

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-1373-2015**  
v. :  
 :  
**BARRY JOHN RINEHIMER,** : **CRIMINAL DIVISION**  
**Defendant** :

**OPINION AND ORDER**

On September 25, 2015, the Defendant filed an omnibus pretrial motion. The motion contained a “Motion to Dismiss Due to Unconstitutional Stop” and a “Motion to Dismiss Due to Unconstitutional Extension of Stop.” A hearing on the omnibus motion was held on December 21, 2015 and February 4, 2016.

**I. Background**

**A. Patrolman David Williams’ Testimony**

David Williams (D. Williams) has been in police officer with the Muncy Borough Police Department for six years. D. Williams has provided his cell phone number to establishments in Muncy because the people who work in the establishments are his friends and because he wants to reduce response time. D. Williams responded to Tommy’s Sports Bar after receiving a call on his cell phone from its manager, Lisa Williams (L. Williams). D. Williams was in full uniform and driving a marked patrol car. L. Williams told D. Williams the following:

Three men entered the bar. One of the men gave L. Williams his business card. The man told L. Williams that he was taking the other two men to the White Deer Motel. While the three men were in the bar, there was activity in the bathroom. L. Williams saw the three men get into a white Chevy truck. The driver was the man who gave her his business card.

D. Williams saw that the business card had the name “Barry” and the name of a company with an address in Virginia. He also saw a broken toilet and water on the bar’s bathroom floor. D.

Williams then advised other officers to be on the lookout for a white Chevy pickup truck with three male occupants and possibly a Virginia license plate.

Four to seven minutes after the advisement, Officer McLaughlin (McLaughlin) communicated that she was seeing a white pickup truck with a Virginia license plate. D. Williams told McLaughlin to “stop and hold” the truck. He advised her that somebody in the truck should be named Barry.

There was snow on the roads, and ten to 15 minutes after the “stop and hold” instruction, D. Williams arrived at the Clinton Township fire department, where McLaughlin had stopped the truck. D. Williams arrived at the stop within 20 to 25 minutes of the call from L. Williams. He exited his patrol car and talked with McLaughlin, who said that she could smell alcohol coming from the truck. D. Williams saw a driver and a front passenger in the truck. He could not initially see into the back of the truck because of the tint of the windows, but he eventually saw a person in the back. As D. Williams was telling the truck’s occupants the reason for the stop, he could smell the odor of alcohol coming from the vehicle. The driver said that his name was Barry, and he presented a Pennsylvania license. Barry, who is the Defendant, said that he had left Tommy’s Sports bar. The Defendant also said that they did the damage in the bar and would pay for the damage. After field sobriety tests, D. Williams formed the opinion that the Defendant had consumed enough alcohol that he could not safely drive, so he placed the Defendant under arrest.

#### **B. Officer McLaughlin’s Testimony**

McLaughlin is an officer with the Montgomery Borough Police Department. At approximately 12:55 a.m. on January 30, 2015, McLaughlin received a “be on the lookout” (BOLO) from Lycoming County Communications. The BOLO identified a white pickup truck

with a Virginia license plate. It said that three men were in the truck and the men had been involved in a criminal mischief incident at Tommy's Sports Bar. It also said that the men were staying at the White Deer Motel in Montgomery, so McLaughlin believed that the truck was coming her way.

Minutes after the BOLO, McLaughlin saw a white truck traveling north on Montgomery Street. The truck briefly pulled into the parking lot of the Station House Restaurant, which was closed and dark. When the truck pulled out of the lot, McLaughlin followed it. About a minute or two later, the truck pulled over by itself. The truck had a Virginia license plate, and McLaughlin contacted Lycoming County Communications for verification that she was seeing the BOLO truck. She then activated her patrol car's light and initiated a stop.

McLaughlin saw three men in the truck and made contact with the driver. She noticed that the driver had slurred speech and glassy eyes. She could also smell alcohol. The driver exited the truck after McLaughlin asked him to. The driver identified himself as Barry Rinehimer (Defendant). He said that he had left Tommy's Sports Bar and had pulled over because McLaughlin was following him. McLaughlin had the Defendant undergo the horizontal gaze nystagmus test, which revealed that the Defendant had nystagmus. After the test, McLaughlin waited for the other officer to arrive. D. Williams arrived approximately seven minutes after the truck pulled over. When D. Williams arrived, McLaughlin told him that the Defendant had nystagmus.

### **C. Arguments**

The Defendant argues that Officer McLaughlin did not have reasonable suspicion to stop the truck. He asserts that there was no first-hand evidence of what happened at Tommy's Sports Bar. He contends that it is unclear if the damage occurred intentionally. The Defendant asserts

that further investigation should have been done before the issuance of the BOLO. The Commonwealth argues that there was reasonable suspicion to stop the truck. It notes that D. Williams was acting on information he received from the bar's manager.

The Defendant also argues that that McLaughlin and D. Williams "unconstitutionally extended the time of the stop by detaining [him] against his will until Officer Williams arrived." He contends that McLaughlin did not have probable cause to ask him to exit the truck. He argues that McLaughlin did not have probable cause to investigate him for DUI. In addition, the Defendant argues that D. Williams "unconstitutionally extended the scope of the stop by subjecting [him] to an investigation for DUI."

