

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**JASON BEAMER,
Defendant**

:
:
:
:
:
:
:

**CR: 854-2013
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on July 31, 2013. A hearing on the motion was held on September 18, 2013.

Background

On April 4, 2013 at 6:39 PM, Corporal Morris Sponhouse (Sponhouse) of the Old Lycoming Township Police Department was dispatched to the area of 2400 Northway Road Ext for a motor vehicle accident. Approximately five (5) minutes later, Sponhouse arrived at the scene and observed two individuals standing next to an operable but damaged motorcycle on the side of the road. The driver and passenger of the motorcycle stated that they were following a white dump truck and as they started to pass the truck in a passing zone they were cut off. The driver and passenger stated that the dump truck did not have working taillights or use a turn signal when it then turned onto a driveway at 2400 Northway Road Ext. The passenger from the motorcycle pointed to the dump truck, which was visible from the road, and stated that a white male exited the truck, did not respond to requests to come to the location of the motorcycle, and walked behind a house next to the driveway. While Sponhouse talked to the driver and passenger a white female from the house walked to the location of the motorcycle and indicated that she wanted to talk. Sponhouse told her he would talk to her after he finished with the motorcycle occupants but she walked away.

Sponhouse parked his unmarked vehicle halfway down the driveway and walked towards the end of the driveway where the dump truck was located. The driveway extended past both the back of the house and the attached porch. Based on a drawing that Sponhouse drew during his testimony, he never went beyond the area of the driveway or the side of the house/porch. Once Sponhouse got near the dump truck on the driveway he saw Jason Beamer (Defendant) grilling chicken under the porch. Specifically, the Defendant was located on a concrete slab that had a roof above it. The roof did not have enclosed walls and was open to the outside other than the section that connected to the house.

Sponhouse asked the Defendant what happened while he was standing on the driveway and the Defendant stated that the motorcycle must have lost control while he turned into the driveway. After informing the Defendant that the driver and passenger of the motorcycle said the dump truck did not have working taillights or use a turn signal, the Defendant agreed to have the lights of his truck checked. None of the Defendant's lights worked except for one on the front passenger side of the dump truck.

While the Defendant walked to the dump truck to check the truck's lights, Sponhouse observed that the Defendant did not have proper balance. While continuing to communicate with the Defendant about the vehicle's lights he further noticed that the Defendant had slurred speech, red eyes, and that he smelled of alcohol. The Defendant agreed to conduct field sobriety exercises on the driveway. As a result, the Defendant was charged with one count of Driving Under Influence of Alcohol or Controlled Substance.

Motion to Suppress

The Defendant argues that Sponhouse had entered the curtilage of his property without first obtaining a warrant, in violation of Article 1 Section 8 of the Pennsylvania Constitution and

under the Fourth Amendment of the United States Constitution. Typically, warrantless searches and seizures in a private home violate the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. These Constitutional protections extend to the curtilage of a person's home as long as the individual has a reasonable expectation of privacy that society is prepared to accept. Commonwealth v. Fickes, 969 A.2d 1251, 1256 (Pa. Super. 2009). Both parties each argue a case that they believe is on point and should be controlling in this case.

The Defendant cites to Lee, where a witness heard a loud crash, observed a pickup truck speed away, and saw damage to her property. Commonwealth v. Lee, 972 A.2d 1 (Pa. Super. 2009). Police responded to the scene five (5) to ten (10) minutes later and followed a trail of antifreeze fluid to the front of the defendant's home. An officer walked down the defendant's driveway and when he got to the end observed a pickup truck behind the house. The officer continued to the back of the house in order to look for damage on the vehicle. The defendant's wife approached the officer and agreed to get the defendant, who she stated had just been driving the pickup truck. After the officer talked to the defendant it was suspected that he had been driving intoxicated. The Superior Court of Pennsylvania found that the area behind the defendant's home, where the pickup truck was located, was within the curtilage area surrounding the private home and entitled to the protection of the Fourth Amendment. Id. at ¶ 7, n.2. As a result the Superior Court suppressed all evidence seized from the illegal entry.

The Commonwealth, however, argues that Simmen is more on point with the facts of this case. Commonwealth v. Simmen, 58 A.3d 811 (Pa. Super. 2012). In Simmen, a witness heard a loud crash, saw a vehicle in her yard that left the scene, and saw damage to her property. An officer arrived at the witnesses' home less than five (5) minutes later and followed a trail of

motor fluid to the defendant's house. The officer observed the suspected vehicle from the street. The officer knocked on the door and requested the defendant's wife to talk to him outside of the house. The defendant's wife gave the officer permission to enter the house and talk to the defendant.

The defendant argued that the officer unlawfully entered his property by walking up his driveway without a warrant. The Pennsylvania Superior Court found that the driveway was not curtilage by agreeing with the trial court's rationale:

Based on the description of the driveway, and the location of the car on it, there was no evidence presented at the time of the suppression hearing to support an assertion that there was any expectation of privacy in the area. The driveway was in the front of the house, leading from the street to the garage contained within the actual residence. The car was parked in plain view of the street on the driveway, within twenty (20) feet of the road. There was no evidence of signs warning against trespass on the driveway or that the driveway was gated or fenced or shielded from the view of the street in any way. In fact, it appears from the description of the house that access to the front door of the residence was made via the driveway. These facts certainly suggest that there could be no reasonable expectation of privacy in the area of the driveway.

The Superior Court further stated that the driveway was accessible to the general public and that the officer viewed the vehicle from a lawful vantage point when he walked up the driveway. The Superior Court distinguished Lee because there the vehicle was found behind the house and that officers went behind the house in order to determine if there was damage.

Here, the dump truck that was in question was visible not only from the road but also from the location of the vehicle accident. Sponhouse testified that he did not see a fence or any signs warning against trespass. The driveway led from the road to the side of the Defendant's house. Based on Sponhouse's testimony, he never went beyond the side of the house/porch or the outside of the driveway prior to the Defendant's consent to check the lights on the truck. Unlike Lee, Sponhouse did not leave the driveway. Therefore, based on the characteristics of the

driveway, this Court finds that the Defendant did not have a reasonable expectation of privacy to the driveway and that Sponhouse was permitted to enter the driveway to investigate.

In the course of investigating the dump truck and while being on the driveway, Sponhouse observed the Defendant grilling chicken on an open porch and began talking to him. As discussed above, Sponhouse was in a location this Court finds that he was permitted to occupy to investigate the motor accident as the Defendant did not have a reasonable expectation of privacy on his driveway. The Court equates this situation to one where an individual talks to an officer at the doorway of their house while the officer remains outside. Sponhouse, while not on the curtilage, merely asks the Defendant questions regarding the motor vehicle and does not conduct a search and seizure. The Court does not believe that police violated the Defendant's Fourth Amendment rights with its conduct that evening and therefore will deny the Defendant's Motion to Suppress.

ORDER

AND NOW, this _____ day of October, 2013, based upon the foregoing Opinion, the Court finds that the Defendant did not have a reasonable expectation of privacy on his driveway. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Peter Campana, Esq.