

COMMONWEALTH OF PENNSYLVANIA
v. TINA L. BAER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 1148-2003

Constitutionality of investigation of a driver who appeared to be incapacitated

1. An individual has a reasonable expectation of privacy in an automobile, and when a vehicle is stopped by a police officer, and its occupants detained, a seizure within the meaning of the Fourth Amendment has occurred.
2. When any detention occurs, it is an intrusion by the government and the reasonableness of the intrusion on a citizen's security and privacy is determined by weighing the gravity of public concerns, the advancement of the public interest and the severity of the interference with individual liberty.
3. Pennsylvania case law recognizes three different levels of interaction between police officers and citizens: a mere encounter, an investigative detention, and an arrest.
4. The type of interaction that occurs when a police officer approaches a car that is already at a stop purely out of concern for that citizen's well-being does not fit comfortably in any of the three levels of interaction.
5. The reasonableness factors generally applied to determine if an investigative detention is constitutional are changed slightly and applied in this case to determine if the investigation of a police officer into a situation where the driver appeared incapacitated is constitutional.
6. The reasonableness factors are as follows: (1) Whether there was a proper basis for the stop, which is judged by examining whether the law enforcement officials were aware of specific and articulable facts which gave rise to reasonable suspicion; and (2) Whether the degree of intrusion into the suspect's personal security was reasonably related to the situation at hand, which is judged by examining the reasonableness of the officials' conduct given their suspicions and the surrounding circumstances.

Appearances:

T.R. Williams, Esq., *Assistant District Attorney*

Stephen D. Kulla, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., October 20, 2003

Facts

1. On May 15, 2003, Trooper Timothy A. Gilbert (hereinafter "Trooper Gilbert") of the Pennsylvania State Police came upon Tina L. Baer (hereinafter "Baer") stopped at a stoplight at approximately 1:30 a.m. The stoplight was at the intersection of Sheller Avenue and Wayne Avenue.
2. Baer's vehicle was facing a steady red light, and Trooper Gilbert believed that he saw Baer's right turn signal activated at the intersection where it is legal to make a right turn on red.
3. Baer's vehicle was sitting in the right turning lane and the vehicle's engine was on, although the vehicle was not moving.
4. Trooper Gilbert testified as to the fact that Baer's car was stationary at a distance of approximately fifteen (15) meters from the intersection. He further testified that the car remained stationary for approximately one and a half (1½) to two (2) minutes before he approached it.
5. Trooper Gilbert testified that after observing Baer through the rear window of her vehicle for approximately one (1) minute, he observed her head slump over the steering wheel of the vehicle for approximately ten (10) seconds.
6. Trooper Gilbert, based on the above observations, felt that Baer may be sick or incapacitated and approached her car to determine if she needed his assistance.
7. When Trooper Gilbert exited his vehicle to approach Baer's vehicle, he did not activate his overhead blue warning lights.
8. Upon reaching Baer's vehicle, Trooper Gilbert asked Baer, "Hey, are you okay."
9. Both parties agree that up to this point Baer was not violating the Motor Vehicle Code, nor was she cited for any violations, nor was there any criminal activity afoot at the time the officer approached her car.
10. Baer rolled down her window and Trooper Gilbert smelled alcohol about her person and noticed that her eyes were bloodshot.
11. Trooper Gilbert asked Baer for her license, registration card and proof of financial responsibility. He noticed as he talked to her that she appeared confused as she fumbled through her glove compartment to find the documents. Furthermore, her speech was slurred.
12. Trooper Gilbert went back to his vehicle with the documents and at that point he activated his overhead blue warning lights.
13. Trooper Gilbert asked Baer to exit her vehicle and asked her to perform the one-leg-stand field sobriety test. Baer could not complete the test.
14. Trooper Gilbert then advised Baer that he was arresting her for driving under the influence of alcohol and he transported her to the Chambersburg Hospital. Baer refused to submit to a blood test at the hospital.

