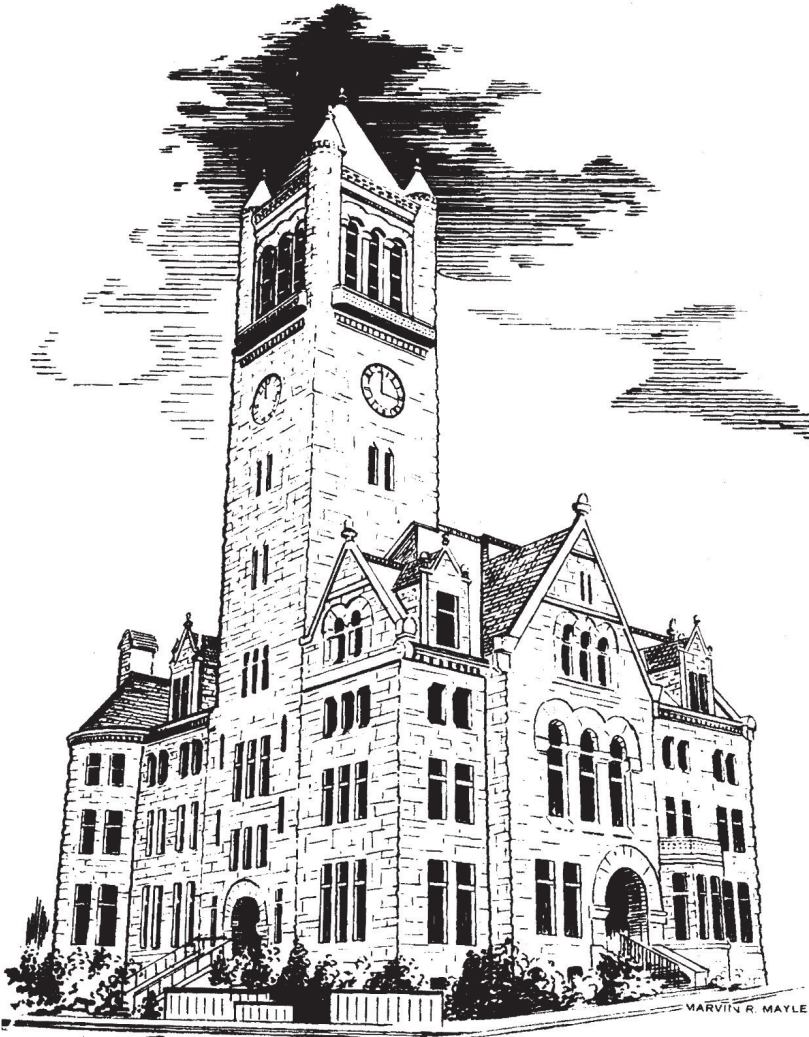


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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

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Personal Representative: Nancy L. Burd
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First Publication

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Attorney: David B. Reiss

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA
CRIMINAL ACTION

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
v.	:	
ERIC MICHAEL ROCK,	:	NO. 1357 OF 2015
Defendant.	:	JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS

J.W. Eddy, Esquire, Assistant District Attorney, For the Commonwealth

Jeremy J. Davis, Esquire, Davis & Davis, For the Defendant

OPINION AND ORDER

GEORGE, J.

February 1, 2016

This matter comes before the Court on an Omnibus Pre-Trial Motion filed on December 29, 2015 in the form of Motion to Dismiss, Petition for Writ of Habeas Corpus, and Motion to Suppress Statements. The defendant is charged with one (1) count of DUI: Controlled Substance – Impaired Ability {1} and one (1) count of DUI: General Impairment – Incapable of Driving Safely {2}. In lieu of a hearing, the parties requested the Court to decide the merits of the Motion solely on the admission of the transcript from the preliminary hearing. After careful consideration, we will DENY the motion in its entirety.

FACTS

On June 18, 2015, Trooper Matthew J. Uram of the Pennsylvania State Police was on patrol duty in Perryopolis, Fayette County, Pennsylvania. At approximately 7:35 p.m., an individual, who wanted to remain anonymous, flagged Trooper Uram down and told him “they had just walked through the Son’s of Italy parking lot with their kids and they saw the vehicle with individuals in it that appeared to be smoking marijuana.” (Preliminary Transcript, p. 2). Only two blocks away, Trooper Uram drove directly to the Sons of Italy. He observed the vehicle, the same as the one described to him by the informant, starting to back out {3}. Trooper Uram pulled in and tried to get behind the vehicle.

