

COMMONWEALTH OF PENNSYLVANIA VS. JOHN M. PAXTON, Defendant, Franklin County Branch, CRIMINAL ACTION 618 OF 1996

*Commonwealth of Pennsylvania v. Paxton*

*Criminal Law - Automobiles - Driving Under the Influence - Probable Cause to Arrest - Conduct and Proof of Sobriety Test.*

1. The standard to be applied to determine whether a traffic stop is proper is whether the officer had articulable and reasonable grounds to suspect a violation of the Vehicle Code.
2. The observation by a police officer of a vehicle being operated without headlights turned on after midnight provides an articulable and reasonable basis to conduct a traffic stop.
3. The test for determining whether a police officer has probable cause to arrest and request chemical testing is whether a reasonable person in the position of the police officer, viewing the facts and circumstances as they appeared at the time, could conclude that the driver operated the car while under the influence.
4. When the police officer observed slurred speech, bloodshot and glassy eyes, and the odor of alcohol emanating from the defendant, probable cause to arrest and request chemical testing existed.
5. The court may take judicial notice of the fact that a clinical laboratory is licensed as an approved testing facility by noting the reference to its approval in the *Pennsylvania Bulletin* unless the defendant presents specific allegations that the test conducted was unreliable.
6. Allegations that the defendant does not know if testing procedures were proper and does not know whether the person who conducted the test was qualified are insufficient to rebut the inference of reliability of tests conducted by a laboratory approved by the Department of Health.

*Todd R. Williams, Assistant District Attorney, Legal Counsel for the Commonwealth*

*David S. Keller, Esquire, Legal Counsel for Defendant*

Walker, P.J., November 22, 1996:

*Factual and Procedural Background*

Defendant, John M. Paxton, filed an omnibus pretrial motion that included a motion to suppress evidence and a motion to quash the information. The court held a hearing on the motion on October 1, 1996.

At the hearing, Mercersburg Police Officer Shawn Fraker testified that at 12:24 a.m. on May 8, 1996, he observed the defendant driving his vehicle without headlights south on Main Street in Mercersburg. Officer Fraker, who was operating an unmarked police car, turned his vehicle around and began to follow the defendant's car. After

proceeding around several cars, Officer Fraker pulled the defendant's car over approximately one mile from where he had first observed the defendant. By the time the defendant's car was back in the officer's sight, defendant's headlights were lit.

When Officer Fraker approached defendant's vehicle and asked to see his driver's licence, he noticed the odor of alcohol coming from inside the vehicle. He also observed that the defendant's eyes were bloodshot and glassy and that his speech was slightly slurred. The officer asked the defendant to get out of his vehicle and perform two field sobriety tests, the walk and turn test and the one-leg stand. The defendant performed poorly on the tests, but because Officer Fraker was not certified to perform field sobriety tests, he called for Police Chief Larry Thomas to confirm his findings and to perform a second set of field sobriety tests.

Defendant was placed under arrest and thereafter consented to a blood alcohol test. The test was performed at the Fulton County Medical Center and indicated the defendant's BAC was 0.142%.

*Discussion*

Defendant first argues that the traffic stop was made without an adequate legal basis. However, the standard to be applied to determine whether a traffic stop is proper is whether the officer had "articulable and reasonable grounds to suspect a violation of the Vehicle Code." See, *Commonwealth v. McElroy*, 428 Pa.Super. 69, 630 A.2d 35 (1993); 75 Pa.C.S.A. § 6308(b). "A police officer may stop a motor vehicle if he or she reasonably believes that a provision of the Motor Vehicle Code is being or has been violated." *Commonwealth v. Grosso*, 448 Pa.Super.552, 556, 672 A.2d 792, 794, citing, *Commonwealth v. DeWitt*, 530 Pa. 299, 304, 608 A.2d 1030, 1032 (1992).

In the instant case, Officer Fraker testified that the defendant's vehicle was operating without its headlights on when he first observed it. At that time the vehicle was being operated in violation of Section 4302 of the Vehicle Code which provides that "[t]he operator of a vehicle upon a highway shall display the lighted head lamps ...[b]etween sunset and sunrise." 75 Pa.C.S.A. § 4302 (a). The observation of the violation provided the officer with an articulable and reasonable basis to conduct the stop. The fact that the defendant

had turned on his headlights by the time that the stop was made does not negate the legality of the stop any more than the slowing down of a speeding vehicle after passing a police officer prohibits the officer from stopping the driver for speeding. Therefore, the court finds that Officer Fraker had articulable and reasonable grounds for stopping the defendant's car and thereby conducted a lawful traffic stop.

The next issue raised is whether there was sufficient probable cause to arrest the defendant for suspicion of DUI and thereafter to request the defendant to submit to chemical testing. Under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), an officer may stop and briefly detain an individual in order to conduct a limited investigation if the officer has reasonable suspicion, based on specific and articulable facts that criminal activity is afoot. *Commonwealth v. Toanone*, 381 Pa.Super. 336, 553 A.2d 998 (1989). The test for determining whether a police officer has reasonable grounds to believe that a motorist is driving under the influence of alcohol is well-settled. A police officer has reasonable grounds to request chemical testing if a reasonable person in the position of the police officer, viewing the facts and circumstances as they appeared to the officer at the time, could conclude that the driver drove his car while under the influence of alcohol. *Fierst v. Commonwealth*, 115 Pa.Comm.w.Ct. 263, 266, 539 A.2d 1389, 1390 (1988).

Officer Fraker had good reason to believe that defendant was intoxicated. Defendant's speech was slightly slurred; his eyes were bloodshot and appeared glassy; and the odor of alcohol was noted coming from the vehicle. Therefore, Officer Fraker was justified in asking the defendant to perform the field sobriety tests. Further, because the officer himself was not certified to evaluate field sobriety tests, he acted with increased diligence and requested a backup to verify his suspicions before placing the defendant under arrest. The court finds that based on the observations of Officer Fraker and the confirmation by Chief Larry Thomas, probable cause to arrest the defendant and to request chemical testing existed.

Next, defendant asserts that the Commonwealth failed to meet its burden of showing that the laboratory tests were completed in compliance with Department of Health regulations. At the omnibus pretrial hearing, the Commonwealth asked the court to take judicial

notice of the fact that Fulton County Medical Center was an approved laboratory by citing reference to the *Pennsylvania Bulletin*.

Defendant relies on *Commonwealth v. Culp*, 378 Pa.Super. 213, 548 A.2d 578 (1988). In that case, the Superior Court found that "mere reference to the *Pennsylvania Bulletin* was not sufficient to satisfy the Commonwealth's burden. The bulletin merely is dispositive of the fact that the Department of Health approved the hospital's laboratory for testing purposes." However, in *Culp*, the defendant in his pretrial motion had alleged:

that the blood sample was not taken "at a relevant time," that the laboratory equipment used "was not properly calibrated and tested for accuracy or in accordance with properly promulgated laws and regulations," that the testing was not performed by persons licensed and approved, that the manner of testing was not as specified by the laws and regulations of the Commonwealth of Pennsylvania, and that he did not voluntarily consent to the testing.

*Id.* at 219-20, 548 A.2d at 581. The court found that the claims were sufficiently specific to require the Commonwealth to provide a more detailed response.

However, in another case, the Superior Court examined the issue raised in *Culp* and other cases and determined that "Our review of the procedures utilized by the Department [of Health] lead [sic] us to the conclusion that publication in the *Pennsylvania Bulletin* and judicial notice thereof is sufficient to satisfy the requirements of §1547(c)(2). *Commonwealth v. Brown*, 428 Pa.Super. 587, 595, 631 A.2d 1014, 1018 (1993). Unless a party who believed that some specific error had been made or some malfunction had occurred presented evidence to rebut the inference of reliability created by the Department of Health approval, judicial notice may be taken. The court went on to note that a party was always free to convince the court that, notwithstanding state approval, the circumstances surrounding a particular test are unreliable. However, specific allegations, and not merely boilerplate objections, must be raised. *Id.*

In the instant case, the defendant's omnibus pre-trial motion alleged at paragraph 11: "That it is not known whether the procedures and equipment utilized in the testing of Movant's blood was as prescribed by the Department of Health." Paragraph 12 states: "That

it is not known whether the individual who performed the testing was a qualified person, authorized to do so under the Clinical Laboratory Act." The court after reviewing the documents finds that defendant's omnibus pre-trial motion to suppress contains boilerplate allegations and does not put the Commonwealth on notice of the specific areas of testing that the defendant considers to be unreliable. The court, therefore, denies defendant's motion to suppress the results of the blood test.

### *Conclusion*

The court, therefore, finds that the fact that Officer Fraker observed the defendant's vehicle traveling in the early morning hours without headlights provided an articulable and reasonable basis to conduct a traffic stop. Once the stop had been made, the officer noted that the defendant's eyes were glassy and bloodshot, his speech was slightly slurred, and an odor of alcohol emanated from within the vehicle. These observations in conjunction with the field sobriety tests performed by two police officers provided probable cause to arrest the defendant and to request that he submit to a blood test to determine the level of alcohol in his system. The court further finds that the Commonwealth's reference to the approval in the *Pennsylvania Bulletin* of the Fulton County Medical Center is sufficient under the facts of this case.

### ORDER OF COURT

November 22, 1996, the defendant's omnibus pre-trial motion is denied.

The court further notes with respect to the blood alcohol test at argument that the Commonwealth admitted that the motion to quash as to subsection (a)(5) should be dismissed because that subsection had been held unconstitutional in the case of *Commonwealth v. Barud*, 64 W.D. Appeal Docket 1994 (7-30-96). The court, therefore, orders that subsection (a)(5) be dismissed.

## **THANK YOU**

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Thank you."

Anonymous Attorney

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