

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**JUSTIN ROSATO,
Defendant**

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**CR: 635-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on August 28, 2012. A hearing on the motion was held September 17, 2012.

Background

On October 16, 2011 around 2:20 AM, Lieutenant Brett Williams (Williams) of the Williamsport Bureau of Police (WBP) was traveling west on East Fourth Street when he saw a dark blue Audi on the 300 block of Market Street with no headlights. Williams turned his marked police vehicle off of West Fourth Street and began following the Audi, which had now placed its headlights on. Williams followed the vehicle while it traveled north on Market Street and observed it turn onto Packer Street. The vehicle proceeded to drive in the middle of a two way road and was positioned so that it was in the oncoming traffic lane. A video taken from Williams's patrol car showed that the vehicle was in the improper lane for approximately thirteen (13) seconds. The vehicle then turned east onto Washington Boulevard and while doing so took a wide turn and crossed over the center yellow line. As the vehicle continued down Washington Boulevard it was driving on the center yellow line and at least once crossed over the line into the opposite lane. The vehicle then turned north on Franklin Street and once again made a wide turn. At this point Williams activated his emergency lights and the vehicle continued north on

Franklin Street, turned east on Hughes Street, and turned into the parking lot of the Fitness Factory. The vehicle failed to park within the lines of the parking stall.

Once the vehicle made a complete stop, the operator of the vehicle, Justin Rosato (Defendant), stepped out of the vehicle. Williams instructed the Defendant to return to his vehicle, which he did. When Williams requested a driver's license, registration, and insurance card from the Defendant he noticed a strong odor of alcohol, glossy and blood shot eyes, and that his movements were slow and methodical. The Defendant indicated he had one beer prior to driving. Williams then asked the Defendant to step out of the vehicle to perform field sobriety tests. The Defendant first was instructed to do the walk and turn test and during the instruction had difficulty keeping his balance. During the test itself the Defendant did not properly walk heel to toe on three (3) separate occasions, took too many steps, wobbled twice (2), did not properly make the turn, and at the end lost balance and did a hop/jump. The Defendant also did not count out his steps as he was instructed to do so. On the one leg stand test the Defendant swayed severely twice (2), used his arms to balance, placed his foot down, did not last the full thirty (30) seconds, and hopped three (3) times until he ran into the side of his vehicle. Subsequently, the Defendant was charged with Driving Under the Influence of Alcohol, a misdemeanor of the first degree, and the summary offenses of Periods for Required Headlamps and Driving on Right Side of Roadway.

Motion to Suppress

The Defendant contends that the stop of his vehicle was improperly conducted. In addition, the Defendant states that there was no probable cause to arrest him for DUI. The reasonable suspicion standard applies when a police officer is investigating a potential Motor Vehicle Code Violation but needs additional evidence to make an arrest under the probable cause

standard. Reasonable suspicion is decided by the court after a review of the totality of the circumstances and a finding that the facts support a reasonable belief that the law is being broken. Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007). “In making this determination, we must give ‘due weight . . . to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Id. (citing Commonwealth v. Cook, 735 A.2d 673, 76 (Pa. 1999)). To establish reasonable suspicion the officer must be able to articulate specific observations that led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Commonwealth v. Little, 903 A.2d 1269, 1272 (Pa. Super. 2006).

Williams has over twenty-one years of experience with the WBP and over each of the last five (5) years has had about twenty (20) DUI arrests. Williams observed the vehicle make two violations of the Motor Vehicle Code including Periods for Required Headlamps and Driving on Right Side of Roadway. Even though the vehicle was driving on a road without lines, the Defendant was blatantly in the oncoming lane of the road for an extended period of time and would not have given an oncoming vehicle enough room to pass. It was not merely a swerve but a continuous obstruction into the oncoming lane. Further, Williams observed the vehicle make two (2) wide turns and regularly drive on the center yellow line.¹ Based upon the following observation by Williams and his experience with the WBP, the Court finds that he had reasonable suspicion to believe a DUI was being committed to conduct an investigatory stop on the Defendant.

¹ Commonwealth v. Angel, 946 A.2d 115 (Pa. Super. 2008) (determining that reasonable suspicion existed with a vehicle crossed a fog line twice and failed to use a turn signal); Commonwealth v. Hughes, 908 A.2d 924 (Pa. Super. 2006) (finding reasonable suspicion for a DUI when the vehicle swerved out of his lane three times); Commonwealth v. Sands, 887 A.2d 261 (Pa. Super. 2005) (determining that a vehicle crossing the fog line three times supports reasonable suspicion for DUI); Commonwealth v. Bailey, 947 A.2d 808 (Pa. Super. 2008) (establishing reasonable suspicion when a vehicle merely has a loud exhaust that may indicate a problem with a muffler).

As Williams had reasonable suspicion to pull the Defendant's vehicle over, the Court will now determine if Williams had probable cause to arrest the Defendant. "Probable cause exists where the officer has knowledge of sufficient facts and circumstances to warrant a prudent person to believe that the driver has been driving under the influence of alcohol or a controlled substance." Commonwealth v. Hilliar, 943 A.2d 984, 994 (Pa. Super. 2008). The court determines probable cause by considering all the relevant facts under a totality of the circumstances analysis. Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007). "A police officer may utilize both his experience and personal observations to render an opinion as to whether a person is intoxicated." Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008). "Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference." Commonwealth v. Cook, 865 A.2d 869, 875 (Pa. Super. 2004) (citing Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004)).

The Court finds that under the totality of the circumstances there was probable cause for Williams to arrest the Defendant for an alleged DUI. "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving" 75 Pa.C.S. § 3802(a)(1). First, the Defendant showed signs of impairment by his driving, which resulted in reasonable suspicion and the vehicle stop. Moreover, the Defendant clearly failed his field sobriety tests as stated by Williams and shown by the patrol vehicle's video recording. During the walk and turn test the Defendant did not properly walk heel to toe on three (3) separate occasions, took too many steps, wobbled twice (2), did not properly make the turn, and at the end lost balance and did a hop/jump. During the one leg stand the Defendant swayed severely twice

(2), used his arms to balance, placed his foot down, did not last the full thirty (30) seconds, and hopped three (3) times until he ran into the side of his vehicle. In addition, the Defendant had strong odor of alcohol, glossy and blood shot eyes, and his movements were slow and methodical. The Defendant argues that his pant legs may have cause him to trip because they were too long, however, there was no indication in the video of the Defendant attempting to fix his pant legs or them appearing to cause him to make any inadvertent movements. In reviewing the totality of the circumstances, this Court finds that Williams had probable cause to arrest the Defendant.

ORDER

AND NOW, this _____ day of October, 2012, based upon the foregoing Opinion, the Court finds that the Williamsport Bureau of Police had reasonable suspicion of a DUI to stop the Defendant's vehicle and probable cause to arrest him. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (MW)
James Protasio, Esq.
George Lepley, Esq.
Eileen Dgien, Dep. CA
Gary Weber