

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1875-2012  
:   
vs. : CRIMINAL DIVISION  
:   
:   
MICHAEL KENDZIOREK, :   
Defendant :

**OPINION AND ORDER**

This matter came before the court on March 5, 2013 for a hearing on Defendant's Omnibus Pretrial motion, which seeks suppression of any and all evidence obtained as a result of the traffic stop on August 31, 2012, because the stop was allegedly conducted in violation of Defendant's constitutional rights. The relevant facts follow.

On August 31, 2012 at approximately 10:25 p.m., Corporal Derron Farber, who was in an unmarked vehicle, was travelling on Slacks Run Road on his way home at the conclusion of his shift. He saw taillights about one-half of a mile in front of him. Corporal Farber increased his speed and closed the gap with the vehicle; it was as if the other vehicle was stopped or moving very slowly. When Corporal Farber was about two-tenths of a mile from the vehicle, he noticed that it was clearly on the opposing side of the road and then it proceeded at a sharp angle across the road to get in the correct lane. It was almost as if the vehicle had pulled over and stopped on the wrong side of the road before returning to the correct lane.

Corporal Farber pulled up within three car lengths of the vehicle and followed it. Within a short period of time the driver's side tires of the vehicle twice crossed the double yellow line by six to twelve inches as it negotiated curves in the road. Due to the steep grade

of the roadway, however, Corporal Farber followed the vehicle for one-quarter to one-half of a mile before stopping it at the top of the hill. The driver of the vehicle was identified from his Michigan driver's license as Defendant Michael Kendziorek.

As a result of the traffic stop, Defendant was charged with driving under the influence of alcohol (DUI), an ungraded misdemeanor, and the summary traffic offenses of driving on roadways laned for traffic and careless driving.

On February 5, 2013, Defendant filed an omnibus pretrial motion, seeking suppression of any and all evidence obtained as a result of the traffic stop, because Corporal Farber allegedly lacked sufficient probable cause to effectuate the stop.

The court must first determine if probable cause or reasonable suspicion is the appropriate standard for determining the lawfulness of the stop in this case. As the Pennsylvania Supreme Court explained in Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108 (2008):

Extensive case law supports the conclusion a vehicle stop for DUI may be based on reasonable suspicion, as a post-stop investigation is normally feasible. However, a vehicle stop based solely on offenses not 'investigatable' cannot be justified by a 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. An officer must have probable cause to make a constitutional vehicle stop for such offenses.

960 A.2d at 116. Corporal Farber stopped Defendant's vehicle because he suspected that Defendant may have been driving under the influence of alcohol. Therefore, the appropriate standard is reasonable suspicion, not probable cause.

“To establish reasonable suspicion, the officer must articulate specific observations which, in conjunction with reasonable inferences derived from those

observations, 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. Caban, 60 A.3d 120 (Pa. Super. 2012)(citations omitted). The reasonable suspicion standard is less stringent than probable cause. Commonwealth v. Rogers, 578 Pa. 127, 849 A.2d 1185, 1189 (2004). In determining whether reasonable suspicion exists, the court must give due consideration to the reasonable inferences a police officer is entitled to draw from the facts in light of his experience. Id. The court is not limited to considering only those facts that clearly indicate criminal conduct, because even innocent facts when taken together may warrant a police officer investigating further. Id., citing Commonwealth v. Cook, 558 Pa. 50, 735 A.2d 673, 676 (1999).

The court finds that Corporal Farber had reasonable suspicion to believe Defendant was driving under the influence of alcohol. As Corporal Farber was catching up to Defendant’s vehicle, he realized that it was either stopped or driving very slowly on the wrong side of the road. The vehicle then traveled at a sharp angle to re-enter the correct lane. Corporal Farber also observed Defendant’s vehicle cross the double yellow line on two occasions such that the driver’s side tires were six to twelve inches into the opposing lane of travel. Given Defendant’s erratic driving, it was perfectly reasonable for Corporal Farber to suspect that Defendant may be under the influence of alcohol and to stop his vehicle to investigate the cause of Defendant’s erratic driving.

Accordingly, the following Order is entered:

**ORDER**

AND NOW, this \_\_\_ day of March 2013, the court DENIES Defendant’s

omnibus pretrial motion seeking suppression of any and all evidence obtained as a result of the stop of Defendant's vehicle.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Cuica, Esquire (ADA)  
George Lepley, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)