

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	NO. CR-29-2025
v.	:	
	:	
CRAIG FORTNEY,	:	Motion to Suppress
Defendant	:	

OPINION

This matter was before the Court on July 29, 2025, on Defendant's Omnibus Motion filed on March 19, 2025, by and through his counsel, Giovanna Daniele, Esquire. At the hearing on the Motion, Defendant appeared personally represented by Attorney Daniele. Assistant District Attorney Eric Birth appeared on behalf of the Commonwealth.

Defendant is charged in the above-captioned Information with Count 1, Improper Left Turn¹, a summary offense, Count 2, DUI—General Imp/Inc of Driving Safely, 2nd Offense², a misdemeanor, and Count 3, DUI—High Rate of Alcohol³, a misdemeanor.

In his Omnibus Motion, Defendant's sole motion is a Motion to Suppress. The Motion to Suppress seeks to have suppressed the evidence obtained by Sheriff Deputies on that basis that the Sheriff Deputies did not have jurisdiction or authority to conduct a traffic stop of the Defendant based on violations of the Motor Vehicle Code (Title 75 of Pennsylvania's Statutes).

At the hearing on the Motion, the Commonwealth presented Shawn Hoffman, Nelson Solomon, Deputy Shayna Ragan, and Deputy Josh Wolfe. The Commonwealth submitted as a Commonwealth Exhibit No. 1, MVR Footage—Craig Fortney. Without objection from the Defense, the exhibit was admitted to the record.

¹ 75 Pa.C.S. §3331(B).

² 75 Pa.C.S. §3802(a)(1).

³ 75 Pa.C.S. §3802(B).

At the conclusion of the hearing, the Court ordered briefs be filed by both parties on or before August 12, 2025. Both parties submitted timely briefs.

Background

By way of further background, the testimony presented at the hearing on the Motion provided the following information. Shawn Hoffman was traveling on the roadways in his capacity as a Door Dash Driver, accompanied by his brother, on August 28, 2024 around 8:30 p.m. in Lycoming County, Pennsylvania. Mr. Hoffman observed a red truck pulling out of a bar parking lot, which caused Mr. Hoffman to be driving behind the driver of the red truck. After observing the driver driving, Mr. Hoffman called 911 with concerns about how the driver was operating his truck. Mr. Hoffman obtained the plate number and provided it to the 911 operator. Mr. Hoffman continued to trail the driver of the truck when the driver of the truck made a right turn on Basin Street. Mr. Hoffman testified that the driver almost wrecked making the turn. Mr. Hoffman then flagged down officers who followed the truck driver into a parking lot.

Nelson Solomon was accompanying his brother who was Door Dashing. The pair were headed in the direction of Wal-Mart located in Montoursville, Lycoming County, Pennsylvania. Mr. Solomon testified that the pair observed a red truck swerving back and forth on the roadway Mr. Hoffman made the call to 911 and continued to follow the truck. Mr. Solomon testified that law enforcement officers approached his brother and him and the pair pointed out the truck and the driver to the officers.

Deputy Sheriff Shayna Ragan testified that she was conducting civil patrol duties and located at Basin Street and Third Street when a pair in a dark colored SUV flagged down Deputy Ragan and Deputy Wolfe with concerned reports about a driver being on the road. The Deputies turned around and to follow the identified driver and vehicle. The Deputies

followed the driver of the red truck and witnessed him fail to activate his left turn signal for two turns. The Deputies activated law enforcement sirens and lights to which the driver of the red truck did not respond by pulling over. Deputy Ragan testified that the tip provided by concerned individuals paired with the violations on behalf of the driver formed the basis for the Deputies to conduct a traffic stop.

Deputy Josh Wolfe testified that he was conducting service of civil paperwork within Lycoming County, Pennsylvania when individuals flagged him and his partner down. The individuals reported that they believed a man was drunk driving on the roadways. After ascertaining the driver and vehicle the individuals were observing, the deputies followed the driver. Deputy Wolfe testified that he observed the driver engage in taking two turns without activating his left turn signal, and the driver failed to stop when the Deputies activated their sirens and lights. Deputy Wolfe testified that the basis of the traffic stop was formed because failing to activate turn signals is a violation under the Motor Vehicle Code.