Procedural History

1. On August 14, 2003, Baer filed an Omnibus Motion to Suppress Evidence Seized as a Result of an Illegal Stop. On the same day, an Order of Court was signed scheduling a hearing on the matter for September 23, 2003.
2. On September 23, 2003, a hearing was held on the Omnibus Motion to Suppress Evidence Seized as a Result of an Illegal Stop.
3. At the conclusion of the September 23, 2003, hearing, attorneys for the parties were directed to submit to the Court brief letters in support of their respective positions by Friday, October 3, 2003.
4. The Court received letters from the attorneys as directed.

Discussion

This matter is before the Court due to the filing of an Omnibus Motion to Suppress Evidence Seized as a Result of an Illegal Stop by the Defendant, Tina L. Baer. The issue is whether the evidence seized as a result of the stop of Baer should be suppressed as the fruit of the poisonous tree because the stop effectuated on Baer was illegal.

The threshold determination involves the nature of the interaction between Trooper Gilbert and Baer.

Pennsylvania case law has made it clear that an individual has a reasonable expectation of privacy in an automobile, and “when a vehicle is stopped by a police officer, and its occupants are detained, a seizure within the meaning of the Fourth Amendment has occurred.” *Commonwealth v. Tarbert*, 348 Pa.Super. 306, 312, 502 A.2d 221, 224 (1985). Therefore, any time the occupants of a vehicle are detained in any manner, the reasonableness of the detention must be determined. Although this Court does not believe that the interaction between Trooper Gilbert and Baer began as a detention, the Court does believe that Trooper Gilbert had to have acted reasonably in investigating the situation on May 15, 2003, in order to comply with constitutional requirements.

The reasonableness, thus the constitutionality, of every intrusion by the government on a citizen’s security and privacy is determined by weighing the gravity of public concerns, the advancement of the public interest and the severity of the interference with individual liberty. *Commonwealth v. Leninsky*, 360 Pa.Super. 49, 53, 519 A.2d 984, 987 (1986). The “central concern in balancing these competing considerations in a variety of settings has been to assure that an individual’s reasonable expectation of privacy is not subject to **arbitrary invasions solely at the unfettered discretion of officers in the field.**” *Id.* (emphasis added).

Pennsylvania case law recognizes three different levels of interaction between police officers and citizens. The first of these is a “mere encounter,” or request for information, that does not need to be supported by any level of suspicion by the police officer. The second level of interaction is an “investigative detention,” and it must be supported by reasonable suspicion. The third level of interaction is an “arrest,” and it must be supported by probable cause. *Commonwealth v. Acosta*, 815 A.2d 1078, 1082 (2003). This Court does not feel that the interaction between Trooper Gilbert and Baer fits comfortably within any of these categories. The interaction involved a concerned police officer approaching a citizen in a stationary vehicle that the officer believed needed assistance.

As already stated, every interaction between a police officer and a citizen needs to be analyzed for its reasonableness, and this court feels that the factors most applicable to the case at hand are the ones enunciated first in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968). The factors are as follows:

1. Whether there was a proper basis for the stop, which is judged by examining whether the law enforcement officials were aware of specific and articulable facts which gave rise to reasonable suspicion; and
2. Whether the degree of intrusion into the suspect’s personal security was reasonably related to the situation at hand, which is judged by examining the reasonableness of the officials’ conduct given their suspicions and the surrounding circumstances. *United States v. Hardnett*, 804 F.2d 353, 356 (6th Cir. 1986), citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968).

These factors generally apply to investigative detentions. However, this court will apply them to the present case to the extent it can. One difference will be that under factor one (1), instead of requiring a reasonable suspicion that a crime has been committed, this Court will require that a reasonable suspicion that the driver was incapacitated be established. See *Commonwealth v. McHugh*, 14 Pa.D.&C. 4th 323, 328 (1992), *affirmed* 428 Pa.Super. 617, 626 A.2d 647 (1993) (discussing, after setting forth the reasonableness factors generally used for investigative detention, that as the officer approached a stationary vehicle, the “officer had a **reasonable suspicion** that the driver was intoxicated or **otherwise incapacitated and not in a position to be driving a vehicle**”) (emphasis added).

