

**Commonwealth of Pennsylvania v.
Alvino Ray Long, Sr., Defendant**
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch
Criminal Action No. 2031-2012

HEADNOTES

Criminal Law; Suppression of Evidence

1. The forcible stop of a motor vehicle is a seizure triggering the protections of the Fourth Amendment.
2. When a police officer makes a traffic stop for purposes of investigating whether a crime is occurring, the officer need only have reasonable suspicion.
3. To conduct a traffic stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation, the officer must have probable cause to effectuate such a stop.

Criminal Law; Third-Party Tips

1. An officer may use information from a third party to gain the level of suspicion needed to effectuate a stop of an individual.
2. To determine whether an officer's stop, based on information from a third party, is valid, the court must consider "the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed."

Criminal Law; Implied Consent Law

1. Pennsylvania's Implied Consent Law permits law enforcement, who have reasonable grounds, to require an individual to submit to chemical testing to determine the presence of alcohol or controlled substance in that individual.
2. An individual must be asked whether he consents to chemical testing. If he refuses, his operating privilege is suspended.
3. An individual need not have a driver's license to be subject to the Implied Consent Law.

Appearances:

Jason D. Arnold, Esq., Counsel for Defendant
Lauren E. Sulcove, Esq., Assistant District Attorney

OPINION AND ORDER OF COURT

Before Van Horn, J.

STATEMENT OF THE CASE

On September 11, 2012, at approximately 9:45 p.m., the Chambersburg Police Department received a call from Cynthia Betz, who reported a vehicle ahead of her driving erratically. Based on that citizen tip, officers stopped the Defendant after he had parked in the parking lot of the Chambersburg Hospital and exited his vehicle. Upon contact with the Defendant, the officers observed that Defendant appeared intoxicated and he was taken by Officer Robert Peterson to Chambersburg Hospital to have his blood drawn.

The Defendant was charged with Driving Under Influence: Highest Rate of Alcohol; Driving Under Influence: General Impairment; Accident Involving Damage to Unattended Vehicle; and Driving Without a License^[1], and waived arraignment on November 28, 2012. On December 27, 2012, Defendant filed a Motion to Suppress [sic] and Compel Production. Due to the unavailability of Officer Peterson, the Court granted the Commonwealth's Motion to Continue, filed January 10, 2013. The Commonwealth filed an Answer to Defendant's Motion to Suppress and Compel Production on April 26, 2013. This Court held a hearing on Defendant's Motion to Suppress on May 30, 2013. At the time of hearing, Defendant filed a Brief in Support of Motion to Suppress.

There are three issues for the Court to consider regarding the Defendant's Motion to Suppress. First, whether Officer Peterson had reasonable grounds for stopping the Defendant. Second, whether the draw of the Defendant's blood was lawful. Third, whether the Commonwealth's Implied Consent Law applies when an individual does not have a driver's license. By this Opinion and Order of Court, the Court denies the Defendant's Motion to Suppress in its entirety.

Reasonable Suspicion Existed to Effectuate Stop of Defendant

The forcible stop of a motor vehicle is a seizure triggering the protections of the Fourth Amendment. See *Commonwealth v. Knotts*, 663 A.2d 216, 218 (Pa. Super. 1995). The issue of what "quantum of cause" is required for law enforcement to stop a vehicle for an alleged violation of the Vehicle Code is an area of the law which has experienced recent changes. See *Commonwealth v. Feczko*, 10 A.3d 1285, 1287 (Pa. Super. 2010). Section 6308(b) of the Vehicle Code provides the relevant statutory authority for such detentions. See 75 Pa. C.S. § 6308(b). In February of 2004, the section was amended to provide that when a police officer possesses reasonable suspicion that a violation of the Vehicle Code has occurred or is occurring, he may effectuate a traffic stop "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." See 75 Pa. C.S. § 6308(b).

