

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-958-2013
	:
vs.	: CRIMINAL DIVISION
	:
KRISTOPHER A. WRIGHT,	: Opinion and Order re
Defendant	: Defendant's Motion to Suppress
	:
	<u>OPINION AND ORDER</u>

This matter came before the Court on September 18, 2013 for a hearing and argument on Defendant's motion to suppress which was filed on July 19, 2013.

Defendant is charged with driving after imbibing a sufficient amount of alcohol such that he was incapable of safe driving (DUI-incapable of safe driving), false identification to law enforcement, and the summary traffic offenses of required financial responsibility, driving under suspension-DUI related, and careless driving, all arising out of a traffic stop that occurred on March 30, 2013.

At the suppression hearing, the Commonwealth presented testimony from Officer Jordan Mahosky of the Tiadaghton Valley Regional Police Department and a video recording from the dashboard camera of his patrol vehicle.

Officer Mahosky testified that at approximately 1:48 a.m. he stopped a red Dodge truck being driven by Defendant Kristopher Wright. He first observed the truck as it was traveling west on Allegheny Street in Jersey Shore. From a distance of about 1000 feet away, Officer Mahosky testified that he saw the truck swerve across the centerline twice as it traveled up Allegheny Street. He turned on the dashboard camera in his vehicle and followed the truck on Allegheny Street until it turned left into the Minit-Mart.

Officer Mahosky traveled past the Minit-Mart, turned right down a side street,

and positioned his vehicle on Fountain Street in an area across the street and about 100 feet east of the Minit-Mart. He turned off his headlights and dashboard camera. He testified that he saw Defendant walk around the front of his truck, stagger a bit and enter the store. After purchasing something inside the store, Defendant came back out and sat in his truck for about five minutes, turning his lights on and off at least 10 times. When Defendant went to leave the Minit-Mart parking lot, he backed up only a foot or two. There was not enough room when he tried to go forward and he made contact with the blue concrete stop of a handicap parking spot. As he exited the parking lot, he drove half on the exit ramp and half on the curb.¹ As Defendant drove back down Allegheny Street, Officer Mahosky turned on his headlights and dashboard camera, pulled out from Fountain Street onto Allegheny Street and again followed Defendant's truck.

Defendant then made a right wide turn from Allegheny Street onto Main Street such that the left tires of his truck were a foot to a foot and a half over the white line that separated his lane of travel from the left turn lane. Officer Mahosky testified that the truck was swerving within its lane before it made another wide, right turn onto Locust Street. After traveling several blocks up Locust Street, Defendant turned left onto Oliver Street and began to pull over to park. At this point Officer Mahosky activated his overhead lights to initiate the traffic stop.

When a defendant files a motion to suppress challenging the constitutionality

¹ None of Defendant's activity in the Minit-Mart parking lot was captured on the video, because Officer Mahosky turned off the camera. Even if he had left the camera on, however, it would not have captured Defendant's activity in the parking lot because it was dark outside and Officer Mahosky was not directly across the street from the Minit-Mart, but at least 100 feet away to the east.

of the stop of his vehicle, the Commonwealth bears the burden of proof to show that the defendant's rights were not violated. Pa.R.Cr.P. 581(H); Commonwealth v. Graham, 554 Pa. 472, 721 A.2d 1075, 1077(1998); Commonwealth v. Enimpah, 62 A.3d 1028, 1031-1032 (Pa. Super. 2013).

If a police officer is making a traffic stop for an offense where he has a reasonable expectation of learning additional evidence related to the suspected criminal activity, the stop needs to be supported by reasonable suspicion. A vehicle stop solely on offenses not "investigatable," however, must be supported by probable cause.

Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108, 115-16 (2008); Commonwealth v. Feczko, 10 A.3d 1285, 1290-91 (Pa. Super. 2010). Here, the basis for the traffic stop was Officer Mahosky's belief that Defendant could be driving under the influence of alcohol; therefore, a reasonable suspicion standard applies.

In order to establish reasonable suspicion, the officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts that lead the officer to believe that criminal activity is afoot. Commonwealth v. Cook, 558 Pa. 50, 735 A.2d 673, 677 (1999) "Merely because a suspect's activity may be consistent with innocent behavior does not alone make detention and limited investigation illegal." Commonwealth v. Riley, 715 A.2d 1131, 1135 (Pa. Super. 1998)(citation omitted). "[A] combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve a reasonable suspicion." Id.

Although the Court questions whether Officer Mahosky could clearly see Defendant's truck cross the centerline before he turned on his dashboard camera in light of

his testimony that he was 1000 feet behind Defendant's truck and the depiction on the first clip from his dashboard camera where Defendant's truck is little more than a pair of tail lights off in the distance, Officer Mahosky's testimony about Defendant's activities in the Minit Mart parking lot as well as the driving depicted on the third clip from his dashboard camera establish that Officer Mahosky had a reasonable suspicion that Defendant was driving under the influence of alcohol.

As Defendant's truck approached the traffic light at the intersection of Allegheny Street and Main Street, Defendant clearly made a wide turn such that the left tires of the truck crossed the white line that separated the left turn lane from the lane for traffic traveling straight or turning right. As the truck travels on Allegheny Street and on Main Street, Defendant allows the truck to drift to the edge of the centerline and then he brings it back so that it is more centered in its lane of travel. This occurs several times. While this drifting or weaving is not particularly egregious, it still supports Officer Mahosky's suspicions. Furthermore, Officer Mahosky testified that Defendant stumbled as he walked around the front of his truck to enter the store, and he ran over a portion of a handicapped curb stop and part of the curb when he exited the Minit Mart parking lot. Therefore, the Court finds that Officer Mahosky had reasonable suspicion to stop Defendant's vehicle to investigate whether Defendant was driving under the influence of alcohol.

Accordingly, the following order is entered:

ORDER

AND NOW, this ____ day of October 2013, the Court DENIES Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Ronald Travis, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file