Upon making contact with the Defendant at his vehicle, the Sheriff Deputy observed the Defendant to have bloodshot eyes, pupil dilation, and an odor of alcohol on his breath. The Deputies suspected the Defendant of a possible DUI, which they subsequently investigated. The Deputies requested the Defendant perform Standard Field Sobriety Tests (SFST) and a Preliminary Breath Test (PBT). During the tests, the Defendant stated that he consumed two beers at Frederick's Tavern in Williamsport. The Defendant was transported to UPMC Hospital where he consented to a chemical blood test. The result of the chemical blood test was a blood alcohol content of .156. As a result, Defendant was charged with Count 1, Improper Left Turn⁴, a summary offense, Count 2, DUI—General Imp/Inc of

⁴ 75 Pa.C.S. §3331(B).

Driving Safely, 2nd Offense⁵, a misdemeanor, and Count 3, DUI—High Rate of Alcohol⁶, a misdemeanor.

Argument and Analysis

Defendant argues for suppression of the stop and subsequent evidence obtained therefrom. “Suppression is warrant only when a constitutional violation occurs.” *Commonwealth v. Lindblom*, 854 A.2d 604, 606 (Pa. Super. 2004). Defendant avers that an illegal arrest/seizure occurred when Deputies Wolfe and Ragan conducted an unlawful traffic stop without authority to do so in the scope of their employment, and that the evidence resulting therefrom should be suppressed as unlawfully obtained. In order to address the Defendant’s Motion to Suppress the Court must determine whether Deputies Ragan and Wolfe had authority in this matter to conduct a traffic stop, and if so, whether the traffic stop was lawfully conducted on a reasonable suspicion or probable cause determination.

a. **The incident in this matter did rise to the level of a breach of the peace investing the Sheriff Deputies with the authority to conduct a traffic stop.**

Defendant avers that the Sheriff Deputy did not have jurisdiction or authority to enforce the Motor Vehicle Code, and thus, all subsequent evidence should be suppressed. Defendant asserts that the deputies lacked jurisdiction to conduct a traffic stop for the summary offense of failing to use a turn signal because it is not an indictable offense, and it was the only basis for the traffic stop that was conducted. Further, the Defendant argues that the Superior Court previously held that all indictable misdemeanors may amount to breaches of the peace, but summary offenses are considered to be “of a petty nature of lesser gravity than an indictable offense” which does not constitute a breach of the peace. *Commonwealth v. Magaro*, 175 Pa. Super. 79 (1954). Additionally, the vehicle stop resulted in further

⁵ 75 Pa.C.S. §3802(a)(1).

⁶ 75 Pa.C.S. §3802(B).

investigation of the Defendant driving under the influence due to observations made by the Deputies.

Based on the arguments made by counsel, the Court will first address whether the Deputies had jurisdiction to conduct the traffic stop. The Defendant argued that there was no indictable offense amounting to a breach of the peace here that justified Deputies Wolfe and Ragan conducting a traffic stop. Moreover, Defendant argued that the summary offense of failing to activate a turn signal was the only basis noted in the affidavit for the vehicle stop, and the only underlying offense charged. Defendant concludes that this offense does not amount to a breach of the peace as defined through the years by the case law. The Commonwealth distinguished the facts from Copenhaver and the facts as presented here by stating that the Defendant's conduct here posed a present and observable danger, and the deputies were trained, uniformed, and operating within their legal authority to conduct the stop for a breach of the peace based on the Defendant's failure to utilize turn signals, placing others in danger on the road.

It is long held that a Sheriff Deputy who has received the same training required of police officers have residual common law authority to enforce the Vehicle Code only when they witness a violation that comprises a breach of the peace. *Commonwealth v. Marconi*, 619 Pa. 401 (2013)(holding that the Sheriffs did not have the authority to independently establish and conduct the suspicionless sobriety checkpoint at which appellee was arrested). Sheriffs and their deputies “are not police officers—nor are they invested with general police powers beyond the authority to arrest for in-presence breaches of the peace and felonies—in the absence of express legislative designation.” *Id* at 413-14. Although “sheriffs and their deputies are not ‘police officers’ under the Vehicle Code,” *Marconi*, 64 A.3d at 1041, the Supreme Court held that “the common law powers of the sheriff include the power to enforce

the motor vehicle code, and that such powers have not been abrogated by statute or otherwise.” *Leet*, 641 A.2d at 301.

