

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**SHANE GRAY,
Defendant**

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**No. 1794-2008
CRIMINAL**

OPINION AND ORDER

Defendant filed a Motion to Suppress on December 5, 2008. A hearing on the Motion was held on January 9, 2009.

Background

The following is a summary of the facts presented at the Suppression hearing. On August 28, 2008, Sergeant Brett Williams (Williams) of the Williamsport Bureau of Police and Chief William Solomon (Solomon) of the Old Lycoming Township Police Department were working DUI patrol at the intersection of Routes 405 and 220 in Wolf Township. Around 11:00 p.m, Williams and Solomon observed a red Ford Ranger pick-up going south then accelerate faster than normal as it turned right onto Route 220. Due to the quick acceleration, the Officers decided to follow the vehicle to see how the operator was driving. The Officers paced the vehicle for three-tenths of a mile going 70 mph, in a clearly and properly posted 55 mph zone, using the certified speedometer¹ on their vehicle. As the Officers followed the vehicle on Route 220, they observed it weaving in the lane from the center line to the fog line and cross the fog line. The Officers then followed the vehicle as it made a left turn onto Lime Bluff Road. They continued to observe the vehicle weaving in the lane as they followed it for about another mile. Near the

¹ The certificate of speedometer accuracy for the police cruiser is dated 7/29/08.

Hughesville Cemetery on Lime Bluff Road, the Officers stopped the vehicle and identified the driver as the Defendant, Shane Gray.

Discussion

The Defendant alleges that the Officers did not have probable cause to stop his vehicle. Specifically, the Defendant asserts that erratic driving is not sufficient for probable cause.

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). A police officer may time the rate of speed of any vehicle on any highway “using a motor vehicle equipped with a speedometer. In ascertaining the speed of a vehicle by the use of a speedometer, the speed shall be timed for a distance of not less than three-tenths of a mile.” 75 Pa.C.S. § 3368.

The Pennsylvania Superior Court in Commonwealth v. Butler, found that the Police officer had probable cause to stop the defendant’s vehicle for a motor vehicle code violation when the vehicle traveled at a high rate of speed, weaved in and out of traffic, and crossed the concrete median. 856 A.2d 131 (Pa. Super. 2004). See also Commonwealth v. Goldhaber, 81 Pa. D. & C. 4th 64 (Bedford Co., 2007) aff’d without opinion 959 A.2d 460 (Pa. Super. Ct. 2008) (held there was reasonable suspicion to stop when the vehicle crossed both the yellow line and

fog line twice each, drove in the wrong lane, followed another car too closely, narrowly avoided hitting parked cars, and was speeding).

The Court finds that the Officers had reasonable suspicion that a violation of the Motor Vehicle Code was occurring or had occurred. Both Williams and Solomon testified that they paced the vehicle, using a certified speedometer, for three-tenths of a mile going 70 mph, in a 55 mph zone. The Officers also testified they observed the vehicle weaving in the lane and cross the fog line. Further, the Court viewed the video taken by the police cruiser that night, which clearly shows the Defendant's vehicle accelerate quickly as it turned onto Route 220, travel at what appears to be a high rate of speed, and weave within the lane of travel. Since the Defendant's vehicle was exceeding the posted speed limit, weaving, and crossing the fog line, the Officers had reasonable suspicion to justify a stop. 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 January 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (PP)
Matthew J. Zeigler, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)