

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH : CRIMINAL DIVISION
vs. :
 : NO. 1415-2008
 :
LAUREN L. DIMASSIMO, : Opinion and Order regarding
Defendant : Defendant's Motion to Suppress

OPINION AND ORDER

The Court heard testimony on the Defendant's Motion to Suppress on March 5, 2009. The issue raised in the Motion is whether the vehicle stop of the Defendant was lawful. The court will recap the factual testimony heard on March 5, 2009.

Officer Jason Bentley of the Montoursville police was on regular patrol duty on June 2, 2008. Around 11:30 p.m. he was behind a white Jeep Wrangler on Broad Street facing westbound. The Jeep made a right-hand turn from Broad Street onto Loyalsock Avenue. After the vehicle turned, the vehicle squealed its tires. The officer then followed the vehicle for approximately 2-1/2 blocks and then he made a vehicle stop on the white Jeep.

The officer approached the driver's door of the stopped vehicle and he asked the female driver to identify herself. The Defendant was the driver of the vehicle and produced identification. The officer asked the Defendant why she squealed her tires and she responded that she was being a jerk.

At this time the officer noticed an odor of alcohol about the Defendant and that her eyes were glassy and tired looking. The officer then ran information on the driver and the information came back that the Defendant's driver's license was suspended on a DUI-related matter.

The officer noticed that when he followed the Defendant for 2-1/2 blocks after her vehicle turned onto Loyalsock Avenue that the vehicle swerved in her own lane but did

not cross the centerline at any time. The officer described the squealing of the tires as taking a few seconds, and being more than just a chirp.

The officer testified that he stopped the vehicle based on a Montoursville borough ordinance known as the “Montoursville Conduct Ordinance.” The applicable post of the ordinance is found at §99-3 “offenses enumerated” subsection B, which states as follows:

B. Any person who willfully operates any motor vehicle within the Borough of Montoursville in such a manner as to cause the tires of his vehicle to squeal or causes or permits loud noises to issue from the muffler of the vehicle and thereby causes public inconvenience, annoyance, alarm or a risk thereof shall be guilty of disorderly conduct. The squealing of tires in emergency situations is expected.

As a result of the stop of the Defendant’s vehicle, Officer Bentley charged the Defendant with the offenses of Driving Under the Influence of Alcohol, 75 Pa.C.S.A. §3802(b)(1.1)(i); Driving Without a License, 75 Pa.C.S.A. §1501(a); and a violation of the Local Montoursville ordinance, 99-3B.

On cross-examination Officer Bentley acknowledged that the Defendant’s vehicle negotiated a right-hand turn properly and that the squealing of the tires occurred after the turn was made. The area in question on Broad Street where the turn was made is a commercial area, with stores, restaurants, a sub shop, a bank, and a Turkey Hill Mini Market. The stores and the bank were closed at the time. The Turkey Hill market and a bar were open. The speed limit was 25 mph. The Defendant was not speeding, and although the Defendant’s vehicle swerved in her own lane the officer did not feel this was a Vehicle Code violation. The roads were dry and it was warm. The officer felt that the rear tires of the Defendant’s vehicle caused the squealing sound.

The officer estimated the duration of the squealing sound to be about two seconds. No other car was in the area at the time.

The Court posed some questions to the officer and asked him what about the situation caused him to think that public inconvenience was disturbed and the officer stated that there was road construction in the area at the time and that a worker was in the area holding a sign. He described the worker as a flag person. The officer also pointed out that the borough ordinance included the concept of the risk of public inconvenience. The officer also noted that there were some residential apartments above some of the businesses on Broad Street.

While the officer did not characterize the Defendant's driving after making the turn onto Loyalsock Avenue as speeding he testified that he believed the Defendant's vehicle accelerated its speed after the turn causing the rear tires to squeal.

The defense presented two witnesses to testify at the suppression hearing: Elisa Gardner, who was the passenger in the Defendant's vehicle; and the Defendant, Lauren DiMassimo.

Elisa Gardner was the owner of the white Jeep. She testified the vehicle was a front wheel drive vehicle, not a rear wheel drive vehicle as thought by the officer. She noted that at times when she shifted gears on the vehicle, particularly when it was warm, a chirping sound was made by the vehicle. She denied the tires squealed and she described the chirping sound as not being noticeable and not being a loud sound. Ms. Gardner acknowledged that they had some alcoholic drinks at dinner. She did not drive her vehicle because she was not feeling well. She did not attribute the way she felt to intoxication.

The Defendant testified that she made an appropriate turn onto Loyalsock Avenue. As she shifted gears the vehicle made a screech or chirp sound for a second. She testified the sound was not loud. She described her speed as about 10 mph. The Defendant acknowledged on cross-examination that when she was asked by the officer why the tires squealed she answered that she was being a jerk. She explained this is a phrase she uses all the time.

The sole issue is whether Officer Bentley had a reasonable basis to affect a motor vehicle stop. He relies on the Montoursville Conduct Ordinance as the basis for the stop.

The facts presented by the Commonwealth establish that the officer, traveling behind the Defendant's vehicle, heard a sound or squeal apparently from the tires of the Defendant's vehicle. The sound lasted approximately two seconds. The statement made by the Defendant after the stop when asked why the tires squealed that she was just being a jerk could support the willful requirement of the Ordinance.

However, there is nothing in the record to show that this two second sound caused any public inconvenience, annoyance or alarm. There is no testimony as to how loud the sound was or how disturbing the sound was. The intersection where this occurred is in a commercial area with several establishments such as the Turkey Hill market and the bar open for business at the time. The only other possible violation of the Ordinance would be that the event in question created a risk of causing public inconvenience, annoyance or alarm. While the officer testified there was a flagman working on a construction project at the time and there were some apartments above some of the businesses on Broad Street, based on the record before us, we cannot see any particular risk of public inconvenience inherent in this situation. It does not

appear that a short squeal-type sound in a commercial area with ongoing construction created any real risk of public inconvenience.

While the Court found the officer to be an honest and straight-forward witness, it cannot say that there is an adequate basis to justify the stop of the Defendant's vehicle. Accordingly, the Court is constrained to grant the Defendant's Motion to Suppress the evidence derived from the stop of the Defendant's motor vehicle.

Accordingly, the following is entered:

ORDER

AND NOW, this _____ day of April 2009, the Court grants the Defendant's Motion to Suppress the evidence in this case.

By The Court,

Kenneth D. Brown,
President Judge

cc: Michael Morrone, Esquire
Melissa Kalas, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)