

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-1761-2014

:

vs.

:

:

:

KRISTOPHER D. WALDRAB,
Defendant

: **Omnibus Pretrial Motion/**
: **Motion to Suppress**

OPINION AND ORDER

Defendant is charged by Information filed on November 17, 2014 with two counts of Driving under the Influence of Alcohol. The counts arise out of an incident which occurred on September 13, 2014 when Defendant's vehicle was stopped for alleged erratic driving by Lieutenant Brett Williams of the Williamsport Bureau of Police (WBP).

On December 17, 2014, Defendant filed a motion to suppress, in which he alleged that he was not in violation of any provision of the Pennsylvania Vehicle Code, there was nothing inappropriate or unlawful or dangerous about the manner in which he operated his vehicle, and Lieutenant Williams did not charge him with any traffic infractions. Accordingly, Defendant argued that the traffic stop was in violation of his constitutional rights.

A hearing was held on Defendant's Motion on January 15, 2015. At the hearing, Lieutenant Williams testified that he was on duty on September 12 and September 13, 2014 working with the County DUI Task Force. At approximately 2:30 in the morning on September 13, 2014 while he was traveling westbound on Fourth Street, he noticed Defendant's vehicle ahead of him also traveling west on West Fourth Street. He was approximately three to four car lengths behind Defendant's vehicle when he first observed it.

According to Lieutenant Williams, he subsequently observed numerous “driving clues” which caused him to be of the opinion that Defendant, as driver of the vehicle, may be impaired. He summarized these driving “clues” as inconsistent turning and driving movements, which included Defendant keeping his turn signal on and not turning in the direction in which he indicated, making wide turns, driving on a double line, and driving on a dotted line.

More specifically, Lieutenant Williams testified that soon after he noticed Defendant’s vehicle traveling on West Fourth Street, he noticed the Defendant driving off and on of the center white dotted line. According to Lieutenant Williams, Defendant “would go back into the driving lane and then back across the line.” Next, when Defendant turned right onto Hepburn Street he drove wide into the intersection and then crossed the double yellow lines. Defendant then turned left onto Edwin Street and was “driving essentially in the middle of the roadway.”

Defendant eventually turned south on Elmira and then back onto West Fourth Street in a westerly direction. Essentially, Defendant went “around the block.”

When Defendant came back onto West Fourth Street, he again drove on and off of the dotted white lines. Just prior to Walnut Street, he activated his left turn signal. Despite the left turn signal being activated he did not turn on Walnut but continued straight. The left turn signal stayed on as he approached the next intersection with Campbell Street. Again, Defendant did not turn left but stayed straight. The left turn signal remained on and upon approaching Maynard Street, Defendant continued to go straight and not turn left. Defendant drove through three intersections with the left turn signal on the entire time and

failed to turn left.

After crossing Campbell Street, Defendant again drove on the double yellow line. After West Fourth Street turned from a one-way to a two-way roadway, Lieutenant Williams activated his emergency lights and stopped Defendant's vehicle.

Lieutenant Williams explained that based upon his training and experience, the many different "clues" at 2:30 in the morning caused him to believe that Defendant was driving while impaired.

The Commonwealth also admitted Commonwealth's Exhibit No. 1, a video purporting to be from the in-car camera of Lieutenant Williams. The disc that was provided to the Court, however, did not contain any depictions from an in-car camera. Rather, it contained depictions from Defendant's processing following his arrest. The parties were notified of this error, and the Commonwealth provided the Court with a replacement Exhibit No. 1, which consisted of the video of Lieutenant Williams' in-car camera. The Court reviewed the video.

The video was, for the most part, consistent with the testimony of Lieutenant Williams. Lieutenant Williams followed Defendant's vehicle for approximately 2 ½ minutes before pulling the vehicle over.

During this time, Defendant committed numerous driving clues, including making wide turns, driving on the yellow center lines, making one far too wide turn, cutting another turn too sharp, driving in the middle of the roadway, driving on and off the center dotted lines, drifting several times from one side of the lane to another, and perhaps most significantly, activating his left turn signal but not changing to the left lane or turning left

through three, and maybe even four, intersections.

When a defendant files a motion to suppress challenging the constitutionality 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).

Because Lieutenant Williams was making a traffic stop where he had a reasonable expectation of learning additional evidence related to the suspected criminal activity, the stop needed to be supported by reasonable suspicion. 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).

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 the 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.

In this particular case, the Court finds the testimony of Lieutenant Williams to be entirely credible. His testimony established that he made several observations which taken together clearly support reasonable suspicion that Defendant was driving while impaired by

either alcohol or a controlled substance. Indeed, some of the “clues” even taken alone were sufficient to establish reasonable suspicion. For example, Defendant’s failure to turn left at three different intersections despite having his left turn signal on would itself establish reasonable suspicion to stop.

Following the hearing, defense counsel argued that Lieutenant Williams caused Defendant’s improper driving by following him in an unmarked vehicle over public city streets in the early morning hours. Defense counsel suggested that anyone would be nervous if being followed in the early morning hours, with no other vehicles on the street and in light of carjacking and other crimes perpetrated on innocent drivers.

While the Court concedes that there could be a set of circumstances in which a driver’s behavior could be explained or even justified by the behavior of a vehicle following it, the evidence does not support such a conclusion here. Moreover, even if such were true, it does not negate a finding of reasonable suspicion. As noted, even though a driver’s activity may be consistent with innocent behavior or an innocent excuse, that alone does not make the detention and the subsequent limited investigation illegal. Riley, 715 A.2d at 1135. “Even a combination of innocent facts, when taken together may warrant further investigation by the police officer.” Cook, 735 A.2d at 676.

In conclusion, even if the driver had an explanation for his conduct, it does not negate reasonable suspicion under the facts of this case.

ORDER

AND NOW, this ___ day of January 2015, the court **DENIES** Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
George Lepley, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file