

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 03-10,492

VS :

LARRY EUGENE YAW :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress Evidence following a stop of the Defendant on December 21, 2002. Defendant asserts that the troopers lacked the required grounds to stop him that evening. Counsel agreed to submit a transcript of the preliminary hearing as the relevant facts to be considered in deciding the issue. The following is a summary of the pertinent facts.

Trooper Derrick Pacella, of the Pennsylvania State Police testified that he was working in the early morning hours of December 21, 2002 with a partner, Trooper Scott Worthington. Notes of Testimony, March 26, 2003 at p.1 At about 1:00 am they were traveling north bound on the Route 15 bypass, just approaching the Foy Avenue Exit to Lycoming Creek Road. Worthington drew Pacella's attention to a cloud of dust and a gold Audi on the right side berm area of the roadway. Id. at p.2 Shortly thereafter, Pacella witnessed the vehicle cross the centerline three times within a one-mile distance. The vehicle would cross into the other northbound lane the distance of about one tire width, and remain in the other lane for approximately 25 to 50 yards, then return to its own lane of travel. Id. at p.6 Pacella also noted that there was another vehicle attempting to pass the Defendant's vehicle on the left side. Pacella could see that they too were observing the nature of the Defendant's driving. Pacella testified that when the police cruiser came alongside the other vehicle (but still behind the Defendant) a

passenger of the other vehicle pointed to the Defendant's vehicle and "she had a look like are you going to do something about this car, a concerned look on her face." Id. at p.2. Once the troopers came upon a safe location to request the Defendant pull over to the side, the troopers attempted a motor vehicle stop. As Pacella approached the vehicle from the passenger's side, he saw 2 beer cans on the passenger floor area. Id. at p.3 When asked by Worthington, Pacella heard the Defendant, identified as Larry Yaw, state that he had consumed no alcoholic beverages that evening. Once Yaw stepped out of the vehicle, Pacella believed that he detected alcohol on the Defendant's breath. After observing the Defendant perform field sobriety tests, he was placed under arrest for DUI. Trooper Worthington also testified at the preliminary hearing. Id. at pp. 16-37 Worthington stated he was Pacella's partner that evening and personally observed the Defendant's erratic driving. Worthington said that he first observed the Defendant's vehicle on the berm approaching the Foy Avenue entrance of Lycoming Creek Road. Id. at p.18 Worthington testified he saw the Defendant's vehicle in a cloud of dust and cinders move into the berm area, coming just short of the curb. As they entered onto Lycoming Creek Road, Worthington followed the Defendant who was traveling approximately 25 in a posted 35-mile hour speed zone for approximately one mile. Id. at p.26

The Pennsylvania legislature previously has vested police officers with authority to **stop** a vehicle when they have "articulable and reasonable grounds to suspect a violation of the Vehicle Code." [75 Pa.C.S. § 6308\(b\)](#). However, the legislature approved changes to the statutory language of [section 6308\(b\)](#) on September 30, 2003. The amended provision now reads as follows:

"(b) authority of police officer. -Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has a reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle. ."

[75 Pa. C.S.A. § 6308\(b\).](#)

The Court finds the facts of this case to be similar to those in Commonwealth v. Mickley, 846 A.2d 686, (PA Super 2004). In Mickley, the trooper observed the defendant operating her vehicle erratically over an approximately 7-mile stretch of well-traveled highway. She was weaving frequently within her lane of travel over a distance of 6 miles and in the last mile drove across the fog line onto the berm in response to oncoming traffic. Here, during the one-mile stretch of roadway in which he was followed, Troopers observed Defendant move into another lane of traffic, along with operating his vehicle at a speed 10 miles under the posted speed limit. Defendant's operation of his vehicle showed no regard for the any other vehicles on the roadway that evening as Defendant was not driving in an isolated or back roads area. Clearly by the description of the reaction of at least one of the occupants of the third vehicle on the road at that time, the manner of Defendant's driving was of some significant concern. Therefore, when viewing all of the evidence presented in this case, the Court finds that the troopers had reasonable suspicion to believe the Defendant was committing a violation of the Motor Vehicle Code. It is clear to this Court that the Defendant posed a hazard not only to himself but also the "other motoring public." The Court therefore denies Defendant's Motion to Suppress the evidence found as a result of the stop.

ORDER

AND NOW, this ____ day of June, 2004, upon consideration of Defendant's Motion to Suppress Evidence, it is ORDERED and DIRECTED that the Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

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