{1} 75 Pa. C.S. § 3802(d)(2).

{2} 75 Pa. C.S. § 3802(a)(1).

{3} The vehicle described to Trooper Uram by the tipster and the vehicle he observed in the Sons of Italy parking lot was a gray Volkswagen Golf.

Trooper Uram exited his cruiser and approached the vehicle. He smelled an odor of marijuana when he was near the trunk of the driver's side of the vehicle. As he got closer to the driver's door, the window was down and the odor of marijuana was stronger. He observed the defendant in the driver's seat.

Trooper Uram noticed the defendant's eyes were red. He asked the defendant to turn the car off and exit the vehicle, which the defendant complied {4}. Trooper Uram then arrested him for DUI, placed him in the back of his patrol car, and read the defendant his Miranda rights. At this time, the defendant made a statement to Trooper Uram, stating the "he smoked one because he had a hard day." (Preliminary Transcript, p. 3).

DISCUSSION

I. MOTION TO DISMISS

Defendant first argues that the charges should be dismissed because Trooper Uram lacked reasonable suspicion to approach the motor vehicle in the parking lot. (Paragraph 23, OPT Motion).

To establish grounds for reasonable suspicion sufficient to justify an investigatory stop, "the officer must articulate specific observations which, in conjunction with reasonable inference derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity." *Commonwealth v. Bennett*, 827 A.2d 469, 477 (Pa. Super. 2003). The question of whether reasonable suspicion existed must be answered by the totality of the circumstances. *Commonwealth v. Reppert*, 814 A.2d 1196, 1203-04 (Pa. Super. 2002). Factors to be considered in forming a basis for reasonable suspicion are, among other things, tips, the reliability of informants, time, location, and suspicious activity. *Commonwealth v. Leonard*, 951 A.2d 393, 396 (Pa. Super. 2008).

In the instant case, Trooper Uram received an in-person tip that they observed individuals in a vehicle in the Sons of Italy parking lot smoking marijuana. An anonymous tip alone is insufficient to meet the reasonable suspicion standard. See *Leonard*, 951 A.2d at 397. Nevertheless, an anonymous tip, in addition with corroboration by the police, can demonstrate "sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop." *Alabama v. White*, 496 U.S. 325, 327, 110 S.Ct. 2412 (1990). Trooper Uram, only two blocks away, arrived on scene and noticed the same gray Volkswagen Golf described to him at the Sons of Italy parking lot, thus corroborating the tip, lending significant support to the tip's reliability. Therefore, Trooper Uram thus had reasonable suspicion to make an investigatory stop

{4} Trooper Uram asked the defendant to perform several field sobriety tests, which the defendant refused. The defendant also refused a chemical test after being read the O'Connell warnings.

since he had information from an eyewitness (who provided the tip) {5} and corroboration of the vehicle, the location, and the timing of the alleged incident. See *Navarette v. California*, 134 S.Ct. 1683 (2014). (an anonymous tip from a 911 caller that she was run off the road by a truck provided the police with reasonable suspicion to make an investigatory stop when the tip included eyewitness knowledge of the alleged crime, the type of vehicle, the license plate, the location of the truck, and the timing of the alleged incident); Also see *Commonwealth v. Gutierrez*, 36 A.3d 1104 (Pa. Super. 2012) (where information about man carrying heroin was provided to police from a person who identified himself, and the information placed the suspect in a particular place at a particular time in a particular vehicle, the police had reasonable suspicion that criminal activity was afoot). Therefore, the defendant’s Motion to Dismiss is denied.

II. PETITION FOR WRIT OF HABEAS CORPUS

Defendant next asserts that the charges against him must be dismissed because the Commonwealth cannot prove that the defendant was incapable of safe driving or that he was under the influence of marijuana. (Paragraph 27, OPT Motion).