Both parties rely on *Commonwealth v. Copenhaver*, 658 Pa. 471 (2020) to make their arguments regarding the Deputies jurisdiction in this matter. In *Copenhaver*, the defendant was pulled over by a deputy sheriff for an expired registration sticker. The Pennsylvania Supreme Court granted the defendant’s petition for review, and finding that an operation of a motor vehicle with an expired registration alone does not comprise a breach of the peace for purposes of a deputy sheriff’s common law authority to enforce the Vehicle Code. The Pennsylvania Supreme Court further held in *Copenhaver* that “for purposes of a deputy sheriff’s common law authority to enforce the Vehicle Code—a breach of peace arises from an act or circumstance that causes harm to persons or property, or has a reasonable potential to cause such harm, or otherwise to provoke violence, danger, or disruption to public order.”

A breach of the peace “generally manifests [itself] by some outward, visible, audible, or violent demonstration; not from quiet, orderly, and peaceable acts secretly done....”

Commonwealth v. Sherman, 14 Pa. D&C 4.C.P. Phila. (1930). The Pennsylvania Superior Court previously determined that all indictable misdemeanors or felonies may amount to breaches of the peace, however summary offenses are considered to be “of a petty nature of lesser gravity than an indictable offense” which would not constitute a breach of the peace.

Commonwealth v. Magaro, 175 Pa. Super. 79, 103 A.2d 449 (1954).

In evaluating the foregoing as it applies here, and in consideration of the arguments made by the parties, the Court cannot find that Sheriff Deputies Wolfe and Ragan lacked jurisdiction in this case to conduct the traffic stop. Notably, in holding that the common law powers of the sheriff include the power to enforce the motor vehicle code, the Supreme Court, in *Commonwealth v. Leet*, 537 Pa. 89 (1994), did not identify violations which would

amount to “breaches of the peace.” Thus, for the Court’s consideration here are a series of examples of violations of the Motor Vehicle Code that do and do not constitute a breach of the peace required for sheriff deputies to exercise jurisdiction within the community. In looking at the case law, conduct by vehicle operators that does not tend to rise to the level of a breach of the peace include—expired tags, expired inspection, or passive behavior not likely to affect other motorists—and such conduct or observations on its own would render deputies without jurisdiction to conduct a vehicle stop. Additionally, deputies do not have authority beyond arresting people for in-presence breaches of the peace and felonies—in the absence of express legislative designation. Conduct the Court can consider that does rise to the level of breach of the peace, and as put forth in *Copenhaver*, includes conduct that places persons or property in harm’s way or poses a danger to the public order, or has a reasonable potential to cause such harm or otherwise provoke violence, danger, or disruption.

Here, the Court heard testimony that the driver was engaged in erratic and concerning driving—including swerving, almost crashing into objects and road barriers, and failing to adhere to the rules of the roadway. Importantly, the Court notes that such descriptions of the Defendant’s driving were neither witnessed or testified to by the Deputies, and the case law is clear that Deputies can exercise jurisdiction where they have *witnessed* conduct that rises to a breach of the peace. Notwithstanding, the Deputies did testify that they observed the failure of the Defendant to activate his left turn signals, which is highly likely to cause confusion and a risk to other drivers on the road as it indicates a driver’s next move. Their observations were made after being informed of the driver’s reckless driving, increasing the likelihood a breach of the peace had occurred. Thus, the Court finds here, based on the testimony offered at the hearing on the motion and the evidence presented, the conduct of the Defendant did rise to a breach of the peace that had a reasonable potential to cause harm on

the public roadways or otherwise provoked danger investing in Deputies Wolfe and Ragan the jurisdiction to conduct a traffic stop.

b. **The Sheriff Deputies had probable cause to conduct the traffic stop and reasonable suspicion to prolong the stop to conduct an investigation based on reasonable suspicion that the Defendant was driving under the influence.**

The Court must next determine whether the Deputies possessed probable cause to effectuate a traffic stop on the Defendant and conduct the subsequent investigation into the driving under suspicion.

