

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No: 00-10,140

VS :

STEPHEN WILCOX :

OPINION AND ORDER

This matter is before the Court for a motion to suppress evidence obtained after a stop of the Defendant's vehicle on November 6, 1999. Argument on the motion was held May 11, 2000. In addition to the testimony from the arresting officers at the hearing on the motion, the Court agreed to consider the transcript of the testimony offered at the preliminary hearing. After a review of the testimony, the Court finds the following facts relevant to the Defendant's motion:

Officers Christopher McKibben and Ron Barto of the Muncy Township Police Department were on routine patrol on November 6, 1999. Officer McKibben was riding with Officer Barto because he was still in training at the department. At approximately 1:35 a.m. the officers observed the Defendant's vehicle make a left turn onto East Lime Bluff Road. Officer McKibben testified that the vehicle was approximately 100 to 200 yards away. Officer McKibben testified that they followed the vehicle approximately one mile, or two to three minutes on East Lime Bluff Road, before they noticed the left back tire cross the center line of the road. The car crossed the center line by one tire width. (N.T. 1/20/00, p. 2). The car then crossed the berm line, or fog line approximately 1 ½ feet. (Id., p.11). Officer McKibben testified that he viewed the conduct of crossing the center line then the fog line on one occasion, when coupled with the time of day, was enough to establish probable cause to stop the Defendant's vehicle for a possible DUI. (Id., p.12).

Officer McKibben testified that it was actually Officer Barto, the driver of the cruiser, who made the decision to stop the Defendant's vehicle. Officer McKibben testified that they did not pull the Defendant over on Lime Bluff Road, they had made a right hand turn. Officer McKibben testified that "as soon as he turned off Lime Bluff Road he turned right in and stopped immediately after turning right." (Id., p. 13). At the time of the preliminary hearing, Officer McKibben was not sure of the name of the road they had turned onto. At the time of the hearing on the suppression motion, Officer McKibben identified a photo of the location of the stop. The photo was a depiction of the intersection of Lime Bluff Road, Ellis Artley Road, and Elm Drive. The photo further depicted a township sign indicating it was in Wolf Township.

Officer Barto expanded the testimony given by Officer McKibben. He testified that the roads in the area are such that they weave in and out of jurisdictions. He testified that while on patrol they often go on roads that veer out of their jurisdiction to take short cuts to their next patrol destination. He testified that they began following the Defendant's vehicle on East Lime Bluff Road. As they approached Beacon, they rounded a sharp corner that went to the right then to the left. At that point in the road, the Defendant crossed the center yellow line and then went off to the right side of the road. Officer Barto testified that they crossed the intersection of Chippewa then turned left toward the quarry, still following the vehicle as it proceeded on Lime Bluff Road. He testified that the vehicle then turned north and went off the road again. He testified that he "waited until there was a violation in [their] own township before making the stop." Officer Barto testified that he recalled stating to Officer McKibben that they had probable

cause to stop the Defendant's vehicle because of the careless manner of driving, as well as the DUI.

Defendant argues that the evidence seized from him after his vehicle was stopped must be suppressed, as the stopping of his vehicle by patrolman McKibben was illegal in that McKibben was acting outside his territorial jurisdiction. The Commonwealth argues that although the stop of the vehicle was admittedly outside their jurisdiction, the officers had the authority to stop the vehicle pursuant to 42 Pa.C.S.A. § 8953 (a)(2), or in the alternative 8953 (a)(5).

Under Section 8953 (a)(2), any municipal police officer who is beyond the territorial limits of his primary jurisdiction, shall have the power and authority to perform the functions of his office as if within his jurisdiction if he is "in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense. The Court in Commonwealth v. McCandless 538 Pa. 286, 648 A.2d 309, (1994), held that section 8953 requires a law enforcement officer to have probable cause *prior to* entering a neighboring jurisdiction. Conduct which raises the officer's suspicions and prompts investigation is not enough. Id., 648 A.2d at 311.

In the instant case, the Court finds that the Officers did not have probable cause to believe that an offense had been committed in their jurisdiction to justify them pursuing the Defendant into another township. A review of the testimony from the preliminary hearing and the hearing on the suppression, leads the Court to conclude that the first observation of the Defendant's car crossing the center line then the fog line

was between the intersections of Beacon and Chippewa on East Lime Bluff Road. According to Defendant's Exhibit No. 1, this would have occurred in Muncy Creek Township, which was outside the officers' primary jurisdiction. The second observation reported by Officer Barto, would have been between the turn onto Lime Bluff Road and the intersection of Ellis Artley and Elm with Lime Bluff Road. According to Defendant's Exhibit No. 1, this conduct could have occurred in either Muncy Creek Township, Wolf Township, or in Muncy Township. Additionally, the stop of the Defendant's vehicle was on Elm Drive, which was in Wolf Township.

Even if the second observation of the Defendant's vehicle passing over the center line of the road was in the officer's primary jurisdiction, the Court finds that that was not enough to establish probable cause to believe that the Defendant had committed the offense of driving under the influence.¹ See Commonwealth v. Carlson, ____ Pa.Super.____, 705 A.2d 468 (1998) (observation of driver crossing center line on one occasion does not constitute probable cause to believe that the driver had committed the offense of driving under the influence). Crossing the center line on two separate occasions has been found insufficient to establish probable cause to believe that the driver had violated section 3309(1)² of the vehicle code. The Court would additionally find that the observation of crossing the center line on one occasion was insufficient to establish probable cause to believe that the defendant was carelessly driving in violation of 75 Pa.C.S. § 3714.³

¹ Officer McKibben testified at the preliminary hearing that he viewed the crossing the center line, along with the time of night enough to establish probable cause to believe that the Defendant was driving under the influence in violation of 75 Pa.C.S. § 3731.

² 75 Pa.C.S. § 3309(1), Driving on roadways laned for traffic

³ Officer Barto testified that he believed that his observations were sufficient to establish probable cause to believe that the Defendant was carelessly driving as well as DUI.

The Commonwealth next argues that the officer's entry into the surrounding jurisdictions may have been justified under 42 Pa.C.S.A. § 8953 (a)(5). Under that section, an officer may be permitted to exercise the functions of his office if, while on official business he views an offense, "or has probable cause to believe that an offense has been committed . . . and which offense is a felony, misdemeanor, breach of the peace or other act which presents an immediately clear and present danger to persons or property." Since the Court has previously concluded that the officers did not have probable cause to believe that an offense had been committed in this case, the Court must reject this argument.

ORDER

AND NOW, this _____ day of June, 2000, based on the foregoing argument, the Defendant's Motion to Suppress all evidence obtained from the stop of his vehicle is GRANTED.

By The Court,

Nancy L. Butts, Judge

cc: CA
Marc Lovecchio, Esquire
Robert Ferrell, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire