

LEGAL NOTICES, cont.

time and place for the hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

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6/30,7/07,7/14,7/21/95

COMMONWEALTH V. KIRK D. SNYDER, C.P., Franklin County Branch, Cr.D., No. 107 of 1994.

Motion to suppress claiming lack of probable cause to stop vehicle simply because vehicle made a "wide sweeping turn" and absent a violation of the Motor Vehicle Code and/or erratic driving-Motion granted.

1. Not all contact between police officials and the public is constitutionally protected.
2. Where the contact amounts so seizure of a person, the provisions of the Fourth Amendment must be carried out.
3. For a traffic stop to be valid the police officer must have probable cause to believe a traffic violation has occurred or a vehicle or licensing provision is being violated.
4. A police officer who reasonably believes that a traffic violation is occurring or has occurred may stop that vehicle.
5. For an investigative stop to be valid, there must be sufficient facts that when taken together, reasonably warrant suspicion of criminal conduct on the part of the occupants of the vehicle.
6. A "wide sweeping turn" on a roadway which has no center line markings and which causes the vehicle in question to come no closer than four or five feet of a vehicle legally moving in the opposite direction does not constitute erratic driving which would warrant an officer in believing that a traffic violation had occurred.
7. An investigative stop is not justified based on a belief that criminal activity was afoot supported by the fact that after making a "wide sweeping turn" the vehicle pulled alongside a curb and shortly after pulled away with the same number of passengers, and even though the driver made what appeared to be a furtive movement to hide his face when the officers passed the vehicle.

*Jill A. McCracken, Assistant District Attorney
Deborah K. Hoff, Assistant Public Defender*

OPINION & ORDER

WALKER, P.J. April 27, 1995:

FINDINGS OF FACT

Officer Michael Bock of the Waynesboro Police Department was stopped on West Fifth Street at the intersection with South Potomac Street around 1:37 a.m. on the morning of April 9, 1994. While stopped at that intersection Officer Bock observed a small blue pickup truck traveling north on South Potomac Street at the same

intersection. The pickup, which contained three passengers, turned east onto Fifth Street towards Officer Bock. Officer Bock testified that the pickup made a "wide sweeping turn" on East Fifth Street, which had no center line marking, and came within four to five feet of the officer's vehicle. Officer Bock then turned his vehicle around and proceeded to follow the pickup east on Fifth Street.

Officer Bock continued to follow the pickup a number of blocks and eventually observed it parked along a curb on Fourth Street still with three passengers in it. As Officer Bock passed the pickup, he testified that the driver of the vehicle put his arm up in what appeared to the officer to be a furtive movement to hide his face. Officer Bock continued around the block and positioned himself in an alley to watch the vehicle. Shortly thereafter, the pickup pulled away from the curb and proceeded south on Walnut Street and then east on Fifth Street.

Officer Bock followed the pickup and radioed to another officer on duty informing him that he had a possible DUI. Officer Bock testified that he did not observe any erratic driving on the part of the driver of the pickup truck at any time other than the "wide sweeping turn" nor did he observe any violations of the Motor Vehicle Code. As the pickup turned onto Fifth Street, Officer Wagaman pulled in behind the pickup and activated his lights. The pickup traveled approximately one-half block and pulled into a marked parking place in the Landis Tool parking lot.

Officer Wagaman approached the driver's side of the pickup and when the driver rolled down the window, Officer Wagaman testified that he smelled a strong odor of alcohol. After thirty seconds, the driver was able to find his license, registration and insurance card. The driver of the vehicle, the defendant, consented to two field sobriety tests and failed both. Defendant was then arrested and consented to a blood test which resulted in a reading of .17%.

DISCUSSION

Defendant has filed a motion to suppress claiming that the officers lacked probable cause to stop his vehicle. Not all contact between police officials and the public is constitutionally protected. However, where that contact amounts to seizure of a person, the provisions of the Fourth Amendment must be carried out. *Terry v. Ohio*, 392 U.S.

1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "For a traffic stop to be valid the police officer must have probable cause to believe a traffic violation has occurred or a vehicle or licensing provision is being violated." *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977). A police officer who reasonably believes that a traffic violation is occurring or has occurred may stop that vehicle. 75 Pa. C.S.A. Section 6308; *Commonwealth v. DeWitt*, 530 Pa. 299, 608 A.2d 1030 (1992); *Commonwealth v. Elliott*, 376 Pa.Super. 536, 546 A.2d 654 (1988). "For an investigative stop to be valid, there must be sufficient facts that when taken together, reasonably warrant suspicion of criminal conduct on the part of the occupants of the vehicle." *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975).

There has been no evidence presented which would indicate that Officers Bock or Wagaman had any reason to believe that a traffic violation had occurred. Officer Bock even testified that defendant was not engaged in any type of erratic driving patterns other than the "wide sweeping turn" which occurred at the intersection of South Potomac Street and West Fifth Street. This court is of the opinion that defendant's turn at that intersection did not constitute erratic driving which would warrant the belief that a traffic violation was occurring when there were no center line markings on the roadway and defendant only came within four to five feet of the officer's vehicle.

This court is also of the opinion that the officers were not justified in conducting an investigative stop as the evidence does not support a reasonable belief that criminal activity was afoot. Defendant's actions while pulled along the curb coupled with defendant's "wide sweeping turn" and the fact that the same number of passengers were in the vehicle when it pulled away from the curb as when it pulled up to the curb would not warrant suspicion of criminal conduct. Results may have been different had the facts in this case been coupled with defendant coming within one or two feet of the officer's vehicle or with more evidence of erratic driving.

CONCLUSION

As there is an absence of evidence which would indicate that defendant was involved in any criminal activity or had violated the

Motor Vehicle Code, this court finds that the stop of defendant's vehicle was illegal. Defendant's omnibus pre-trial motion is granted.

ORDER OF COURT

April 27, 1995, the court grants defendant's omnibus pre-trial motion and orders the suppression of all evidence obtained as a result of the vehicle stop.

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