In an Omnibus Pre-Trial Motion for Petition for Habeas Corpus relief, the Court must determine whether the Commonwealth established a prima facie case for the charged offenses. *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001). “When deciding whether a prima facie case was established, [the Court] must view the evidence in the light most favorable to the Commonwealth, and . . . consider all reasonable inferences based on that evidence which could support a guilty verdict.” *Commonwealth v. James*, 863 A.2d 1179, 1182 (Pa. Super. 2004) (citation omitted). Unlike the beyond a reasonable doubt standard, a prima facie case is merely a degree of evidence “that if presented at the trial in court, and accepted as true, the judge would be warranted in allowing the case to go to the jury.” *Commonwealth v. Wojdak*, 502 Pa. 359, 368, 466 A.2d 991, 996 (1983) (emphasis original); see *James*, 863 A.2d at 1182.

To move forward with the charge of DUI: Controlled Substance – Impaired Ability, the Commonwealth must make out a prima facie case that the defendant: (1) drove, operated, or was in actual physical control of a vehicle upon a highway or trafficway; and (2) while driving, operating, or in actual physical control of the vehicle, the defendant was under the influence of marijuana to a degree that impaired his ability to safely drive, operate, or be in actual physical control of the vehicle. 75 Pa. C.S. §3802(d)(2). The Commonwealth has met this burden.

{5} Although the eyewitness/tipster wished to stay anonymous, he or she provided this tip to Trooper Uram in person after he or she flagged him down. “[I]dentified citizens who report their observations of criminal activity to police are assumed to be trustworthy, in the absence of special circumstances, since a known informant places himself at risk of prosecution for filing a false claim if the tip is untrue...” *Commonwealth v. Barber*, 889 A.2d 587, 593-94 (Pa. Super. 2005).

First, Trooper Uram observed the defendant operate the vehicle. Trooper Uram testified at the preliminary hearing, that as he pulled into the parking lot, he observed that the vehicle in question started to back out of the parking space. He later testified that the driver of the vehicle was the defendant. Additionally, Trooper Uram provided sufficient testimony that the defendant's ability to safely drive was impaired from the use of marijuana. Trooper Uram explained that he noticed an odor of marijuana from the vehicle, and the smell was stronger the closer he got to the driver's side window. He further testified that the defendant's eyes were bloodshot. Coupled with the admission of the defendant, these observations were sufficient to establish a prima facie case for a violation of 75 Pa. C.S. §3802(d)(2).

Likewise, and for the same reasons, the Commonwealth also provided enough evidence to make out a prima facie case for DUI: General Impairment – Incapable of Driving Safely. Accordingly, the defendant's Petition for Writ of Habeas Corpus must be denied.

III. MOTION TO SUPPRESS STATEMENTS

Defendant's last argument is the statement that he gave to Trooper Uram that he "smoked one because he had a hard day" must be suppressed since the Trooper lacked probable cause to place the defendant under arrest. (Paragraph 32, OPT Motion).

The police must have probable cause to make an arrest. Probable cause is established when the facts and circumstances which are within the knowledge of the officer at the time of the arrest are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. *Commonwealth v. Thompson*, 604 Pa. 198, 203, 985 A.2d 928, 931 (2009). Like the reasonable suspicion standard, the test to determine whether probable cause existed to arrest the defendant is for the Court to look at the totality of the circumstances. *Id.* Trooper Uram had probable cause to arrest the defendant based on the tip he received, the corroboration of the tip, the strong odor of marijuana from the vehicle, the defendant's bloodshot eyes, and the defendant operating the vehicle. Since Trooper Uram had probable cause to make the arrest, the motion to suppress the statements will be denied{6}.

Wherefore, we will enter the following Order:

ORDER

AND NOW, this 1st day of February, 2016, upon consideration of the defendant's Omnibus Pre-Trial Motion in the form of Motion to Dismiss, Petition for Writ of Habeas Corpus, and Motion to Suppress Statements, and after hearing thereon, it is hereby ORDERED and DECREED that the Motion is DENIED in its entirety.

The District Attorney is DIRECTED to list this matter for trial.

BY THE COURT:
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:
CLERK OF COURTS

{6}The defendant has not alleged that his statements were obtained in violation of Miranda. Therefore, we will not address same.

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