

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS
FOR THE 26TH JUDICIAL
DISTRICT, COLUMBIA COUNTY
BRANCH, PENNSYLVANIA
CRIMINAL DIVISION

vs

HARRY S. FISHER,

Defendant

CASE NO: 984 OF 2003

GARY NORTON, ESQUIRE, Attorney for the Commonwealth of
Pennsylvania

STEPHEN K. URBANSKI, ESQUIRE, Attorney for Defendant

MAY 16, 2005. JAMES, J.

OPINION PURSUANT TO PA.R.APP.P.1925(b)

Following a non-jury trial on October 15, 2004, defendant was found guilty of two counts of Driving Under the Influence of Alcohol (75 Pa.C.S.A. §3731(a)(1) and 75 Pa.C.S.A. §3731(a)(4)) and the summary offence of Driving on Roadways Laned for Traffic (75 Pa.C.S.A. §3309(1)). Defendant appealed based on issues arising out of the denial of a suppression motion on July 16, 2004. Defendant alleges that there was insufficient reasonable suspicion and probable cause for the traffic stop, detention, and arrest.

The facts of this case were presented at both the suppression hearing and the non-jury trial. This incident occurred on September 30, 2003, at approximately 5:00 p.m.

Beginning in Berwick and ending in Mifflin Township, a witness was following another vehicle while on her way home from work. The female witness noticed that the driver's head was "bobbing" and she thought he was sick. He was driving "erratically," from side to side, crossing the center line completely on three occasions. When he made a turn, defendant's vehicle hit a curb. The witness got his license number and called 9-1-1. She followed him to a driveway which he entered. Immediately she saw the police arrive, and she left.

The police arrived and approached the defendant. The officer detected alcohol on his breath. He had slurred speech, staggered gait, bloodshot eyes, and his balance was impaired. The police arrested him and took him for a breathalyzer test. It was stipulated that the BAC was .151.

After the suppression hearing of July 16, 2004, this court denied defendant's Omnibus Pretrial Motion to Suppress Physical Evidence and to Quash Information. At the non-jury trial of October 15, 2004, as stated above, this court found the defendant guilty of Driving Under the Influence, 75 Pa.C.S.A. §3731(a)(1) and 3731(a)(4)(i) and the summary offense Driving on Roadways Laned for Traffic 75 Pa.C.S.A. §3309(1). Defendant appealed to the Superior Court.

The issue is whether the police had reasonable suspicion to approach defendant and probable cause to arrest him. "Police

officers may stop a vehicle whenever they have articulable and reasonable grounds to suspect that a violation of the Vehicle Code had occurred." Commonwealth v. Whitmyer, 542 Pa. 545, 668 A.2d 1113 (1995). "To have reasonable suspicion, police officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including 'tips' from citizens." Commonwealth v. Korenkiewicz, 743 A.2d 958, 963, (Pa.Super. 1999), citing Commonwealth v. Lohr, 715 A.2d 459, 461-462 (Pa.Super. 1998). "The information supplied by the informant must be specific enough to support reasonable suspicion that criminal activity is occurring. ... The informer's reliability, veracity, and basis of knowledge are all relevant factors in this analysis. Id. "Established Pennsylvania law generally accepts that intoxication is a condition within the understanding or powers of observation of ordinary citizens." Id. (citations omitted).

In this case the citizen-informant identified herself and stated to 911 that the subject vehicle was driven off the road and into the left hand lane several times and that the driving was erratic. Defendant's vehicle struck a curb while making a turn. She indicated that she was concerned about safety and that the driver seemed either ill or intoxicated. She got the vehicle's license number. This information was reliable since the tipster identified herself and gave detailed reasons for her

concerns. She should be commended for calling 911. The police would have been remiss if they did not respond. There was reasonable suspicion for inquiry.

Defendant also argues that the "stop" in his driveway was an invasion of privacy. This argument is meritless. The police approached the defendant who had parked in his driveway just off the roadway. He was just exiting his vehicle and was the only one in the vicinity. He had slurred speech, staggered gait, bloodshot eyes, and his balance was impaired. There were no "No Trespassing" signs and the police did not enter any area of the premises that were prohibited. None of defendant's constitutional rights were violated.

In this case the Commonwealth had to prove that the defendant was driving upon the roadways of the Commonwealth under the influence of alcohol to a degree that rendered him incapable of safe driving and/or that his BAC was .10 % or greater. He was driving erratically; he smelled of alcohol and had staggered gait and bloodshot eyes; his BAC was .151%. He is guilty of the offenses.

The convictions should be sustained.

BY THE COURT:

HONORABLE THOMAS A. JAMES, JR., J.