Contrary to the seemingly plain language of the amendment, both the Supreme Court and the Superior Court have interpreted the reasonable suspicion standard as applying where the offenses involved are "investigatable." *Commonwealth v. Chase*, 960 A.2d 108, 116 (Pa. 2008). See also *Feczko*, 10 A.3d at 1290. In *Chase*, the Supreme Court stated:

[O]ne must remember the reason why the Constitution tolerates the lesser standard articulated in Terry—the detention is allowed to maintain the status quo so the officer may conduct a brief and safe investigation to see if indeed there is criminal activity afoot. Extensive case law supports the conclusion a vehicle stop for DUI may be based on reasonable suspicion, as a post-stop investigation is normally feasible. However, a vehicle stop based solely on offenses not "investigatable" cannot be justified by a mere reasonable suspicion, because the purposes of a Terry stop do not exist—maintaining the status quo while investigating is inapplicable where there is nothing further to investigate. An officer must have probable cause to make a constitutional vehicle stop for such offenses.

Chase, 960 A.2d at 115-16. In the instant case, the Commonwealth must demonstrate that Officer Peterson had reasonable suspicion to effectuate a stop of the Defendant, as the offenses, particularly the Defendant's erratic driving, were investigatable.

While the reasonable suspicion necessary to justify a *Terry* stop is less stringent than probable cause, officer must have more than a hunch for a stop to be lawful. *Commonwealth v. Patterson*, 591 A.2d 1075 (1991). "Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 329, (1990). However, an officer need not personally observe the conduct which leads him to believe that criminal activity is afoot, but rather can rely on information from third parties. See *Commonwealth v. Wright*, 672 A.2d 826, 830 (Pa. Super. 1996). To determine whether an officer's stop, based on information from a third party, is valid, the court must consider "the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed." *Commonwealth v. Jackson*, 519 A.2d 427 (1986), see also *Commonwealth v. Whelton*, 319 Pa. Super. 42, 465 A.2d 1043 (1983).

At the hearing on May 30, 2013, Cynthia Betz, the third party that informed the police of the Defendant's erratic driving, testified that she was driving home on September 11, 2012 at 9:45 p.m. when she initially encountered the Defendant. She testified that she was driving in the right-hand lane on Fifth Avenue, a street with one lane of travel in each direction, when she observed a maroon or burgundy vehicle traveling in the same direction as her, but traveling in the left-hand lane. At that point, she called 911 to report the car's erratic driving. She informed the dispatcher what she had observed. She testified that right before the car reached Montgomery Avenue, it turned off its headlights. The car was driving very close to the parked cars and that it may have hit those parked cars. Ms. Betz followed the car, keeping a distance of two to three car lengths between her car and the other car. The maroon or burgundy vehicle then turned into a parking lot near the Chambersburg Hospital and Ms. Betz parked on the street, under a light and near another occupied car. The driver of the maroon or burgundy vehicle got out of the vehicle. Ms. Betz testified that the police arrived at the scene and she identified for the police the car that she had observed driving erratically and that she had followed. She indicated that she didn't get a good look at the driver, but that the person had a small stature and was wearing dark clothing. That individual was then identified by the police as the Defendant.

Based on Ms. Betz's testimony of the information she relayed to the 911 dispatcher and the officers on the scene, this Court determines that Officer Peterson had reasonable suspicion to stop the Defendant. Ms. Betz was able to give specifics as to the car she was observing, particularly the color, where it was driving, how it was driving, and ultimately where it stopped. The Defendant was stopped on foot a short distance from where he parked his car. These facts give credibility and reliability to Ms. Betz's statements to police. Therefore, Officer Peterson's stop of the Defendant to investigate whether criminal activity was afoot, specifically whether there was a reason for the Defendant's erratic driving, was lawful and the evidence that grew out of that stop will not be suppressed.

The Draw of Defendant's Blood was Lawful

Pennsylvania "Implied Consent Law" permits law enforcement, who have reasonable grounds, to require an individual to submit to chemical testing to determine the presence of alcohol or controlled substance in that individual. 75 Pa.C.S.A. § 1547(a). Specifically, this section states that

"[a]ny person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle: (1) in violation of section ... 3802 (relating to driving under influence of alcohol or controlled substance)...."

Id. The individual must be asked whether he consents to such a test, although an officer need not be the person to make that request. *Occhibone v. Commonwealth*, 669 A.2d 326 (Pa. 1995). If the individual refuses to consent, his operating privilege is suspended for a period of 6-18 months. 75 Pa.C.S.A. § 1547(b)

The Defendant argues that he never consented to the draw of his blood because the officer didn't ask him whether he consented. Further, he testified that he didn't say he refused the blood draw because no one ever asked him and he didn't feel like he had a choice to refuse. However, Cindy Pottorff, the phlebotomist on duty at Chambersburg Hospital when the Defendant was brought in for the blood draw, testified differently. Ms. Pottorff testified that the Defendant was first asked whether he wanted to be seen in the emergency room. Defendant initially answered in the affirmative, but changed his mind and changed his answer to no. See Commonwealth Exh. 1. Ms. Pottorff then testified that the officer asked Defendant if he consented to the blood draw, to which the Defendant answered in the affirmative. She testified that if the Defendant had refused to consent, she would have documented that fact, which she did not do. Commonwealth's Exhibit 1 demonstrates that no such "notation of refusal or resistance" was indicated. Ms. Pottorff further testified that a notion is only made when an individual refuses a blood draw, there is no documentation made when an individual consents. This Court finds Ms. Pottorff's testimony to be more credible and therefore finds that Defendant was given an opportunity to consent or refuse to the blood draw, as required by the Implied Consent Law. Therefore, the draw of the Defendant's blood was lawful.

Implied Consent Law Applies to All Drivers

The Defendant next argues that, because the Defendant was not a licensed driver, he is not subject to the Implied Consent Law, and therefore the draw of his blood was unlawful.

This Court first notes that there was no evidence offered at the May 30, 2013 hearing that the Defendant did not have a driver's license. Therefore, even if the Court did find his legal argument to have merit, it could not be applied to the instant case. However, Defendant's argument has no legal merit. Section 1547(a) states that "Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth..." shall be subject to the section. 75 Pa.C.S.A. § 1547(a) (emphasis added). The section does not provide for any exceptions. The Defendant provides no case law to support his argument that the section does not apply to non-licensed drivers, nor could this Court find any such cases. This Court will not apply Defendant's theory, without any supporting law, to a statute that is inclusive of all persons who operate vehicles in this Commonwealth.

CONCLUSION

Officer Peterson, relying on information relayed to the police department by a citizen, had reasonable suspicion to stop the Defendant. The citizen's tip was sufficiently specific to provide credibility and reliability to the tip, and to permit the officer to act on the information. Further, the draw of the Defendant's blood was lawful, given the Commonwealth's Implied Consent Law, and given the fact that the Defendant consented to the draw, after being requested by Officer Peterson to do so. The fact that the Defendant allegedly did not have a driver's license at the time of this encounter does not change that outcome. Accordingly, the attached Order denies the Defendant's Motion to Suppress in its entirety.

ORDER OF COURT

AND NOW THIS 28th day of June, 2013, the Court having reviewed and considered the Defendant's Motion to Suppress [sic] and Compel Discovery filed December 27, 2012, the Commonwealth's Answer thereto filed April 26, 2013, testimony and evidence presented at the May 30, 2013 hearing, and the Defendant's Brief in Support of Motion to Suppress, and having reviewed the applicable law;

IT IS HEREBY ORDERED THAT the Defendant's Motion to Suppress [sic] is DENIED.

Pursuant to the requirements of Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

^[1] See 75 Pa.C.S.A. §§ 3802(c), 3802(a)(1), 3745(a), 1501(a).