While it is clear that deputies are not police officers, “a peace officer may, without a warrant, arrest for a felony or for a misdemeanor committed in his presence although the right to arrest for a misdemeanor, unless conferred by statute, is restricted to misdemeanors amounting to a breach of the peace.” *Commonwealth v. Pincavitch*, 214 A.2d 280, 282 (1965). The Court has already concluded that failing to use turn signals while operating a motor vehicle is a breach of the peace.

Under 75 Pa.C.S. Section 6308(b), police officers may stop a vehicle if they have “reasonable suspicion that a violation of the Motor Vehicle Code has occurred.” Probable cause is required when the stop results in a search or arrest based on observed violations. “A stop of a single vehicle is unreasonable where there is no outward sign the vehicle or the operator are in violation of the Motor Vehicle Code...there must be specific facts justifying this intrusion.” *Commonwealth v. Sands*, 887 A.2d 261, 266 (Pa. Super. 2005) citing *Commonwealth v. Swanger*, 453 Pa. 107, 307 A.2d 875, 878 (1973). “The legal standard of proof required by a police officer when engaging or interacting with a citizen varies depending on whether the citizen has been detained, and if so, the degree of the detention and the circumstances surrounding the interaction.” *Commonwealth v. Cauley*, 10 A.3d, 321, 325 (Pa. Super. 2010). It is necessary for an 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 [Motor Vehicle] Code.”*

Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010) citing *Commonwealth v. Gleason*, 785 A.3d 567 Pa. 111, 785 A.2d 983, 989 (2001)(emphasis in original).

Here, both deputies testified to observing the Defendant fail to activate his left turn signal at two different intersections (East Third and Railway and Railway and East Willow) and receiving information from identified citizen informants who provided information of the Defendant's vehicle and concerning driving, including swerving. The observations by the deputies amount to sufficient probable cause to conduct a traffic stop and issue any such citation or violation as required by law.

Next, the Court will determine if the deputies possessed the requisite reasonable suspicion to conduct SFSTs and subsequent investigation of a suspected DUI. If reasonable suspicion exists to support an investigatory detention, then it is lawful. *Commonwealth v. Cauley*, 10 A.3d 321, 324 (Pa. Super. 2010). To qualify for the reasonable suspicion standard, the officer must provide a showing of specific and articulable facts, and when combined with reasonable inferences warrant an intrusion like an investigatory detention. *Id* at 326. A court must evaluate the totality of the circumstances to determine if an officer possessed reasonable suspicion that criminal activity was underway. *Commonwealth v. Cauley*, 10 A.3d 321, 326 (Pa. Super. 2010).

Here, the deputies possessed the requisite reasonable suspicion to conduct the DUI investigation upon making contact with the Defendant and observing articulable signs of intoxication including blood shot eyes, the odor of alcohol, dilated pupils, and difficulty producing documentation. The deputies were in uniform, driving a marked vehicle, and

effectuated the stop by activating the siren, to which the Defendant did not immediately respond based on the testimony.

Moreover, the deputies had authority to investigate under the standard evaluated above because there was a reasonable potential for the Defendant's conduct to cause harm on the public roadways or otherwise provoke danger. Other states have held that driving under the influence amounts to a breach of the peace, *see: Commonwealth's Brief at 3* citing *City of Waukesha v. Gorz*, 166 Wis. 2d 243, 479 N.W.2d 221, 223-24 (Wis.Ct.App. 1991). It would be against the best interests of the community for the Court to otherwise find that the available law enforcement agents did not have authority to conduct the traffic stop, despite having the requisite probable cause and additional reasonable suspicion, to further investigate an individual of suspected DUI. Under the totality of the circumstances, including the reports made to the deputies by the concerned citizen informants, upon which the deputies relied to effectuate the stop and subsequent investigation, the Court finds that the deputies had the requisite reasonable suspicion to conduct the investigatory detention of the Defendant on August 28, 2024.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 2nd day of February, 2026, the Defendant's Motion to Suppress is **DENIED** for the above-explained reasons.

By the Court,

Ryan M. Tira, Judge

RMT/asw

CC: DA; PD; CA

Gary Weber, Esq.—Lycoming Reporter