

COMMONWEALTH OF PENNSYLVANIA  
v. JOHNNIE WOODS, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action — Law, No. 656–2010

*Reasonable Suspicion; Emerging from Alley, Driveway, or Building (75 Pa.C.S.A. §3344); Urban District*

1. Reasonable suspicion exists when an officer is able to articulate specific observations which, when considered with reasonable inferences derived there from, lead to a reasonable conclusion, in light of the officer's experience, that criminal activity is afoot and the person seized was engaged in criminal activity.
2. The driver of a vehicle emerging from an alley, building, private road or driveway within an urban district shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, private road or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic. 75 Pa.C.S.A. §3344.
3. "Urban district" is defined as the territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more. 75 Pa.C.S.A. §102.
4. Where the officer who made a traffic stop pursuant to 75 Pa.C.S.A. §3344 did articulate that the defendant emerged from a driveway, drove onto the sidewalk area without stopping but did not state with specificity that he was aware or reasonably believed the defendant was operating his vehicle in an urban area, the officer did not set forth specific and articulable facts to conclude that a violation of 75 Pa.C.S.A. §3344 had occurred.
5. It is incumbent on the Commonwealth to establish evidence on the record as to whether or not the police officer was aware or reasonably believed that he was within an urban area when he stopped the defendant's vehicle.

Appearances:

Franklin County District Attorney's Office

Michael O. Palermo Jr., Esquire

Johnnie Woods, *Defendant*

OPINION

Meyers, J., July 28, 2010

Facts

The defendant has been charged with the offense of driving under the influence. The defendant filed an Omnibus Pre-Trial Motion challenging the investigatory stop initiated by Officer Armstrong of the Chambersburg Police Department on February 4, 2010, at approximately 2:23 hours. An Omnibus Pre-Trial Hearing was held on 8th day of July, 2010, at which time the Commonwealth provided the testimony of Officer Armstrong. The Defendant, Johnnie Woods, testified on his own behalf. Mr. Woods is challenging the officer's basis for the stop. The officer, upon having his memory refreshed by

reviewing his report, generally testified that he believed that the Defendant committed the offense of violating 75 Pa.C.S.A. §3344 — Emerging from alley, driveway, or building.

The officer testified that he initially observed the Defendant's vehicle on South Fourth Street in the Borough of Chambersburg. The Defendant's vehicle approached a four-way stop intersection at a high rate of speed that led the officer to anticipate that the Defendant's vehicle might not stop at the intersection. However, the Defendant's vehicle lawfully stopped at the stop sign, after which the officer in a marked police cruiser began following the Defendant's vehicle. As the officer followed the Defendant's vehicle he crossed over the eastbound two-lane street of Queen Street, then made a left onto the westbound two-lane street of Lincoln Way East, made a right onto Third Street, subsequently made a left onto Kennedy Street. Ultimately the Defendant's vehicle made a right onto Grant Street. While the Defendant's vehicle was traveling on Grant Street, the officer testified that he observed the Defendant's vehicle pull into the macadam parking area or driveway at the Knouse Foods' property on Grant Street. The Defendant's vehicle made a continuous turn into the parking area and then exited the parking area without stopping and resumed traveling on Grant Street after which the police officer activated his lights and stopped the Defendant's vehicle. The officer provided general information of what other businesses surround the Knouse Foods property on Grant Street, but lacked specificity as to the distance or location of the residences, businesses, alleys and entrances on the length of Grant Street.

The Defendant took the stand and testified that as he was turning around his vehicle in the Knouse Foods parking area he did not bring his vehicle to a stop, but instead "tapped" on his brakes before re-entering Grant Street. He did this because he could see that there were no other vehicles on the roadway that would require him to stop to allow them to pass. After he re-entered Grant Street, he was ultimately stopped by Officer Armstrong.

Officer Armstrong testified that the Defendant had an odor of alcohol on his breath, after which he asked the Defendant to perform a PBT or preliminary breath test, which revealed that the Defendant's BAC was 0.163 percent.

The Commonwealth argues that the Defendant's failure to bring his vehicle to a stop violated 75 Pa.C.S.A. §3344. The Defendant's counsel argued that the "spirit" of 75 Pa.C.S.A. §3344 was not, in fact, violated given the time of day and the lack of traffic on the street. In listening to the evidence offered by both Officer Armstrong and the Defendant neither of them provided testimony as to whether or not the Defendant violated each and every element of 75 Pa.C.S.A. §3344. No party testified with any specificity as to the number or nature of businesses, residences or driveways, alleys or buildings were located along the length of Grant Street. In fact, defense counsel asserted that the Court should be familiar with and know the overall character of Grant Street and take that into account when making its ruling. However, the record is void of any testimony of the number of driveways, alleys, parking areas, residences or buildings along Grant Street which is significant for the reasons which will become apparent hereafter.

#### Discussion

The Superior Court in *Commonwealth v. Anthony*, 977 A.2d 1182 (Pa.Super. 2009), has stated:

A police officer is justified in conducting a stop of a person if the officer can point to specific facts which create a reasonable suspicion that the person is involved in criminal activity. To determine whether reasonable suspicion exists, a court is to examine several factors, including whether or not specific and articulable facts that will lead the police to believe criminal activity may be afoot. Both the quantity and quality of the information are to be considered when assessing whether a stop is justified.

The Superior Court in *Commonwealth v. Bailey*, 947 A.2d 808 (Pa.Super. 2008), has held that anytime a police officer "has reasonable suspicion" to believe a violation of the Motor Vehicle Code is occurring or has occurred, the officer may initiate an investigatory vehicle stop. This has been the standard adopted by our state legislature in 75 Pa.C.S.A. §6308.

"Reasonable suspicion exists when an officer is able to articulate specific observations which, when considered with reasonable inferences derived there from, lead to a reasonable conclusion, in light of the officer's experience, that criminal activity is afoot and the person seized was engaged in the criminal activity. We consider the totality of the circumstances in determining whether reasonable suspicion existed to justify an investigatory traffic stop." *Bailey*, 947 A.2d at 811.

Based upon the rulings of our appellate courts, this Court finds that Officer Armstrong was required to articulate specific observations that he made at the time of the stop, which when considered with reasonable inferences derived there from lead to a reasonable conclusion that the Defendant was committing a violation of the Motor Vehicle Code and that criminal activity was afoot.

In order to understand the conclusion this court has reached it is necessary to set forth 75 Pa.C.S.A. §3344 — Emerging from alley, driveway, or building, in its entirety.

Unless otherwise directed by official traffic-control devices erected in accordance with provisions of Subchapter B of Chapter 31 (relating to traffic-control devices), the driver of a vehicle emerging from an alley, building, private road or driveway within an *urban district* shall stop the vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across the alley, building entrance, private road or driveway or, in the event there is no sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic. (Emphasis added.) 1976, June 17 P.L. 162, No. 81, §1, effective July 1, 1977. 75 Pa.C.S.A. §3344.

First, this Court finds that Officer Armstrong was able to testify that he observed the Defendant's vehicle emerging from a parking area or driveway on or along Grant Street without stopping immediately prior to re-entering the street. Officer Armstrong was able to note that there was no sidewalk in the area and that there was merely a difference in the composition of the macadam which delineated the driveway area from the cart way area of Grant Street. This testimony may quickly lead one to conclude that the officer, having observed those actions of the Defendant, was able to articulate that a violation of 75 Pa.C.S.A. §3344 had occurred.

What the Commonwealth failed to elicit from Officer Armstrong and what he failed to testify to was whether or not Mr. Woods' actions were occurring within an "urban district," thus requiring him to stop the vehicle immediately prior to driving onto a sidewalk or at the point nearest the street to be entered where the driver has a view of approaching traffic. The Court finds this lack of testimony regarding the existence of an "urban district" along Grant Street to be significant. If Mr. Woods was not operating his vehicle within an "urban district," then Officer Armstrong did not have reasonable suspicion to believe there was criminal activity afoot or that a violation of the Motor Vehicle Code had occurred.

The term "urban district" is defined in 75 Pa.C.S.A. §102 as follows:

"Urban district." The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

This Court notes that without consulting the definition of "urban district" it may be easy to jump to the conclusion that all of the streets within a city, borough, town or village are part of an "urban district." This conclusion is unwarranted when in fact there may be areas within cities, towns and boroughs within the Commonwealth that are not also "urban districts" as defined by the legislature. This Court believes that within locations commonly thought of as "urban" there exist areas that are not "urban districts." In a location that is generally "urban" but not also an "urban district," an operator of a motor vehicle does not have to stop the vehicle before entering the street or road as required under 75 Pa.C.S.A. §3344.

In fact, an "urban district" may very well exist in some of the most remote townships and locations within the Commonwealth of Pennsylvania. Most remote townships and counties within our Commonwealth may have areas comprised of a series of houses with driveways on public roads combined with a series of businesses, which if clustered within 100 feet of each other for a distance of at least one-quarter mile, would meet the definition of an "urban district." An operator of a motor vehicle within that location would be expected to bring his or her vehicle to a stop at the point identified under 75 Pa.C.S.A. §3344.

In the case sub judice, the officer did not testify with any specificity that he believed the Defendant to be operating his vehicle within an "urban district." Despite the fact that defense counsel asserted that this Court should be familiar with Grant Street and should find the stop to be unlawful within the "spirit" of 75 Pa.C.S.A. §3344, this Court is not free to speculate or make assumptions about which streets within the Borough of Chambersburg or any "urban" areas within the 39th Judicial District are also an "urban district." It is incumbent upon the Commonwealth to establish evidence in the record as to whether or not the police officer believed that he was within an urban district and could testify to the fact that he was of the opinion that at the location in which he observed the vehicle make a turn without stopping, that the driveways, alleys and buildings were situated at intervals of less than 100 feet for a distance of a quarter of a mile or more. In the absence of such testimony, this Court finds that the officer did not set forth specific and articulable facts to conclude that he believed that a violation of 75 Pa.C.S.A. §3344 was occurring. For the foregoing reasons, this Court finds that the Commonwealth has not met its burden of providing specific and articulable facts that the police officer believed that a violation of 75 Pa.C.S.A. §3344 had occurred. This Court finds that the investigatory stop initiated by Officer Armstrong was unlawful and that all evidence obtained from the stop thereafter should be suppressed.

ORDER OF COURT

July 28, 2010, the Defendant's omnibus pretrial motion to suppress the evidence obtained as a result of an unlawful investigatory stop of his vehicle is granted. All evidence obtained following the police officer's stop of the Defendant's vehicle including, but not limited to, the PBT test is suppressed.

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