As the higher courts in our state have not addressed the specific issue before us, this Court has sought guidance in Common Pleas Court cases from within the Commonwealth. In *Commonwealth v. McHugh*, the court was faced with a set of facts similar to ours in that in both cases police officers approached a stationary vehicle in the belief that the driver of the vehicle was somehow incapacitated. *McHugh* at 323. Although the police officer in *McHugh* suspected that the driver could be intoxicated, that was not his sole reason for approaching the vehicle, as he also felt the driver could have been incapacitated in some other way. *Id.* at 326. The defendant was arrested for driving under the influence and filed an omnibus pre-trial motion to suppress the evidence saying that the police officer had no right to effectuate such an investigation. *Id.* at 323.

The court took the above reasonableness factors into consideration and determined that “even if the driver was not intoxicated, he was incapacitated in some manner so as to make his apparent control of the vehicle (he was in the driver’s seat with the engine running and his foot on the brake) unsafe.” *Id.* at 328. The court in *McHugh* determined that it was reasonable for the police officer to approach the vehicle believing that the driver was in some way incapacitated, and as quoted above, emphasized that even if the police officer had no inclination that the driver was intoxicated, the circumstances surrounding the police officer’s approach made it reasonable that the officer investigated the status of the driver. *Id.*

This Court will now examine the requirements of Terry as applied to the facts in the instant matter.

1. Whether there was a proper basis for the stop, which is judged by examining whether the law enforcement officials were aware of specific and articulable facts which gave rise to reasonable suspicion.

There was a proper basis for the investigation in McHugh and in our case that is evidenced by the specific and articulable facts the police officers were able to cite in describing why they investigated the stationary vehicles. These specific and articulable facts gave rise to a reasonable suspicion that something was potentially ailing the drivers of the vehicles, not of criminal activity, per se. In fact, this Court takes note that in both cases the defendants were not violating the Motor Vehicle Code, were not cited for any violations, nor was there any criminal activity afoot at the time the officers approached the vehicles. *Id.* at 325. This emphasizes the point that the basis of the investigations was not to consider a potential crime but rather to check on the welfare of the incapacitated drivers.

The clear and articulable facts that the police officer in McHugh reported which make the officer's actions reasonable are as follows: The defendant's vehicle was parked at an odd angle in a public parking lot at 2:27 a.m. *Id.* at 325. The parking lot was not a place where people came to park their cars overnight. *Id.* Although the vehicle was parked, the car's engine was on. *Id.* The defendant was in the driver's seat of the vehicle and was wearing his seatbelt. *Id.* He was slumped against the driver's side window, and his eyes were closed. *Id.* The police officer opened the vehicle's door after tapping on the window and getting no response from the defendant. *Id.* at 326. Only upon opening the door of the car did the police officer determine that the defendant was under the influence of alcohol. *Id.*

The facts in our case are similar to those in McHugh, if not even more deserving of the police officer's attention. Trooper Gilbert observed a driver in a lane of traffic with her body slumped over the wheel of the vehicle. The vehicle was sitting approximately fifteen (15) meters from the intersection. It was 1:30 in the morning. Furthermore, while it is not illegal to not turn on red when there is no sign prohibiting such a turn, it could certainly catch the attention of a police officer who must wonder why the driver is not turning when it is perfectly legal to do so. Trooper Gilbert was unclear whether he asked Baer to roll down her window or not but when she did Trooper Gilbert smelled alcohol about her person. While standing alone, each of the above facts may not amount to much in and of themselves; when looked at all together, this Court determines that the police officer had every right to worry about the safety of the driver and investigate.

2. Whether the degree of intrusion into the suspect's personal security was reasonably related to the situation at hand, which is judged by examining the reasonableness of the officials' conduct given their suspicions and the surrounding circumstances.

Due to the facts as set forth above, in both cases the degree of intrusion is deemed reasonable. If it was determined that Baer or the defendant in McHugh had been unconscious due to a medical condition, each in turn would be thanking the police officer for approaching the vehicle to see if she or he needed his assistance. Either officer would have been hailed a hero who saved a physically unwell citizen if the above scenario had proved true. This Court notes that a medical ailment was just as likely to be the cause of Baer's actions as was the intoxication that we now know was the cause of her actions. In his duties as a police officer, Trooper Gilbert had the responsibility to make sure that Baer was not suffering from a medical ailment.

This Court emphasizes the importance of the circumstances surrounding the investigation of both the defendant in McHugh and the defendant in our case. The police have a duty to keep the citizens of the Commonwealth safe and cannot in good faith pass up a scene in which a citizen's safety may be in jeopardy or where there is a potential threat to the safety of other citizens.

This Court has no intention of this decision being read so as to allow the police a broad-sweeping power to perform similar investigations undeterred. The constitutional restraints and reasonableness test apply to this situation just as they do for any stop. However, in the factual scenarios portrayed in both McHugh and in our case, it is entirely reasonable that police officers approached the vehicles to check on the well-being of each respective driver. The fact that both drivers were determined to be intoxicated and were subsequently arrested in these cases is secondary to the duty the officer owes all citizens, including drivers of motor vehicles, to keep them safe.

In both cases the police officers were aware of clear and articulable facts as described above and the "degree of intrusion into the suspect's personal security was reasonably related to the situation at hand." Hardnett, *supra*.

Furthermore, the facts of Commonwealth v. Gallagher are similar to those in our case and while the difference in the law of 1976 as compared to current law leads to opposite outcomes, the fact that similar

investigations were allowed in both cases is what is most relevant. 242 Pa.Super 289, 363 A.2d 1274 (1976). In Gallagher, two police officers came upon a station wagon that was illegally parked in a turnpike cross-over area where the vehicle was partially obstructing two lanes of traffic. Id. at 291. The vehicle's engine was turned off and the driver was behind the wheel fast asleep. Id. The police officers helped the driver across the highway and to a place of safety. Id. While moving him, the officers observed a strong odor of alcohol about his person. Id. They subsequently arrested him for driving under the influence. Id. at 292. The defendant filed a motion to suppress evidence obtained as a result of his allegedly-illegal arrest. Id. at 291.

The court found that the officers "were justified in stopping to investigate a car partially blocking two turnpike lanes, and were justified in leading appellant to a position of safety." Id. at 293. However, under the law at the time, a police officer could not arrest a person for a misdemeanor, without a warrant, if the police did not see the crime actually being committed. Commonwealth v. Reeves, 223 Pa.Super. 51, 53, 297 A.2d 142, 143 (1972) (citations omitted). Because driving under the influence is a misdemeanor and the officers did not see the driver actually driving as the vehicle's engine was turned off, the officers could not make the arrest without a warrant. Gallagher at 242 Pa.Super 292. Thus the defendant's motion to suppress the evidence obtained as a result of an illegal arrest was granted. Id.

At present, the legislature has made it clear that there are some exceptions to this rule about a police officer having to witness a misdemeanor to arrest without a warrant. One such exception is set forth in 75 Pa.C.S.A. §3731(c) stating, "A police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section [dealing with driving under the influence], regardless of whether the alleged violation was committed in the presence of the officer."

The most pertinent part of the above discussion is that the court in Gallagher found it reasonable and justifiable that the officers stopped to investigate a vehicle that was blocking two lanes of traffic. The court looked at the circumstances surrounding the police officers' approach of the vehicle and deemed it reasonable.

Conclusion

Trooper Gilbert's investigation into the well-being of an incapacitated driver was completely reasonable considering the "specific and articulable facts" which he could set forth and the circumstances surrounding the investigation. Hardnett, *supra*. Therefore, the motion to suppress evidence seized as a result of an illegal stop is denied.

ORDER OF COURT

And now this 20th day of October, 2003, the Court having reviewed the Defendant's Omnibus Motion to Suppress Evidence Seized as a Result of an Illegal Stop, and having conducted a hearing on said Motion on September 23, 2003, and reviewed the letters from counsel in support of their respective positions, it is hereby ordered that the request to suppress evidence as outlined in the Omnibus Motion is denied .