

COMMONWEALTH OF PENNSYLVANIA  
v. DAVID ALLEN VERDIER, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 2205 of 2006

*Reasonable Suspicion*

1. To establish grounds for reasonable suspicion, the officer must articulate specific observations which, in conjunction with reasonable inferences derived from these observations, led him to reasonably conclude, in light of his experience, that criminal activity was afoot and the person he stopped was involved in that activity.

Appearances:

Jeremiah D. Zook, Esq., *Assistant District Attorney*

R. Paul Rockwell, Esq., *Assistant Public Defender*

OPINION

Walsh, J., April 30, 2007

In this case, the Defendant, David Allen Verdier ("Defendant" or "Verdier") filed an Omnibus Pre-Trial Motion to suppress evidence. In his Motion, the Defendant states that he believes that "he was stopped unlawfully as the officer did not have probable cause or reasonable suspicion to believe that Defendant was committing an offense prior to said stop." See Motion, paragraph 5. Defendant seeks suppression of all evidence obtained following his unlawful stop, including but not limited to blood test results, police observations of the Defendant, any and all statements made by the Defendant and any and all other evidence arising out of the stop. Pursuant to Pa. R.Crim.P. 581, the Court held an evidentiary hearing on April 5, 2007.

The only witness to testify was Corporal Brian MacDonald of the Chambersburg Police Department. He testified that in the early morning hours of November 1, 2006, he was on duty, conducting routine patrol in full uniform and in an unmarked police vehicle. Corporal MacDonald was out on the street, looking for traffic and Vehicle Code violations. In the vicinity of the rear of the Southgate Mall, Corporal MacDonald observed a white van traveling very slowly for that section of roadway. He observed the van turn right, traveling south onto Cedar Street. Corporal MacDonald testified that he often sits in the CVS parking lot and observes traffic on that roadway. He claimed to be familiar with the usual and customary speed of vehicles on that section of road which has a 35 mph speed limit. There was no challenge to Corporal MacDonald's estimate of vehicle speed based upon his experience and training. Corporal MacDonald testified that he observed the white van traveling well below the posted speed limit of 35 mph, sufficiently slowly that it caught his attention. Corporal MacDonald pulled out behind the van, followed it onto Cedar Street and, when the vehicle turned from Cedar Street right onto west Washington Street, the van's back tires hit the curb. Corporal MacDonald testified that the curb was about normal height, approximately four inches. It was the rear passenger side tire that hit the curb. Corporal MacDonald testified that the vehicle's right rear tire was not "blatantly on the sidewalk" but that it either went over the curb or simply hit the

curb. Corporal MacDonald testified that the vehicle's slow speed and its striking the curb on the right-hand turn caused him to be suspicious that the driver might be operating the vehicle while under the influence of alcohol or a controlled substance.

Corporal MacDonald testified that in his years on the Chambersburg Police Department, he estimated that he has arrested one hundred or more persons for driving under the influence. In addition, he received training at the Municipal Police Officer's Academy on the Vehicle Code, as well as a school through the Pennsylvania Department of Education for Vehicle Code Violations. He testified that he has been a police officer since January 10, 1990, a period of almost 17 years as of the time of this violation. He also testified that in his experience, it is not unusual to see both reduced speed and difficulty in turning for drivers who are under the influence of alcohol or drugs. He noted that he has seen it in his own practice and his own arrests and he has seen it in other cases in the police department. Corporal MacDonald testified that because of the vehicle's uncharacteristically slow speed and its striking the curb with its rear passenger tire, he proceeded to conduct a traffic stop. At the time Defendant's vehicle was stopped, it was dark out. The area of the stop was very well lit from overhead streetlights and the intersection itself was clear such that there was nothing in the intersection that would have affected the Defendant's ability to make the turn correctly. Corporal MacDonald's testimony was credible. He was the only witness called by the prosecution and there were no witnesses called by the defense. Defense counsel conducted no cross-examination of Corporal MacDonald. Additionally, defense counsel offers no contrary version of the facts in this case and the Defendant's brief<sup>[1]</sup> confirms that the Defendant's position is that Cpl. MacDonald's suspicion was not a reasonable suspicion.

The focus of this suppression motion lies squarely within the purview of 75 Pa.C.S.A. §6308(b). The language of this subsection of the statute was amended in 2004 and contains the following language:

Authority of police officer--Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

75 Pa.C.S.A. §6308(b).

According to the statute Cpl. MacDonald needed a "reasonable suspicion" to stop the Defendant's vehicle. Since the amendment to 75 Pa.C.S.A. §6308(b), the Superior Court has heard many cases involving this standard and has declared: "to establish grounds for 'reasonable suspicion' ... the officer must articulate specific observations which, in conjunction with reasonable inferences derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and the person he stopped was involved in that activity." Commonwealth v. Little, 903 A.2d 1269 (Pa. Super. 2006), citing Commonwealth v. Bennett, 827 A.2d 469, 477 (Pa. Super. 2003). The Superior Court has further articulated that when determining whether an officer possessed reasonable suspicion, due weight must be given to the reasonable inferences that an officer draws from the facts in light of his experience. Commonwealth v. Sands, 887 A.2d 261 (Pa. Super. 2005).

The Commonwealth has cited and this Court has examined Commonwealth v. Little, 903 A.2d 1269 (Pa. Super. 2006), Commonwealth v. Emeigh, 905 A.2d 995 (Pa. Super. 2006), Commonwealth v. Smith, --- A.2d ---, 2007 WL 152116 (Pa. Super. 2007), and Commonwealth v. Fulton, --- A.2d ---, 2007 WL 1040921 (Pa. Super. 2007). In each of these cases the Superior Court gives credit to the officer's experience when examining the facts and reasonable inferences drawn from them, and we will do the same in this case.

As noted above, Cpl. MacDonald had been a police officer for nearly seventeen (17) years when this incident occurred; he was trained at the Municipal Police Officer's Academy and the Pennsylvania Department of Education for Vehicle Code Violations; he estimated that he has arrested one hundred or more persons for driving under the influence; he often sits in the CVS parking lot and observes traffic on the same roadway which this incident occurred; that in his experience, it is not unusual to see both reduced speed and difficulty in turning for drivers who are under the influence of alcohol or drugs. The education, training and experience of Cpl. MacDonald combined with the uncontested facts that the intersection was clear, well lit, and there were no impediments in the intersection cause this Court to conclude that it was reasonable for Cpl. MacDonald to make the inference that the Defendant's vehicle's uncharacteristically slow speed and its striking the curb with its rear passenger tire was the result of a violation of the motor vehicle code.

Accordingly, we find that the combination of factors listed above confirm that Cpl. MacDonald had a reasonable suspicion to effect a stop of the Defendant's vehicle and Defendant's Motion to Suppress will

be denied.

#### ORDER OF COURT

April 30, 2007, the Court having considered the evidence and having reviewed the arguments, briefs of counsel and the applicable law, it is ordered that Defendant's Motion to Suppress is denied. This determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing in this order shall prevent the Defendant from opposing such evidence at trial upon any ground except its suppressibility.

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[1] Although Defendant's brief was not timely, we did consider it when making this decision.