

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-69-2016
v.	:	
	:	
ANDREW GRENINGER,	:	PRETRIAL MOTION
Defendant	:	

OPINION AND ORDER

On March 22, 2016, the Defendant filed a Motion to Suppress Evidence. A hearing on the suppression motion took place on May 26, 2016.

Background

On October 23, 2015, Andrew Greninger (Defendant) was arrested for Driving under the Influence of Alcohol¹ by Officer Jeff Hughes (Hughes) of the Old Lycoming Township Police Department. Hughes testified that he has been with Old Lycoming Township for 13 years and has made hundreds of motor vehicle stops. He further testified to his training and experience in both detecting drivers who are under the influence of drugs and alcohol through his training in Standard Field Sobriety tests (SFST) as well as a Drug Recognition Expert. Hughes testified that he was on duty, in uniform, parked in his police vehicle, observing traffic on Lycoming Creek Road when he saw maroon Chevrolet Venture travelling southbound changing lanes without using a turn signal. After seeing two turn signal violations and an awkwardly wide turn taken on Meisner Ave, Hughes pulled over Defendant. Upon approach of the vehicle, Hughes saw an unopened can of Budweiser in the cup holder. While speaking with Defendant, Hughes detected a strong odor of alcohol and observed additional empty beer cans on the floor of the vehicle. Defendant admitted to Hughes at that time to consuming alcohol. Hughes asked Defendant to exit the vehicle to perform field sobriety tests. The field sobriety

¹ 75 Pa. C.S. §3802 (a)(1) and §3802(c).

tests administered by Hughes were also captured on the in car camera video-recording. The Commonwealth admitted the video at the hearing.

The Court observed that Hughes asked Defendant to perform two field sobriety tests; the walk and turn and the one leg stand. During the walk and turn test the Defendant is observed stumbling unable to maintain his balance. The video also shows the Defendant trying to step forward with his right foot; however, he repeatedly crosses his right foot over his left and stumbles off the line. Hughes next asks Defendant to perform the one leg stand test. The video shows clearly that the Defendant fails both sobriety tests. Defendant was then placed under arrest for DUI and transported to the DUI Processing Center to submit to a chemical test of his blood. The Commonwealth submitted Defendant's signed DL-26 as Commonwealth's Exhibit #2 at the suppression hearing.

Discussion

Reasonable Suspicion/Probable Cause

Defendant alleges in paragraph 4 of his pretrial motion that his vehicle "was stopped without probable cause and/or reasonable suspicion to believe that a crime was committed by the operator." Defendant's allegation concerns the quantum of cause required in order for a law enforcement officer to stop a vehicle for an alleged violation of the Vehicle Code. The relevant statutory authority is 75 Pa.C.S. § 6308(b), which states:

Authority of police officer.—Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title. Commonwealth v. Feczko, 10 A.3d 1285 (Pa. Super. Ct. 2010).

In order to stop a vehicle where there is only reasonable suspicion either of criminal activity or a violation of the Motor Vehicle Code, under the authority of Section 6308(b), the stop must serve a stated investigatory purpose. *Id.* citing Commonwealth v. Chase, 599 Pa. 80, 960 A.2d 108, 116 (Pa. 2008). If a stop based on reasonable suspicion alone is to be valid, there must be something more to investigate. For example, in the case at bar, due to the erratic driving of the Defendant the officer may have had a reasonable suspicion that something was making the driver incapable of driving and it would be legal and appropriate at that point to stop the vehicle. See Commonwealth v. Weaver, 2013 PA Super 245, 76 A.3d 562, 568 (Pa. Super. 2013), *aff'd*, 105 A.3d 656 (Pa. 2014) (*per curiam*) (requiring reasonable suspicion to pull a suspect over for driving under the influence). In order to make a stop where no further investigatory purpose is served by the stop, there must be probable cause for the stop i.e. the police officer has personal knowledge of facts and circumstances that would warrant a prudent man to believe that an offense has been committed. Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, "it is incumbent [sic] upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the Code." Gleason, 785 A.2d at 989 (citation omitted). See also Chase, 960 A.2d at 116 (reaffirming Gleason's probable cause standard for non-investigative detentions of suspected Vehicle Code violations). Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. Ct. 2010). In the case at bar, Hughes accuses Defendant of a violation of 75 Pa.C.S. § 3334:

(a) General rule. -- Upon a roadway no person shall turn a vehicle or move from one traffic lane to another or enter the traffic stream from a parked position unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in this section.

