

COMMONWEALTH OF PENNSYLVANIA
v. BRADLEY D. WENGER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
No. 1142 of 2005

Motion to Suppress; Probable Cause; Driving Under the Influence

1. A police officer must articulate specific facts that he possessed at the time of a stop that provide probable cause to believe that the vehicle or driver was in violation of the Motor Vehicle Code.
2. A police officer has probable cause to believe a driver is violating the Motor Vehicle Code and to stop that vehicle when the vehicle is not being driven as nearly as practicable entirely within a single lane of travel and is a hazard to himself and other drivers on the road.
3. The defendant's vehicle was a hazard when it crossed the center line six to nine times while traveling a total of ten to twelve blocks and nearly struck the cars that were parked along the curb.
4. Because the vehicle was a hazard, the police officer had probable cause to stop the vehicle.
5. Because the officer had probable cause to stop the vehicle, the evidence of DUI gained through the stop shall not be suppressed.

Appearances:

David W. Rahausser, Esq., Assistant District Attorney

R. Paul Rockwell, Esq., Assistant Public Defender

OPINION

Walker, P.J., February 9, 2006

Factual Summary

On April 28, 2005, at approximately 10:40 p.m., Officer Dimoff was in full uniform patrolling the Borough of Chambersburg on his motorcycle when a vehicle going through an intersection^[1] attracted his attention. Officer Dimoff proceeded to follow the vehicle for approximately eight to ten blocks. During this time, the vehicle crossed the center line of Queen Street five to seven times.^[2] The vehicle nearly struck the cars that were parked along the curb. From where Queen Street merges into Lincoln Way (commonly referred to as East Point), the vehicle traveled two more blocks to Coldbrook Avenue where it made a left hand turn onto Coldbrook Avenue and stopped at Officer's Dimoff's signal. During these two blocks, the vehicle crossed into the center turning lane one or two times.^[3] When Officer Dimoff approached the driver of the vehicle, he detected a strong odor of alcohol. The driver admitted to drinking that evening and failed a field sobriety test. Officer Dimoff then charged the defendant with violating 75 Pa.C.S.A. §3309(1) - Roadways Laned for Travel, a summary offense, and 75 Pa.C.S.A. §3802(c) -- Driving Under the Influence of Alcohol, a misdemeanor of the first degree.

The defendant has filed a suppression motion in which he argues that his driving did not pose a safety hazard and therefore, Officer Dimoff did not have probable cause to believe that he was violating

the Motor Vehicle Code. The defendant further argues that because the stop was unlawful, the evidence gained during the stop must be suppressed.

Discussion

When a police officer stops a car for erratic driving, the officer must articulate specific facts that he possessed at the time of the stop that provide probable cause to believe that the vehicle or driver was in violation of the Motor Vehicle Code. Commonwealth v. Gleason, 567 Pa. 111, 785 A.2d 983 (2001). 75 Pa.C.S.A. §3309(1) requires an individual to drive his vehicle within a single lane and to move from that lane only when he can make the move with safety.

The defendant cites to Commonwealth v. Spade, 54 Pa. D. & C.4th 348 (2000), and 19 Pa. 54 Pa. D. & C.4th 41 (1993), in support of his argument that the stop was not supported by probable cause and that all evidence of driving under the influence gained through the stop should be suppressed. The Commonwealth cites to Commonwealth v. Chernosky, 2005 Pa.Super. 157, 874 A.2d 123, in support of its argument that the defendant's motion to suppress should be denied.

In Chernosky, the Court held that a police officer had probable cause to stop a vehicle when the vehicle crossed the double yellow lines and then swerved over to the right side of the road. Over a period of minutes and several miles, the defendant's vehicle was continually over the berm and was in the other lane of travel at least twice. Additionally, the vehicle nearly struck a light pole. Although the officer could not remember whether there had been any other traffic on the road, the Court found that the length of time and distance traveled posed a risk to public safety.[4]

The case before this Court involves a similar situation in which the defendant's vehicle crossed the center line six to nine times while traveling a total of ten to twelve blocks and nearly struck the cars that were parked along the side of Queen Street. The officer stated during his testimony that there had been other traffic on the road. The officer further stated that although he did not believe the defendant posed a risk to other drivers on the road, he did believe that the defendant posed a risk to the cars parked along the curb on Queen Street.

The Court finds that the defendant's erratic driving posed a danger to the cars parked along the curb on Queen Street and to other drivers on the road. In the Court's opinion, the defendant was a hazard to other drivers on the road because he easily could have sideswiped a car that had been coming up alongside him when his vehicle crossed the center line on the one-way street. Therefore, the Court holds that the stop was supported by probable cause to believe that the defendant was violating 75 Pa.C.S.A. §3309(1). Further, the Court holds that the evidence of DUI gained through the stop shall not be suppressed.

ORDER OF COURT

February 9, 2006, after reviewing the record and conducting a hearing, the Court hereby orders that the defendant's motion to suppress is denied. The Court finds that the defendant was a hazard to himself and other drivers on the road and that the police officer had probable cause to stop the defendant's vehicle. Therefore, the evidence of DUI gained through the stop shall not be suppressed.

[1] The defendant was crossing Main Street as he was heading east on Queen Street.

[2] Queen Street is a one-way street with two lanes of traffic heading east. Cars park along both sides of the street.

[3] This section of roadway is two way traffic with one lane of traffic heading east and one lane of traffic heading west. The lanes are separated by a center turn lane.

[4] An off-duty police officer initially spotted and followed the vehicle. Upon determining that the person in the vehicle was likely intoxicated and posed a risk to public safety, she called in to have an on-duty officer effectuate the stop. When determining whether the defendant posed a risk to public safety, the Court noted that although the off-duty officer could not recall whether or not there had been other vehicles on the road, the off-duty officer was a civilian at the time and was on the road.