

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:
	:
vs.	: NO. 02-10,870
	:
MINDY LAUBSCHER,	: CRIMINAL ACTION - LAW
	:
Defendant	: MOTION TO SUPPRESS EVIDENCE

Date: November 26, 2002

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress Evidence obtained by the Commonwealth following Defendant's vehicle being stopped by the Pennsylvania State Police. Based on that evidence, Defendant was charged with Driving Under the Influence of Alcohol (DUI). An evidentiary hearing was held on October 10, 2002. The following facts were established at the hearing. On March 10, 2002, at approximately 2:00 a.m., Defendant Laubscher together with two female passengers (who both testified in this case) were proceeding north on Williams Street in the City of Williamsport between West Third Street and West Fourth Street (traveling toward West Fourth Street). Laubscher was driving her vehicle. One passenger was in the front seat and one passenger was in the rear seat. As they approached West Fourth Street, a State Police cruiser approached in the opposite direction. The police cruiser had turned left from driving in a westerly direction on West Fourth Street onto Williams Street and headed south towards West Third Street. As the two cars passed, Laubscher made a hand gesture, which the troopers interpreted as Laubscher having "flipped them the bird."

Upon seeing this, Trooper Eisenhower, who was driving the vehicle, decided to turn around and follow her. He testified it was his belief that Laubscher should be pulled over, because

normally people do not “flip off” the police. To Trooper Eisenhower, this was an indication that Laubscher might be intoxicated. Trooper Eisenhower turned the cruiser around and proceeded to follow Laubscher.

Laubscher stopped at the Williams and West Fourth Street intersection. Laubscher contends that it was a blinking red light. The troopers contend that it was a solid red light. After Laubscher stopped at the light she then proceeded through and turned left onto West Fourth Street. The troopers then pulled Laubscher over for going through a solid red light. Subsequent to the stop, evidence regarding Laubscher’s DUI was obtained through Officer Eisenhower’s observation of and questioning of Laubscher.

Discussion

To determine the main issue before the Court, as to whether the evidence used to establish the DUI charge should be suppressed, the Court must determine whether the troopers legally stopped Laubscher. If they had not, then the evidence obtained is inadmissible. The proffered justification for the stop is that Laubscher violated the Motor Vehicle Code by going through a steady red light. The Commonwealth has not pursued attempting to justify the stop on the basis of the testimony of Trooper Eisenhower indicating that normally people do not “flip off” the police, *i.e.* that Laubscher might be under the influence of alcohol, as being probable cause for the vehicle stop.

Police officers have the authority to “stop a vehicle when they have ‘ articulable and reasonable grounds to suspect a violation’ of the vehicle code. *See*, 75 Pa.C.S.A. §6308(b); ***Commonwealth v. Battaglia***, 802 A.2d 652, 655 (Pa. Super. 2001). “Articulate and reasonable

grounds” and “probable cause” do not express different standards, but are one in the same. *See, Commonwealth v. Whitmyer*, 668 A.2d 1113, 1116 (Pa. 1995); *Battaglia*, 802 A.2d at 655. Before the “ ‘government may single out one automobile to stop, there must be specific facts justifying this intrusion.’” *See, Whitmyer*, 668 A.2d at 1117 (quoting *Commonwealth v. Swanger*, 307 A.2d 875, 878 (Pa. 1973)). To permit a vehicle stop for an alleged violation of the Motor Vehicle Code, the officer must “articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*” *See, Commonwealth v. Gleason*, 785 A.2d 983, 989 (Pa. 2001) (emphasis in original).

The troopers here did not have probable cause to stop Laubscher for violating the Motor Vehicle Code by going through a steady red light. A vehicle facing a steady red light must stop and remain stopped until “there is an indication to proceed,” *i.e.* green light or it is permissible to turn on red. *See, 75 Pa.C.S.A. §3112(3)(i)*. A vehicle facing a flashing red light must stop and proceed as if it was a stop sign. *See, 75 Pa.C.S.A. §3114(1)*. The uncontradicted testimony was that Laubscher pulled up to the intersection, stopped, then proceeded to turn on to Fourth St. If the light was steady, then she violated the Motor Vehicle Code and the troopers had probable cause to stop her for violating 75 Pa.C.S.A. §3112(3)(i). If the light was a flashing red, then the troopers did not have probable cause to stop Laubscher because she acted in accord with 75 Pa.C.S.A. §3114(1). The real crux of the case, therefore, is whether the traffic signal was a steady red or a blinking red.

