

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 v. : **No. 587-08**
 : **CRIMINAL**
 EDWARD L. KLEMENTOVICH, :
 Defendant :

OPINION AND ORDER

Before this Honorable Court is the Defendant’s Omnibus Pre-Trial Motion filed April 29, 2008. A hearing on the Motion was held on June 20, 2008.

Background

The following is a summary of the facts presented at the Preliminary Hearing on April 9, 2008 and the Suppression Hearing. On December 31, 2007, around 7:52 p.m., while monitoring traffic at 2687 Euclid Ave in Duboistown, Officer Eric Winters (“Winters”) of the Duboistown Borough Police Department, observed a vehicle accelerate very quickly causing both rear tires to lose complete traction as the vehicle crossed the intersection north on Valley St. Winters noted that the vehicles actions caused a large white cloud in the roadway. He also observed that traffic on Euclid Ave had to slow down because of the large white cloud. Winters noted that the roadway was wet as it had rained earlier that day.

Winters activated his emergency lights and in car camera, then proceeded to follow the vehicle. As Winters followed the vehicle, he observed it make a wide turn onto Arch Street and then cross the center line as it traveled toward Baker’s Cove, where the vehicle made a right hand turn and struck the curb before stopping. Winters then identified the vehicle as a blue

Chevrolet truck and the driver as Edward L. Klementovich (“Defendant”). Winters testified that Defendant told him that he and his girlfriend were having an argument and he was sorry for the “burnout.” Winters related that he pulled Defendant’s vehicle over as Defendant’s actions in squealing the tires caused a white cloud which was a hazard to other drivers. Winters also related at the time of the preliminary hearing that the squealing of tires is a noise violation under Chapter 121 § 121-2 of the Duboistown Local Ordinances. Defendant was charged with Vehicle Code Offenses of Driving Under the Influence, Careless Driving, Driving Vehicle at Safe Speed, as well as Crimes Code offenses of Disorderly Conduct, and Public Drunkenness.

Robert Kutz (“Kutz”), a mechanic at AAA Motors testified on behalf of Defendant. Kutz related that he has been a mechanic for twenty-two years, and that his duties involved road testing and inspecting vehicles. Kutz testified that the Defendant came to him and asked if he could make the tires on Defendant’s truck squeal. He explained that in order to squeal tires, you need one foot on the brake and one foot quickly pushing the gas pedal. Kutz claims he was unable to make the tires on Defendant’s truck squeal as the truck did not have enough horsepower. Kutz also testified that while he tried to squeal Defendant’s truck tires on wet and dry pavement, he did not try to do so at the intersection of Euclid Ave and Valley Street in Duboistown.

Lynn Bonner (“Bonner”) also testified on behalf of Defendant. Bonner related that he was the owner of Tire Masters for five years and worked as a maintenance/car repairman for twelve years. Bonner testified that he attempted to squeal the tires on Defendant’s truck on dry pavement and was unable to do so. Bonner also related that the Defendant’s truck did not have a big enough engine and too big of tires to squeal. Further, Bonner testified that he did not try to

squeal Defendant's tires on wet pavement and did not go to the intersection where Defendant allegedly squealed his truck's tires.

Defendant's girlfriend, Rose Potter ("Potter") testified that she was in the truck with Defendant on the night of December 31, 2007. Potter testified that she did not hear anything to indicate the Defendant tried to squeal the tires and he did not accelerate quickly. She also testified that she did not see a cloud of smoke. Potter related that she and the Defendant went to the Valley Inn for dinner and found out that they were not serving. She testified that they had a few drinks before leaving, but was not intoxicated. Finally, Potter testified that she and the Defendant were not arguing that night, but were discussing what to do next.

Next, Defendant's boss, Glen Luxenberger ("Luxenberger"), the general manager of A & M Steel Fabrication testified. Luxenberger related that he left the Valley Inn at the same time as the Defendant. Luxenberger testified that he was at the stop sign behind the Defendant. He related that the Defendant did not accelerate quickly, there was no squealing noise, and that he observed smoke, which was exhaust from the cold weather. Luxenberger also testified that he has worked on vehicles and that if the tires are squealed then the smoke will blow out the back, but if its exhaust, then it follows the vehicle, as exhaust is under the vehicle.

Finally, Defendant testified on his own behalf. Defendant alleged that he did not squeal his tires, that his vehicle is incapable of doing so, that he did not accelerate quickly, and it was the exhaust causing the white smoke. Defendant also related that he took his car to Kutz when it was warm, but that the pavement where his truck was tested is the same as the intersection at Euclid Ave and Valley Street. Defendant testified that he never told Winters he squealed his tires and never said he and Potter were arguing. Defendant also testified that he was at the Newberry Hotel having drinks with his boss, prior to going to the Valley Inn. Defendant related that he had

approximately six beers that evening between 4:00 p.m. and 7:52 p.m. when he was pulled over. Further, Defendant testified that he did not know how many drinks both his boss and Potter had.

Discussion

Defendant alleges that Winters had neither probable cause nor reasonable suspicion to justify stopping Defendant's vehicle. Specifically the Defendant claims that after Winters allegedly observed the Defendant squeal his tires, he proceeded to follow Defendant's vehicle and did not observe any unusual driving. In opposition, the Commonwealth argues that Winters had reasonable suspicion and/or probable cause that a violation of the Pennsylvania Motor Vehicle Code had occurred. Winters alleged he heard the Defendant squeal his tires and accelerate very quickly causing a large white cloud to form, creating a hazard for other drivers.

According to the Pennsylvania Supreme Court, "where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible." Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)). Police Officers are authorized to stop a vehicle whenever they have "reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred." Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) citing 75 P.S. § 6308(b).

At the Suppression hearing, the Defense relied on Commonwealth v. Davis in support of their position. In that case, the vehicle spun its tires and then accelerated at a high rate of speed. Commonwealth v. Davis, 2007 Pa. D. & C. Dec. LEXIS 312, p.2, aff'd without opinion, 938 A.2d 1111 (Pa Super. Ct. 2007). The Officer activated his emergency lights after the vehicle spun its tires, but prior to the vehicle accelerating at a high rate of speed. Id. The Common Pleas

Court of Bucks County, Pennsylvania, found that, “observing accelerating tires that cause a peel out was insufficient to justify the stop in question.” Id. at 8.

The Court finds Davis, supra, inapplicable. Here, Winters had reasonable suspicion that a violation of the Pennsylvania Motor Vehicle Code and a violation of the Duboistown Local Ordinance had occurred. In the present case, not only did Winters observe the Defendant’s vehicle accelerate quickly causing the tires to squeal, but he related that this “burnout” created a large white cloud on the roadway. Defendant’s actions created a hazard to other drivers, as Winters noted that other vehicles were forced to slow down because of the cloud, which was shown by the video taken by the police car that night. Therefore, the facts of this case are distinguishable from those in Davis. Further, the Court disagrees with Defendant’s argument that the cloud of smoke was merely exhaust. From observing the video taken from the police car, the cloud of smoke is larger and appears to have been behind the vehicle, whereas when the vehicle is parked the exhaust clouds appear to be smaller and hover around the vehicle before dissipating. Additionally, while Kutz and Bonner could not get the tires on Defendant’s vehicle to squeal, the Court finds their testimony unpersuasive as their tests were not conducted at the same intersection under the same conditions. Therefore, the Court finds that the Commonwealth has met its burden, as such the Defendant’s Motion to Suppress is denied.

ORDER

AND NOW, this ____day of June 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Omnibus Pre-Trial Motion to Suppress is DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (MK)
William J. Miele, Esq.
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)