

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-11635
 : (1635 of 2004)
 vs. :
 :
 : CRIMINAL
 STEVEN J. COWHER, :
 Defendant :

ORDER

AND NOW, this ____ day of March 2005, the Court GRANTS the defendant's motion to suppress. Officer Moulthrop testified she stopped the defendant's vehicle because she believed he was driving in a careless manner in violation of 75 Pa.C.S.A. §3714. Section 3714 states: "Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense." The reckless driving statute is substantially similar to careless driving, the only difference being that the disregard for the safety of persons or property is willful or wanton instead of careless. The Pennsylvania Superior Court has held that merely squealing tires does not constitute reckless driving; however, squealing tires and fishtailing in congested traffic is sufficient evidence for reckless driving. See Commonwealth v. Deily, 236 Pa.Super. 105, 344 A.2d 595 (1975). Where, as here, the officer admitted the defendant did not fishtail and no person or vehicle was in the vicinity of the defendant when he squealed his tires, the Court finds merely squealing tires does not constitute careless driving.

The Commonwealth argues that the defendant did more than squeal his tires; he proceeded down West Southern Avenue at an excessive speed and braked hard enough to make the back end of his vehicle elevate. Although the Court believes Officer Moulthrop

testified truthfully and her allegation of careless driving was not a pretext to justify the stop once Officer Moulthrop received information that the defendant's registration was valid, the Court is not convinced that Officer Moulthrop's observations were sufficient to establish the defendant exceeded the 35 mile per hour speed limit or the defendant disregarded the safety of persons or property.

Officer Moulthrop admitted on cross examination that after the defendant squealed his tires as he turned left onto West Southern Avenue from Hill Street, she could only see him travel about 10 feet on West Southern Avenue before her view from Bald Eagle Alley was obstructed by a residence. Officer Moulthrop turned left onto Hill Street and then left onto West Southern Avenue. She stated she then saw the defendant brake near Merrick Brothers, approximately two-tenths of a mile away. She testified she didn't know at what speed the defendant was traveling, but in her estimation the defendant could not travel that distance if he was abiding by the speed limit. While Officer Moulthrop initially indicated traffic on West Southern Avenue was usually busy at 8:30 a.m. with people going to school and to work, it was revealed through cross-examination that this incident occurred on a Saturday morning. Although Officer Moulthrop had to wait for a vehicle to pass by to turn into the Bi-Lo parking lot and to turn onto West Southern from Hill, the defendant did not encounter any traffic until he caught up to a two or three vehicles traveling in the same direction near Merrick Brothers. Officer Moulthrop also stated she couldn't tell if he was tailgating the person in front of him. The defendant's "hard braking" was not mentioned in Officer Moulthrop's police report or the affidavit of probable cause. There also was no evidence presented that the "hard braking" left skid marks or caused the defendant's tires to squeal. Based on the record as a whole, the Court cannot conclude that the defendant

exceeded the speed limit or operated his vehicle in a manner that evidenced a disregard for the safety of persons or property.

By The Court,

Kenneth D. Brown, P.J.

cc: William Simmers, Esquire (ADA)
Michael Morrone, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)