a .125 blood alcohol percentage *if we assume* his blood alcohol level peaked prior to the accident does not advance the inquiry and is inadmissible for that offense." Gonzalez, supra, at 35.

Instantly, a review of the report of Dr. Guzzardi indicates that, like the expert in Gonzalez, he is without sufficient information to determine the Defendant's blood alcohol content at the time of his arrest. Dr. Guzzardi reports that without other information, including the times and amounts of alcohol consumed and the alcohol content in the beer consumed, he is unable to estimate the amount of alcohol in the blood with any scientific certainty, and any conclusion with regard to the Defendant's blood alcohol content would be purely speculative. Based on Gonzales, the Court finds that this evidence is not relevant and is inadmissible on the charge of driving under the influence under §3731(a)(4), and Dr. Guzzardi will not be permitted to testify with regard to his inconclusive findings at the trial.¹

¹ Although the court in Gonzalez would have admitted the testimony with regard to §3731(a)(1) charge, this Court cannot permit the testimony where the charges are combined in a jury trial. The Court finds that admitting the charge as evidence of one offense, but not the other offense, would create confusion for the jury.

ORDER

AND NOW, this _____ day of December 2000, based upon the foregoing opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress statements made while in the police cruiser is GRANTED. It is further ORDERED and DIRECTED that the Commonwealth's Motion to Exclude the Testimony and Report of Dr. Guzzardi is DENIED in Part and GRANTED in Part. Dr. Guzzardi will be permitted to offer testimony with regard to his observations of the field sobriety tests. Dr. Guzzardi will not, however, be permitted to testify with regard to his inconclusive findings with regard to the Defendant's blood alcohol content at the time of his arrest.

BY THE COURT,

Nancy L. Butts, Judge

xc: William Simmers, Esquire
Eric Linhardt, Esquire
CA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire