

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**TINA KAUFMAN,
Defendant**

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**CR: 482-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on September 24, 2012. A hearing on the motion was originally scheduled for December 3, 2012, however, a Commonwealth witness failed to attend. As a result, the Court denied the Commonwealth's request for a continuance at the time of the hearing, which was reversed on appeal by the Superior Court of Pennsylvania. A hearing on the Motion was then scheduled for December 3, 2013, which was again continued by the Commonwealth to December 30, 2013 due to witness availability.

Background

On December 11, 2011 around 2:13 AM, Chief Jeffrey Gyurina (Gyurina) of the Montoursville Police Department was driving in a marked police vehicle east bound on Route 180 when he observed a red Ford Taurus. Gyurina testified that he saw the vehicle veer into the adjoining lane twice and go over the fog line three (3) times. The parties submitted the in-car tape from the police vehicle, which the parties agreed for the Court to review in preparation of this decision. The Court reviewed the tape and observed the Ford Taurus cross the fog line twice and swerve into the adjoining lane on four (4) occasions. In addition, the vehicle continuously swerved profoundly from each side of the lane.

Gyurina engaged his emergency lights and pulled the vehicle over based upon reasonable suspicion of Driving Under the Influence of Alcohol and probable cause of Careless Driving.

While getting the identification of the driver, Tina Kaufman (Defendant), Gyruina noticed that her eyes were red and glossy. Further, the Defendant had slowed speech and had the odor of alcohol emanating from her person. When asked if she had been drinking, the Defendant had said she had a couple.

The Defendant was giving a preliminary breath test, which indicated positive for alcohol consumption. The Defendant agreed to field sobriety tests, which were completed unsatisfactory according to Gyurina. The Defendant was instructed the “finger to nose” test and missed the tip of her finger to her nose on all attempts. The Defendant also put her foot down four (4) times on the “one leg stand” test before being instructed to stop. Finally, on the “walk and turn” test the Defendant did not hold her position during instruction, did not walk in a straight line, took ten (10) steps initially, and missed heel to toe on multiple occasions. The Court also observed the field sobriety tests taped on the in-car camera and agrees with the observations of Gyurina.

The Defendant was charged with one count of Driving Under Influence of Alcohol (2nd),¹ one count of Driving Under the Influence with Highest Rate of Alcohol (2nd),² and one count of Careless Driving.³ The Defendant argues that police did not have reasonable suspicion to believe the Defendant was committing a DUI or probable cause to believe the Defendant had committed a Careless Driving offense to initially pull her vehicle over. Further, even if the vehicle stop was legal, the Defendant argues that police did not have probable cause to arrest her and take her to the DUI center to get her blood drawn.

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(c).

³ 75 Pa.C.S. § 3714(a).

Motion to Suppress

The Defendant contends that the stop of her vehicle was improperly conducted. In addition, the Defendant states that there was no probable cause to arrest her 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).

Gyurina has over fifteen (15) years of experience with the Montoursville Police Department and has received training in observing the signs/indications of intoxication. Gyurina observed the vehicle repeatedly sway from one side of the lane to the other for over two (2) minutes. In addition, the vehicle crossed the fog line two (2) times and into the adjoining lane four (4) times.⁴ Based upon the following observation by Gyurina and his experience with the Montoursville Police Department, the Court finds that he had reasonable suspicion to believe a

⁴ 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).

DUI was being committed to conduct an investigatory stop on the Defendant. As the Court has found reasonable suspicion of a DUI to stop the Defendant's vehicle, it is not necessary for the Court to also determine if there was probable cause to stop the vehicle for the offense of Careless Driving.

As Gyurina had reasonable suspicion to pull the Defendant's vehicle over, the Court will now determine if he 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 Gyurina 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 her driving, which resulted in reasonable suspicion and the vehicle stop. Moreover, the Defendant clearly failed her field sobriety tests as stated by Gyurina and shown by the patrol vehicle's video recording. During

the “finger to nose” test the Defendant never placed the tip of her finger on her nose. On the “walk and turn” test the Defendant did not properly walk heel to toe on multiple occasions, took too many steps, and lost balance twice (2). During the “one leg stand,” as viewed by this Court, the Defendant placed her foot down seven (7) times and did not last the full thirty (30) seconds. In addition, the Defendant had the odor of alcohol emanating from her person, glossy and blood shot eyes, and slowed speech. In reviewing the totality of the circumstances, this Court finds that Gyurina had probable cause to arrest the Defendant.

ORDER

AND NOW, this _____ day of February, 2014, based upon the foregoing Opinion, the Court finds that the Montoursville Police Department had reasonable suspicion of a DUI to stop the Defendant’s vehicle and probable cause to arrest her. Therefore, the Defendant’s Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)
Peter Campana, Esq.
Eileen Dgien, Dep. CA