

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH	:	No. CR-516-2012
	:	
v.	:	
	:	
COLIN J. POPHAL,	:	Motion to Suppress
Defendant	:	

OPINION AND ORDER

Defendant is charged by Information filed on April 20, 2012 with two counts of driving under the influence of alcohol. The charges arose out of an incident which occurred on December 3, 2011 near the 1000 block of North Loyalsock Avenue.

At approximately 7:37 p.m., Officer Kurt Hockman was dispatched to the Walmart parking lot at 1015 North Loyalsock Avenue. While issuing a traffic citation, Officer Hockman heard a Dodge Charger SRI engine RPM's increase and tires squeal. As a result of what he heard, the Officer followed the vehicle to the 1000 block of North Loyalsock Avenue and issued a traffic stop.

According to Officer Hockman, there was nothing about the driving of the vehicle that indicated a violation of the Vehicle Code. It was the Officer's opinion, however, that the driver's conduct violated Title 99(3)(B) of the Borough of Montoursville Conduct Ordinance, which reads as follows:

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 risk thereof shall be guilty of disorderly conduct. The squealing of tires in emergency situations is excepted. 99 Montoursville Conduct Ordinance § (3)(B).

As a result of the stop, Officer Hockman obtained evidence sufficient to charge the Defendant with two counts of driving under the influence of alcohol.

Before trial, the Defendant filed a Motion to Suppress alleging that no probable cause existed for the Officer to believe a crime had occurred simply from hearing the tires, no probable cause existed to effectuate a traffic stop as there was nothing unlawful about the manner in which the Defendant operated his vehicle, and no probable cause existed to believe that the Defendant's vehicle was responsible for the squealing tires. Omnibus Pretrial Motion, 5/23/2012, p. 1. As a result of the lack of probable cause, the Defendant submits that the traffic stop was unconstitutional. Omnibus Pretrial Motion, 5/23/2012, p. 2. Accordingly, a hearing was scheduled and heard by the Court on June 13, 2012.

In addition to the testimony of Officer Kurt Hockman, the Commonwealth introduced into evidence video surveillance from Officer Hockman's car during the relevant time period, testimony from assisting Officers, and a copy of Title 99(3)(B) of the Borough of Montoursville Conduct Ordinance.

In the recent years, the applicable standard for traffic stops has evolved. In order to make a constitutional vehicle stop for a violation of the Motor Vehicle Code, an Officer must have probable cause. Commonwealth v. Feczko, 10

A.3d 1285, 1291 (Pa. Super. Ct. 2010)(citing Commonwealth v. Chase, 960 A.2d 108, 115-16 (Pa. 2008)).

A vehicle stop based solely on offenses not “investigatable” cannot be justified by mere reasonable suspicion, because the purposes of a *Terry* stop do not exist- maintaining the status quo while investigating is inapplicable where there is nothing further to investigate....

Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, “it is incumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, *which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code.*”

Id.(emphasis added)

The violation of Title 99(3)(B) of the Borough of Montoursville Conduct Ordinance is non-investigatory traffic stop because once an officer pulls over a driver for said violation, there is nothing remaining to investigate. In order for the Defendant’s traffic stop to be valid, there must be evidence of probable cause.

Probable cause exists where “the facts and circumstances within the officer’s knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it.” Commonwealth v. Griffin, 2011 Pa. Super. Ct. 138)(citing Commonwealth v. Stewart, 740 A.2d 712, 715 (Pa. Super. Ct. 1999)). In determining whether probable cause exists, the Court must consider the totality of the circumstances as they appeared to the arresting officer. Id.

The Court finds that probable cause existed to issue a traffic stop in Defendant's case. Officer Hockman testified that he ordered a traffic stop because he witnessed the Defendant's tires squealing. The Officer was issuing a traffic citation in the Walmart parking lot at 1015 North Loyalsock Avenue. He testified that while out of his vehicle, the Officer heard a vehicle's engine RPM's increase and tires squeal. The Officer looked towards where the sound was emanating and saw a Dodge Charger. No other vehicles were moving in the area. The squealing lasted for approximately two to three seconds. Officer Hockman's observations gave rise to a suspected violation of the Title 99(B)(3) of the Borough of Montoursville Conduct Ordinance.

Officer Hockman was able to articulate specific facts possessed by him, at the time of the questioned stop, which provided probable cause to believe that the Defendant was in violation of Title 99(B)(3). The Court viewed a video recording from Officer Hockman's patrol car, which confirmed that the Dodge Charger's tires squealed. According to the Ordinance, a violation occurs when a driver merely creates a risk of public inconvenience, annoyance, or alarm. Officer Hockman testified that the parking lot was busy with people. Given that this incident occurred in the parking lot of a shopping area, a risk of public inconvenience, annoyance, or alarm is likely.

Officer Hockman testified that he followed the Defendant's vehicle because he suspected that the Defendant had violated the Conduct Ordinance. Once the traffic stop was executed, the Officer explained to the Defendant why his car was stopped. Then, the Officer asked the Defendant why his tires had been

squealing. There was no evidence of an emergency. It was not until after the Officer explained who he was and why the Defendant was being pulled over that the Officer noticed signs of intoxication.

The Court concludes that there was a sufficient legal basis for Officer Hockman to stop the Defendant's vehicle. Accordingly the following order is entered:

ORDER

AND NOW, this ____ day of July, 2012, following a hearing and argument, the Court DENIES the Defendant's Motion to Suppress.

By the Court,

Judge Marc F. Lovecchio

cc: Aaron Biichle, Esquire (ADA)
George Lepley, Esquire
Angeline Allen, Intern for Judge Lovecchio
Gary Weber, Esquire (Lycoming Reporter)
Work File