The swearing contest between the troopers and Laubscher and her passengers as to the light’s status does not resolve the issue. What does is the unbiased testimony of the Director of

the City of Williamsport streets department, George Holliday. His testimony established that the traffic signal light at West Fourth Street and William Street was programmed so that it would be blinking red for William Street traffic at 2:00 a.m. on the morning in question and for several hours thereafter. Therefore, at the time Laubscher stopped at the intersection, the light would have been blinking red, at least according to its program. The street director's testimony was supported by documents concerning the light's program that were introduced into evidence. He also testified that a review of the records reported there was no reported malfunction of that traffic light at any time close to the incident in question.

Admittedly, this testimony might not be absolute conclusive proof that the light was blinking red at the crucial time. Nevertheless, it is safe to reason that the light did not deviate from its program so as to, at the very least, cast a reasonable doubt upon the testimony to the effect that Laubscher had violated a vehicle code by proceeding improperly through the red light. Therefore, this Court concludes Laubscher did not violate the Motor Vehicle Code by stopping then proceeding. As a result, the troopers did not have probable cause to stop the vehicle and their subsequent obtaining of evidence supporting the DUI charge against Laubscher is invalid.

The troopers also did not have probable cause to stop Laubscher for driving under the influence. It is illegal to operate a motor vehicle while under the influence of alcohol or a controlled substance that "renders the person incapable of safe driving." *See*, 75 Pa.C.S.A. §3731(a). More than a mere hunch is needed to justify a stop. *See, Commonwealth v. Bowersox*, 675 A.2d 718, 723 (Super. 1996). Probable cause is "a reasonable belief, based on surrounding facts and totality of circumstances, that an illegal activity is occurring or evidence of a crime is

present.” See, *Commonwealth v. Petrell*, 738 A.2d 993, 998 (Pa. 1999). There is no indication from the evidence that Laubscher was operating her vehicle in an unsafe manner as the result of alcohol or drugs. The fact that she “flipped off” the troopers does not indicate that she was intoxicated as Trooper Eisenhower surmised.

The mere act of “flipping off” the troopers does not establish probable cause that Laubscher was incapable of operating her vehicle safely due to alcohol impairment. Especially in light of cases where far more indicative activity of impairment took place, but yet did not establish probable cause for DUI. See, *Gleason*, 785 A.2d 983 (Observing a vehicle cross a solid for line two or three times over a distance of a quarter mile did not constitute probable cause to stop the vehicle.); *Battaglia*, 802 A.2d 652 (Erratic driving, weaving and traveling 5-10 mph slower than traffic, by itself does not constitute probable cause to stop vehicle for DUI.). There was no other testimony produced indicating that Laubscher was operating her vehicle in an unsafe manner. Therefore, the troopers did not have probable cause to stop Laubscher for DUI.

Conclusion

The evidence supporting the DUI charge must be suppressed. The troopers lacked the probable cause to stop Laubscher for violating the Motor Vehicle Code by driving through a solid red light since the light was a flashing red. The troopers also lacked the probable cause to stop Laubscher for DUI based solely on her “flipping them off.” Thus, the DUI charges must be dismissed.

ORDER

The Motion of Defendant to suppress evidence supporting the charge of Driving Under the Influence of Alcohol is GRANTED and such evidence is suppressed. Defendant's Motion to Dismiss the Charges of Driving Under the Influence of Alcohol is GRANTED and the charges are DISMISSED. Costs shall be paid by Lycoming County. Any bail is terminated and shall be returned, minus appropriate fees and charges.

BY THE COURT,

WILLIAM S. KIESER, JUDGE

cc: Henry W. Mitchell, Esquire, ADA
George E. Lepley, Jr., Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire, Lycoming Reporter