

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-1623-2015
	:
vs.	: CRIMINAL DIVISION
	:
	:
ROBERT CLYDE CHASE,	:
Defendant	: Motion to Suppress Nunc Pro Tunc

OPINION AND ORDER

Defendant, Robert Chase, was initially charged with Driving under the Influence of alcohol (DUI) and related offenses on June 3, 2015. Following the waiver of his preliminary hearing on September 23, 2015 which was incidentally continued twice, he decided to plead guilty. His guilty plea hearing was scheduled for January 29, 2016.

Apparently changing his mind, Defendant filed an Omnibus Pretrial Motion Nunc Pro Tunc, without objection of the Commonwealth, on November 25, 2015. The hearing was scheduled for December 29, 2015 but continued at the request of the Commonwealth without objection by Defendant. The hearing was next scheduled for February 3, 2016. The morning of the hearing, Defendant requested a continuance asserting that the parties were “still negotiating.” The Court denied the continuance request and the hearing proceeded on February 3, 2016.

Defendant’s sole issue is that Trooper Adam Kirk of the Pennsylvania State Police did not have reasonable suspicion to stop Defendant’s vehicle for suspected DUI on March 6, 2015.

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. CRIM. 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. *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 Trooper Kirk's belief that Defendant could be driving under the influence of alcohol; therefore, a reasonable suspicion standard applied.

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.*

In considering the testimony of Trooper Kirk as well as in viewing the dash-cam video that was marked as Commonwealth's Exhibit 1 and played for the Court, the Court finds that Trooper Kirk had reasonable suspicion to stop Defendant's vehicle to investigate whether Defendant was driving under the influence of alcohol.

Trooper Kirk has been employed by the Pennsylvania State Police (PSP) for approximately nine and a half years in the Patrol Unit. He has vast experience and training in the enforcement of the DUI laws. On March 6, 2015, he was on duty in a marked Patrol Unit traveling north on Lycoming Creek Road.

At approximately 11:50 p.m. near the area of Lycoming Creek Road which intersects with Route 973 east, Trooper Kirk started following Defendant's vehicle, which was also traveling northbound.

As Trooper Kirk got closer, approximately three car lengths' away, he observed that Defendant's vehicle was traveling side to side in its own lane. The vehicle's tires sporadically touched both the outside white berm line and the inside center double line. On two occasions, the vehicle's far left tires completely crossed the inside double yellow lines. The vehicle then slowed down in order to make a left turn onto Route 973 west. Before turning, however, the vehicle actually straddled the white dividing line between the left turn lane and the straight lane. The dividing line was actually between both wheels essentially splitting the car in two. After the vehicle turned left, it continued slightly weaving and as the road turned left both of the vehicle's left tires completely crossed the double yellow line.

While Trooper Kirk had decided to pull Defendant's vehicle over earlier, he did not activate his lights until the vehicle fully crossed the double lines on Route 973 west as the road was turning left.

Trooper Kirk followed Defendant's vehicle for approximately a minute and a half before activating his lights. There was no apparent reason to explain why Defendant was driving so erratically. It was close to 12:00 midnight. Clearly, Trooper Kirk had reasonable

suspicion to stop Defendant's vehicle to determine the cause of Defendant's improper and unsafe driving.

ORDER

AND NOW, this 8th day of February 2016, following a hearing, the Court **DENIES** Defendant's Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
George Lepley, Esquire
James Protasio, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file