

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-840-2014
	:
vs.	:
	:
	:
JASON KNOTT,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on Defendant’s omnibus pretrial motion. The relevant facts follow.

Defendant is charged with two counts of driving under the influence of alcohol (DUI). He filed an omnibus pretrial motion seeking suppression of evidence in which he alleged that the police lacked probable cause to stop his vehicle.

A hearing was held on the motion on October 24, 2014. The Commonwealth called Chief William Solomon of the Old Lycoming Township police department as a witness.

Chief Solomon testified that on March 16, 2014 at about 1:46 a.m. he and Officer Brett Williams were on a countywide DUI enforcement project. They were in full uniform, but in an unmarked patrol car. They were parked in the Kohl’s parking lot, which is in the vicinity of the Cell Block bar and other downtown drinking establishments. Officer Solomon observed three vehicles leave the parking lot. He pulled out to follow the vehicles and observe how they were being driven. He focused on the second vehicle, a truck, which rapidly accelerated on the straight stretch of Via Bella heading toward the highway. According to Chief Solomon, as the truck went up the on-ramp, it was driven on the left

yellow fog line and then over onto the right, white fog line. The truck merged onto Route 180 westbound. Once Chief Solomon reached the highway, he passed the car that was between him and the truck from the moment they left Kohl's parking lot to get directly behind the truck.

According to Chief Solomon, the vehicle was onto the white fog line again at the Maynard Street exchange before he caught up to it. The truck then crossed back to the left side of the lane of travel almost to the white broken line. At the area of the Route 15 exchange, the truck drifted toward the right fog line and then back toward the left lane. Chief Solomon testified that the "weaving" within the lane of travel continued until he stopped the truck near the Reach Road exit. Chief Solomon testified that the driving was indicative of someone driving under the influence.

On cross-examination, Chief Solomon acknowledged that the vehicle never crossed over any of the lines into another lane. He contended, however, that the truck was driven on the lines on the on-ramp and "touched" the lines on Route 180. He also admitted that sober people "touch the lines."

Defendant's driving was captured on the dashboard camera of Chief Solomon's vehicle. The DVD was admitted as Commonwealth Exhibit 1. While the DVD does not clearly depict the vehicle touching or riding on the lines at the on-ramp or the Maynard Street exit as testified to by Chief Solomon, the latter driving is clearly depicted and the DVD as a whole supports Chief's Solomon's testimony. For example, when the truck is traveling up the on-ramp Chief Solomon's vehicle is a distance behind it and another car is between them so that the fog lines of the on-ramp cannot be seen. One can tell,

however, that the truck is on the left side of the ramp and then drifts or weaves toward the right side of the ramp.

Defendant contends that Officer Solomon lacked probable cause to stop his vehicle. However, the relevant standard in this case is not probable cause, but reasonable suspicion.

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 activity, the stop needs to be supported by reasonable suspicion. Commonwealth v. Feczko, 10 A.3d 1285, 1290-1291. “Extensive case law supports the conclusion a vehicle stopped for DUI may be based on reasonable suspicion, as a post-stop investigation is normally feasible.” Commonwealth v. Chase, 960 A.2d 108, 116 (Pa. 2008). Reasonable suspicion is required in order that the individual’s privacy rights may not be violated but also to permit the officer to shed light on relevant matters that the stop would be expected to produce. Chase, 960 A.2d at 115 and 120-21.

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. See Commonwealth v. Cook, 558 Pa. 50, 735 A.2d 673, 677 (1999). Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest. Commonwealth v. Brown, 606 Pa. 198, 996 A.2d 473, 477 (2010). “In order to determine whether the police had a reasonable suspicion, the totality of the circumstances-the whole picture-must be considered. Based upon that whole picture, the detaining officer must have a particularized and objective basis for suspecting the

person stopped of criminal activity.” In the Interest of D. M., 566 Pa. 445, 781 A.2d 1161, 1163 (2001) (citation omitted).

An officer need not establish an actual violation of the Vehicle Code before stopping a vehicle. Commonwealth v. Bowersox, 450 Pa. Super. 176, 675 A.2d 718, 721 (1996). The police officer must only have reasonable suspicion to believe that a violation of the Motor Vehicle Code is occurring or has occurred. Commonwealth v. Holmes, 14 A.3d 89, 95 (Pa. 2011). Furthermore, “a combination of circumstances, none of which taken alone would justify a stop, may be sufficient to achieve reasonable suspicion.” Commonwealth v. Riley, 715 A.2d 1131, 1135 (Pa. Super. 1998). “Merely because a suspect’s activity may be consistent with innocent behavior does not alone make detention and limited investigation illegal.” Id.

A stop may be based on an officer’s observation of erratic driving. Commonwealth v. Starr, 739 A.2d 191, 195 (Pa. Super. 1999). Defendant’s vehicle rapidly accelerated on Via Bella and then weaved within its lane of travel from the moment it started up the on-ramp until Chief Solomon stopped the vehicle just past the Reach Road exit. Although the vehicle did not cross over the center line or the fog line, there were multiple instances where it drove on or touched those lines. These observations, as well as the fact that it was nearly closing time of the Saturday night/early Sunday morning before St. Patrick’s Day, would give a police officer reasonable suspicion to believe based on his training and experience that the individual driving the vehicle was under the influence of alcohol. See, for example, Commonwealth v Baumgardner, 767 A.2d 1065 (Pa. Super. 2001),

reversed on other grounds, 796 A.2d 965 (Pa. 2002)¹ (defendant was followed for approximately two miles during which time defendant's vehicle weaved from side to side in the right-hand lane "more or less for that entire distance"); Commonwealth v. Masters 737 A.2d 1229 (Pa. Super. 1999) (defendant made repeated, unwarranted lane changes); Commonwealth v. Montini 712 A.2d 761 (Pa. Super. 1998) (defendant was observed weaving within his lane of traffic and also crossed the double yellow center line of the roadway); Commonwealth v. Lawrentz, 683 A.2d 303 (Pa. Super. 1996) (defendant was weaving and swaying and crossed the center line of the road on two occasions).

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of February 2015, the court denies Defendant's omnibus pretrial motion which seeks suppression of the evidence that Chief Solomon obtained as a result of the stop of his vehicle.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire
James Protasio, Esquire
George Leplely, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file

¹ The Superior Court found that the officer possessed reasonable suspicion to believe the defendant was driving under the influence of alcohol. The Pennsylvania Supreme Court reversed, finding that the version of 75 Pa.C.S. 6308 in effect at that time required probable cause. Section 6308 has since been amended and only requires reasonable suspicion if the driver's detention can serve an investigatory purpose relevant to the suspected violation. Commonwealth v. Feczko, 10 A.3d 1285, 1290-1291 (Pa. Super. 2010), citing Commonwealth v. Chase, 960 A.2d 108, 115-116 (Pa. 2008).