

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

COMMONWEALTH	:	
	:	
v.	:	No.: 04-12,052
	:	
WILLIAM F. COYLE, III,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's Omnibus Pre-Trial Motion filed February 23, 2005. Defendant sets forth a Motion to Suppress Evidence and a Motion to Dismiss Count 2, Driving Under the Influence. The Motion was argued before the Court on March 30, 2005. The relevant facts are as follows.

On September 16, 2004, Officer Richard Shearer (Shearer) of the Hughesville Police Department heard via police radio that a red Dodge Daytona had been involved in a hit and run accident in South Williamsport. The radio indicated that the suspect vehicle could be identified by damage to the right side of the vehicle. Approximately 13 minutes after the alleged hit and run, Shearer observed a red Dodge Daytona in Hughesville. Shearer conducted a traffic stop of the vehicle and after inspecting the right side of the vehicle determined that it was not involved in the hit and run. While interacting with the driver however, Shearer detected an odor of alcohol and slurred speech from Defendant and conducted field sobriety tests. Satisfied that Defendant was under the influence of alcohol, Shearer arrested Defendant and transported him to Williamsport Hospital for a blood alcohol test. The test indicated a blood-alcohol concentration of .14%. Defendant now argues that

the stop was not supported by adequate probable cause or reasonable suspicion and therefore the evidence seized must be suppressed.

“The legislature 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.” *Commonwealth v. Battaglia*, 2002 Pa.Super. 209, 802 A.2d 652, 655 (2002); *citing* 75 Pa.C.S.A. § 6308(b). “[A] stop and frisk may be supported by a police radio bulletin only if evidence is offered at the suppression hearing establishing the articulable facts which support the reasonable suspicion. To hold otherwise would permit the government to bypass the protections of the Fourteenth Amendment and Article I, Section 8, of the Pennsylvania Constitution by always having a second police officer summoned for assistance for the purpose of making the inquiry of a suspect on the basis of an initial police officer’s suspicion.” *Commonwealth v. Queen*, 536 Pa. 315, 320, 639 A.2d 443, 445 (1994); *see also* *Commonwealth v. Jackson*, 548 Pa. 484, 698 A.2d 571 (1997) (The fact that an officer received his information over the police radio neither establishes nor negates the existence of reasonable suspicion.)

The danger contemplated by *Queen* is apparent in the instant case. The grounds on which Defendant’s stop was based consisted primarily of the make, model and color of Defendant’s car matching those of a hit and run suspect. The problem with the Commonwealth’s case is that Shearer had no knowledge of the hit and run accident but for the radio operator’s report. The articulable and reasonable grounds that led to the release of the radio report should have been at issue, not whether Shearer subjectively believed the report or was persuaded to act on it. There is no impropriety in Shearer relying on a police radio bulletin that was supported by adequate probable cause to make a vehicle stop.

However, Shearer is not the correct source of the articulable facts necessary for its foundation at a suppression hearing. Shearer had no basis for probable cause independent of the information transmitted to him via the radio bulletin. The Commonwealth did not sufficiently evidence the procurement of the original facts about the red Dodge Daytona or in support of their accuracy.

Defendant's second Motion argues that count 2 Driving Under the Influence should be dismissed. Defendant argues that 75 Pa.C.S.A. § 3802(b) is unconstitutional. Based on the Honorable Kenneth D. Brown's holding in *Commonwealth v. Aden J. Moyer* (04-10,867, 3/21/05) the Court disagrees and denies the motion.

ORDER

AND NOW, this ____ day of April, 2005, based on the foregoing Opinion, the Court hereby GRANTS Defendant's Motion to Suppress. It is ORDERED and DIRECTED that evidence obtained as a result of the vehicle stop of Defendant on September 16, 2004 be SUPPRESSED. The Court DENIES Defendant's Motion to Dismiss Count 2 – Driving Under the Influence of Alcohol.

By the Court,

Nancy L. Butts, Judge

xc: DA (RF)
P. Campana, Esquire

Eileen Dgien,
Deputy Court Administrator
Hon. Nancy L. Butts
Gary Weber, Esquire
Law Clerk