

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No: 00-10,915

VS :

MICHAEL T. MARTIN :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress. Argument on the motion was scheduled for August 4, 2000. At that time, it was agreed that the facts are not in dispute, and the motion was submitted on the transcript of the preliminary hearing. After a review of the transcript, the Court finds the following facts relevant to the Defendant's motion.

On February 29, 2000, Officer Barto, of the Muncy Township Police Department, was on routine patrol in a marked police unit. (N.T. 5/25/00, p. 3) Shortly before 11:00 p.m., he received a call from the Lycoming County Communication Center of a possible DUI. The Communication Center advised that the reporting person was following the vehicle, and had observed the vehicle cross the center yellow line a few times. (Id., p. 5) The reporting person gave a description of the vehicle, and advised of the direction the vehicle was travelling. Officer Barto then positioned himself to watch for the vehicle to pass. Officer Barto testified that he was not given the name of the person reporting the offense at that time. He testified that he did learn the identity of the person later, while at the hospital. (Id., p. 5)

As he viewed the vehicle fitting the radioed description come toward him, he saw the vehicle cross the center yellow line by one tire width on one occasion. (Id., p. 7) He waited for the vehicle to pass him, then he pulled out and activated his lights. (Id., p. 3) Officer Barto followed the Defendant for approximately 1/4 mile before the vehicles

came to a stop. (Id., p.7) Officer Barto did not witness any additional vehicle violations, and the Defendant stopped his vehicle appropriately. (Id., p. 9) The Defendant failed field sobriety tests administered by Officer Barto, and he was arrested for DUI. (Id., p. 4) The Defendant was transported to the Muncy Valley Hospital where a blood sample was obtained. The blood test confirmed that the Defendant had a blood alcohol content of .14%.

The Defendant alleges that the evidence obtained as a result of the stop must be suppressed, as Officer Barto did not have reasonable suspicion or an articulable basis to stop his vehicle. In order for a police officer to effectuate a traffic stop, he must possess a reasonable and articulable suspicion of a Vehicle Code violation on the part of the vehicle operator. [75 Pa.C.S.A. § 6308\(b\)](#). The officer need not personally observe the illegal or suspicious conduct which forms basis for reasonable suspicion for investigatory vehicular stop, but may rely, under certain circumstances, on information provided by third parties, or “tips.” [Const. Art. 1, § 8](#); [75 Pa.C.S.A. § 6308\(b\)](#).

In Commonwealth v. Wilson, 424 Pa.Super. 110, 622 A.2d 293 (1993), alloc. denied 536 Pa. 623, 637 A.2d 283 (1993), the Superior Court examined the requirements surrounding reasonable suspicion for automobile stops emanating from information provided by a tip. The court explained:

Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by the police and its degree of reliability. Both factors—quantity and quality—are considered in the “totality of the circumstances—the whole picture,” that must be taken into account when evaluating whether there is reasonable suspicion. Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were reliable.

Id., at 115, 622 A.2d at 295-296 (citations omitted).

In assessing the reliability of the reporting person, the courts have looked to whether the reporting person is identified. Generally, tips from anonymous, unidentified persons have a relatively low degree of reliability, and more information is required to establish the requisite quantum of suspicion. Conversely, a tip from an identified person may carry enough indicia of reliability for the police to conduct an investigative stop. The courts have reasoned that a known informant places himself at risk of prosecution for filing a false claim if the tip is untrue, whereas an unknown informant faces no such risk. [Commonwealth v. Lohr, 715 A.2d 459, 461-62 \(Pa. Super. 1998\)](#).

Applying these principles to the instant case, the Court first finds that the reliability of the reporting person was not adequately established. After a review of the preliminary hearing transcript, the Court finds there was no evidence presented that the reporting person was identified at the time of the call. The only identifying feature of the reporting person at the time of the call to the County Communication Center was that he or she was following the Defendant's vehicle. Even if the Court were to have found that the informant was identified based on Officer Barto's testimony that he eventually learned the identity of the reporting person, the Court does not believe that the information supplied by the reporting person was specific enough to warrant a stop.

The information supplied by the informant must be specific enough to support reasonable suspicion that criminal activity is occurring. [Korenkiewicz, supra, citing Commonwealth v. Allen, 555 Pa. 522, 725 A.2d 737 \(1999\)](#). The only information provided in this case was that the reporting person, who was following the Defendant's vehicle, witnessed the vehicle cross over the center yellow line on a few occasions. Without more, the Court finds that the information provided was not specific enough to

support reasonable suspicion that criminal activity was occurring. *Compare to Commonwealth v. Lohr*, 715 A.2d 459 (Pa.Super. 1998), (Although underlying source of information was citizen call, officer had reasonable suspicion to justify stop of vehicle where citizen had watched the Defendant erratically drive his vehicle into the parking lot of a store. The citizen then followed the Defendant into the store and was able to smell alcohol from the direction of the Defendant. *Citizen had therefore corroborated his visual conclusion with his olfactory sense.* Most importantly, the Court noted, was that the caller gave his name to the police dispatcher, and remained on the telephone the entire time, at the very location of the incident.) See also *Commonwealth v. Korenkiewicz, supra* (Officer was authorized to execute a stop where tip from an identified service station attendant was that when he approached the Defendant's car that had parked in the service station lot for over twenty minutes, the Defendant did not respond and he appeared either ill or intoxicated. The Informant reported that the Defendant's head was 'wobbling and his eyes were 'very wide open'. Informant also gave the description and location of the car.)

Since the Court has found that the reliability of the informant has not been established, the Court must next determine whether Officer Barto had enough additional observation, or corroboration to establish reasonable and articulable suspicion for a stop. The Court finds that he did not. Officer Barto testified that he observed the Defendant's vehicle cross the center yellow line on one occasion before he pulled out behind him. After pulling out behind the Defendant, Officer Barto did not observe any additional erratic driving. Observation of a motorist crossing over the center yellow line on one occasion without evidence of speeding or a safety hazard does not give an

officer articulable and reasonable grounds for a stop. See Commonwealth v. Malone, 19 D&C 4<sup>th</sup> 41, 45 (1993), see *also*, Commonwealth v. Patrick, 82 W.L.J. 1 (Officer observation of Defendant swinging widely and cross the double yellow line, and proceed slower than the posted speed without more, did not justify a stop.) Based on Malone and Patrick, the Court finds that Officer Barto's observation of the Defendant's vehicle crossing the center yellow line on one occasion, without more, was not sufficient to establish reasonable and articulable grounds for a stop of the Defendant's vehicle.

ORDER

AND NOW, this \_\_\_\_\_ day of October, 2000, based on the foregoing argument, the Defendant's Motion to Suppress all evidence obtained from the stop of his vehicle is GRANTED.

By The Court,

Nancy L. Butts, Judge

cc: CA  
William Miele, Esquire  
DA  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire