

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**STERLING KEPNER,
Defendant**

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**No. 2083-2008
CRIMINAL**

OPINION AND ORDER

Defendant, Sterling Kepner filed a Motion to Suppress on March 16, 2009. A hearing on the Motion was held on August 14, 2009.

Background

The following is a summary of the facts presented at the Suppression hearing. At around 2:14 a.m., on December 5, 2008, Patrolman Anthony Oeler (Oeler) of the Muncy Borough Police Department (Muncy PD) was sitting at the traffic light on East Water Street in Muncy when he observed a red Dodge extended cab pick-up making a right turn onto South Main Street. When the vehicle was making the turn, Oeler testified he scooted his vehicle up in the intersection so he could see the vehicle. Oeler related that as the vehicle made the turn he noticed one of the vehicle's tires cross over the double yellow line as it proceeded on South Main Street. Oeler activated his in-car camera¹ and followed the vehicle for about three blocks. While following the vehicle, Oeler observed it cross the double yellow line two additional times in the course of three blocks. Oeler was ready to activate his emergency lights when the vehicle made a left turn onto New Street and then accelerated. Oeler paced the vehicle for approximately 9.14 seconds and a

¹ Oeler related the tape from the in-car camera had static, was black, and therefore, unusable.

distance of 591.36 feet, with a Vascar unit² and determined it was traveling at 44 mph. At the time, Oeler mistakenly believed the speed limit on New Street was 25 mph; however, the speed limit was 35 mph. The vehicle proceeded on New Street for approximately one-half mile before it turned onto Clarkstown Road which is just outside of the Borough's jurisdiction, into the Pennsylvania State Police's jurisdiction. At that time, Oeler activated his emergency lights and proceeded to pull the vehicle over. Oeler related that while the vehicle was pulling over, it nearly struck the guide wire and guidepost before parking in front of them. Oeler explained that he pulled the vehicle over for crossing the center line three times and then for speeding. He testified that he would have pulled the vehicle over sooner for crossing the yellow lines, but waited to do so because the vehicle accelerated.

Discussion

The Defendant raises three arguments in his motion as to why the officer did not legally stop the vehicle and thus requires suppression of the evidence. First, the Defendant asserts the officer lacked reasonable suspicion that a violation of the vehicle code was occurring or had occurred based on his mistaken belief that the speed limit was 25 mph rather than 35 mph. Second, the Defendant alleges the method by which his speed was determined was insufficient. Finally, the Defendant asserts that the officer was out of his jurisdiction when he conducted the vehicle stop, thus could not lawfully conduct the stop. Defendant also asserts the officer did not have probable cause because he was out of his jurisdiction. The Commonwealth asserts in opposition that the officer had reasonable suspicion that a violation of the vehicle code was occurring when the Defendant crossed the double yellow line several times and was speeding.

² The certificate of accuracy for the Vascar unit is dated 8/15/08.

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 person violates the Pennsylvania Motor Vehicle Code Maximum Speed Limit law when he/she operates a vehicle at the speed in excess of the maximum speed limit. 75 Pa.C.S. § 3362. The Motor Vehicle Code states,

the rate of speed of any vehicle may be timed on any highway by a police officer using a mechanical or electrical speed timing device. . . . (3) Electronic devices which calculate speed by measuring elapsed time between measured road surface points by using two sensors and devices which measure and calculate the average speed of a vehicle between any two points may be used by any police officer.

75 Pa.C.S. § 3368(c)(1), (3).

However, “no person may be convicted upon evidence obtained through the use of devices authorized by paragraph (3) in an area where the legal speed limit is less than 55 miles per hour if the speed recorded is less than ten miles per hour in excess of the legal speed limit. . . .” 75 Pa.C.S. § 3368(c)(4).

Also according to the Statewide Municipal Police Jurisdiction Act,

[a]ny duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases:

. . .

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

42 Pa.C.S. § 8953(a).

Lastly, in Commonwealth v. Klopp, at around 2:00 a.m., while following the Defendant's vehicle for approximately 1.6 miles, two troopers observed the Defendant's vehicle cross the white fog line and double yellow line four times. 860 A.2d 1211, 1212 (Pa. Super. Ct. 2004). The Pennsylvania Superior Court held that the Troopers had reasonable suspicion to stop the Defendant's vehicle. Id. 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 officer had reasonable suspicion that a violation of the Motor Vehicle Code was occurring or had occurred. Oeler testified that he observed the vehicle cross the yellow line on at least three occasions over the course of three blocks. Oeler also related that he paced the vehicle using the Vascar unit, which is a statutorily approved method of determining speed. Further, although Oeler was mistaken as to the correct speed limit and thus, Defendant could not be convicted of speeding under Section § 3368(c)(4) of the Motor Vehicle Code, he was not mistaken that the Defendant was speeding and thus had reasonable suspicion that a violation of the vehicle code was occurring. Finally, although Oeler testified he was outside of the jurisdictional boundary, he was lawfully allowed to stop the Defendant's vehicle

because he was in pursuit of the Defendant and observed the violations while in his jurisdiction.³ Since the Defendant's vehicle was exceeding the posted speed limit and crossed the yellow line on at least three occasions, the officer had reasonable suspicion to justify a stop. Therefore, the Court finds that the Commonwealth has met its burden.

ORDER

AND NOW, this ____ day of September 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 (MK)
George E. Lepley, Jr., Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)

³ 42 Pa.C.S. § 8953(a)(2).