

**IN THE COURT OF COMMON PLEAS FOR  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 03-10,135</b>
	:	
<b>LAUREN DIMASSIMO,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court is the Defendant's Motion to Suppress Evidence, which alleges that the stop of her vehicle was invalid. Defendant contends that any information gained by the officer as a result of the stop of the vehicle must be suppressed as fruit of the poisonous tree. A hearing on the matter was held on August 29, 2003, and the following testimony was presented.

Officer Jeremy Brown of the Williamsport Bureau of Police testified that on November 11, 2002 the Defendant was driving her vehicle eastbound on Washington Boulevard in the city of Williamsport. Brown testified that prior to the stop he had initially observed her travel eastbound on Eldred Street, right on Franklin Street and then left onto Washington Boulevard. While on Washington Boulevard, Brown paced the Defendant's vehicle for five-tenths of a mile and determined that she was traveling at 52 mph in a posted 35 mph speed zone. Once he made contact with Defendant DiMassimo, he formed a sufficient basis for placing her under arrest for Driving Under the Influence. On cross examination, Brown stated he paced the Defendant's vehicle from in front of a local business known as Joey's

Place (Penn Street and Washington Boulevard) until he reached the 900 block of Washington Boulevard, at approximately Almond Street, when he activated his overhead lights. Brown testified he later measured the distance between Joey's Place and the area where he believed he activated the overhead lights of his vehicle and found that it was approximately five-tenths of a mile.

The Defendant testified that she, too later measured the distance that she had traveled on Washington Boulevard. She testified that she recalled doing Field Sobriety Tests beside a cemetery which is located just prior to the intersection of Washington Boulevard and Railway Streets. The Railway Street location is a few blocks west of where the officer testified the Defendant stopped her vehicle. The Defendant further testified that when she measured the distance between Franklin Street, where she turned onto Washington Boulevard, and the place where she remembered being stopped, the distance was approximately two-tenths of a mile. The Defendant admitted that she had been drinking alcohol and being unbalanced during the field sobriety tests.

The stop "of a single vehicle is unreasonable where there is no outward sign the vehicle or the operator are in violation of The Vehicle Code . . . Before the government may single out one automobile to stop, there must be specific facts justifying this intrusion." Commonwealth v. Whitmyer, 542 Pa. 545, 551-552, 668 A.2d 1113 (Pa., 1995), citing Commonwealth v. Swanger, 453 Pa. at 112, 307 A.2d at 878 (Pa., 1973). Under 75 Pa.C.S.A.

§ 3368(a), Speed timing devices, a police officer using a motor vehicle equipped with a speedometer may time the rate of speed of a vehicle. In doing so, the officer is required to time the speed for a distance of not less than three-tenths of a mile. Id. Here, the Commonwealth relies upon Officer Brown's assertion that he paced the Defendant's vehicle, finding that she was traveling at 52 mph. in a posted 35 mph speed zone as sufficient to establish a violation of the Motor Vehicle Code.

The Court finds that there is insufficient evidence presented to provide a foundation for the Officer Brown's claim that he paced the Defendant's vehicle for at least three-tenths of a mile. While the officer testified that he was following the Defendant's vehicle for a distance of approximately five-tenths of a mile, there was no information presented as to how closely he followed the Defendant's vehicle, whether he maintained the same distance between the Defendant's car and his own at any time while driving or, if he did maintain the same distance between the two vehicles, how far or for what length of time he maintained that distance to establish exactly what speed she was traveling at the time he was following her. Therefore, the Court finds that the officer lacked reasonable and articulable grounds for stopping the Defendant's vehicle.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of September, 2003, for the reasons set forth above, the Defendant's Motion to Suppress Evidence is GRANTED

and it is ORDERED and DIRECTED that all evidence seized as a result of the motor vehicle stop shall be suppressed.

By the Court,

\_\_\_\_\_ J.

xc: DA (WS)  
Mike Morrone, Esquire  
Court Scheduling  
Honorable Nancy L. Butts  
Gary Weber, Esquire  
Diane L. Turner, Esquire