The Commonwealth argues that there was no unconstitutional extension of the stop. It notes that McLaughlin testified that D. Williams arrived within seven minutes of the truck pulling over. The Commonwealth argues that probable cause for DUI developed while McLaughlin was investigating the incident that occurred at Tommy's Sports Bar. It notes that McLaughlin told D. Williams about her observations. It also notes that D. Williams took over the investigation once he arrived at the stop.

## **II. Discussion**

"[A]n investigative detention must be supported by a reasonable and articulable suspicion . . . ." Commonwealth v. Williams, 73 A.3d 609, 613 (Pa. Super. 2013). "[T]o establish grounds for reasonable suspicion, the officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. The question of whether reasonable suspicion existed at the time [the officer conducted the stop] must be answered by examining the totality

of the circumstances to determine whether the officer who initiated the stop had a particularized and objective basis for suspecting the individual stopped. Therefore, the fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the [stop] warrant a [person] of reasonable caution in the belief that the action taken was appropriate.” Commonwealth v. Basinger, 982 A.2d 121, 125 (Pa. Super. 2009) (internal citations and quotation marks omitted).

“To have reasonable suspicion, police officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including ‘tips’ from citizens.” Commonwealth v. Lohr, 715 A.2d 459, 461 (Pa. Super. 1998). “A police officer need not personally observe unusual or suspicious conduct reasonably leading to the conclusion that criminal activity is afoot and that a person is armed and dangerous; [the Superior Court] has recognized that a police officer may rely upon information which is broadcast over a police radio in order to justify an investigatory stop. In such cases, the factors that must be considered in justifying an investigatory stop . . . include the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed.” Commonwealth v. Jackson, 519 A.2d 427, 430 (Pa. Super. 1986) (citation and internal quotation marks omitted).

**A. The Stop of the Defendant’s Truck was Lawful Because the Officers had Reasonable Suspicion that the Truck Contained Individuals who had been Involved in Criminal Activity.**

Officer Williams articulated the following facts and circumstances. The manager of Tommy’s Sports Bar told D. Williams that there was activity in the bathroom while three men

were in the bar. D. Williams saw a broken toilet and water on the bathroom floor. The bar manager told D. Williams that one of the three men gave her his business card. D. Williams saw that the business card had the name Barry and had the name of a company with a Virginia address. The manager also told D. Williams that the men had entered a white truck, which Barry was driving. These facts and circumstances would warrant a person of reasonable caution in the belief that three men in a white truck, possibly with a Virginia license plate, were involved in criminal activity.

Officer McLaughlin articulated the following facts and circumstances. She saw a white truck with a Virginia license plate. She saw the truck minutes after receiving the BOLO. The truck was in Montgomery, and the BOLO said that the men were staying at the White Deer Motel, which is in Montgomery. It was early in the morning, and the truck had pulled into the parking lot of an establishment. These facts and circumstances would warrant a person of reasonable caution in the belief that the truck was the BOLO truck. The stop of the Defendant was lawful because Officer Williams had reasonable suspicion that men in a white truck, possibly with a Virginia license plate, were involved in criminal activity, and because Officer McLaughlin had reasonable suspicion that the truck she saw was the BOLO truck.

**B. The Officers' DUI Investigation of the Defendant was Lawful Because They had Reasonable Suspicion that the Defendant was Committing DUI.**

As already discussed, the officers had reasonable suspicion to investigate the occupants of the truck for the incident at Tommy's Sports Bar. "[A]n investigative detention . . . may continue only so long as is necessary to confirm or dispel such suspicion . . . ." Williams, 73 A.3d at 613. As McLaughlin was investigating the bar incident, she noticed that the Defendant, who was the truck's driver, had slurred speech and glassy eyes. She also noticed an odor of

alcohol. Earlier, she had observed the Defendant pull over without prompting. These facts and circumstances would warrant a person of reasonable caution in the belief that the Defendant was had consumed enough alcohol to render him incapable of safe driving. Therefore, McLaughlin had reasonable suspicion to investigate the Defendant for DUI.

McLaughlin observed that the Defendant had nystagmus. She told Officer Williams about the nystagmus and her other observations. Since an officer can rely on information from another officer, D. Williams had reasonable suspicion to investigate the Defendant for DUI. Therefore, D. Williams' DUI investigation was lawful.

### **III. Conclusion**

The stop of the Defendant was lawful because the officers had reasonable suspicion that the truck contained individuals who had been involved in criminal activity at Tommy's Sports Bar. While investigating the bar incident, Office McLaughlin obtained reasonable suspicion that the Defendant was committing DUI. Therefore, her DUI investigation was lawful. McLaughlin told Officer Williams about her observations. Therefore, Williams' DUI investigation was lawful.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the "Motion to Dismiss Due to Unconstitutional Stop" and the "Motion to Dismiss Due To Unconstitutional Extension of Stop," which are contained in the omnibus pretrial motion filed on September 25, 2015, are hereby DENIED.

By the Court,

Nancy L. Butts, President Judge