Hughes testified that he observed no turn signal when Defendant changed lanes as well as when he made a right turn onto Meisner Ave. As the Motor Vehicle Code requires drivers to signal upon changing lanes and making turns the Court finds Hughes had the probable cause necessary to stop Defendant's vehicle for a violation of the Motor Vehicle Code. Therefore, the stop of Defendant's vehicle was lawful.

Implied Consent

Defendant's counsel has made the argument in the case at bar that Implied Consent as set forth in Title 75 § 1547, is unconstitutional under the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution. The Commonwealth submitted as its Exhibit 2 Defendants signed

DL-26 CHEMICAL TESTING WARNINGS AND REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TESTING AS AUTHORIZED BY SECTION 1547 OF THE VEHICLE CODE IN VIOLATION SECTION 3802 (relating to driving under the influence of Alcohol or Controlled Substance).

Defendant's Counsel highlights number 3 and number 4 of the DL-26²:

3. If you refuse to submit to the chemical test your operating privilege will be suspended for at least 12

² The police officer reads the following Chemical Testing Warnings to Defendant

It is my duty as a police officer to inform you of the following:

1. You are under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code.
2. I am requesting that you submit to chemical test of [blood] (blood, breath or urine. Officer chooses the chemical test).
3. See text of opinion.
4. Id.

I certify that I have READ the above warnings to the operator regarding the suspension of his/her operating privilege and gave the operator an opportunity to submit to chemical testing.

Signature of Officer: [Hughes's Signature] Date: 10/23/2015

I have been advised of the above.

Signature of Operator: [Defendant's Signature] Date: [illegible]

Operator refused to sign, after being advised.

Signature of the Officer: _____ Date: _____

months. If you previously refused a chemical test or were previously convicted of driving under the influence, you will be suspended for 18 months. In addition, if you refuse to submit to the chemical test, and you are convicted of violating section 3802(a)(1) (relating to impaired driving) of the vehicle code, then, because of your refusal, you will be subject to more severe penalties set for in section 3804(C) (relating to penalties) of the vehicle code. These are the same penalties that would be imposed if you were convicted of driving with the highest rate of alcohol, which include a minimum of 72 consecutive hours in jail and a minimum fine of \$1,000.00, up to a maximum of five years in jail and a maximum fine of \$10,000.

4. You have no right to speak to an attorney or anyone else before deciding whether to submit to testing. If you request to speak to an attorney or anyone else after being provided these warnings or you remain silent when asked to submit to chemical testing, you will have refused the test.

This Court, relying on the reasoning in Missouri v. McNeely, 133 S.Ct. 1552, (2013), and the binding case law of Pennsylvania Commonwealth v. Carley, 2016 PA Super 127 (Pa. Super. Ct. Jun. 16, 2016), has held that the implied consent of law is not unconstitutional; however, in light of the Supreme Court of the United States more recent holding in Birchfield v. North Dakota, 195 L. Ed. 2d 560 (U.S. June 23, 2016), that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests. The Supreme Court of the United States, in Birchfield, No. 14-1468, (June 23, 2016) p. 36 stated

Our prior opinions have referred approvingly to the general concept of implied consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply...there must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.

Therefore, in light of Birchfield, supra, this Court must suppress the results of the blood alcohol test.

ORDER

AND NOW, this _____ day of August, based upon the foregoing Opinion, the Motion to Suppress is GRANTED in part and DENIED in part: In conformity with Birchfield v. North Dakota, 195 L. Ed. 2d 560 (U.S. June 23, 2016), the results of Defendant's Blood Alcohol Test are hereby SUPPRESSED. In all other respects, the Motion is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Anthony Ciuca, Assistant District Attorney
Peter Campana, Esq. Defendant's Counsel
Eileen Dgien, Deputy Court Administrator
Gary Weber, Lycoming Law Reporter