

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

**IN THE INTEREST OF:
BNK,**

A Minor

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No. JV 176-2017

OPINION AND ORDER

And now this **5th** day of **October, 2017**, after a hearing held on September 21, 2017, in regard to the Motion to Suppress Evidence filed by the Juvenile on September 11, 2017, at which time the Juvenile was present and represented by Julian G. Allatt, Esquire. Jeffrey Yates, Esquire was present on behalf of the Commonwealth.

On June 22, 2017, a Petition alleging Delinquency was filed charging the Juvenile with three (3) counts of Driving Under the Influence pursuant to 75 Pa.C.S. §3802; one (1) count of Careless Driving pursuant to 75 Pa.C.S. §3714; and one (1) count of Periods for Requiring Lighted Lamps pursuant to 75 Pa.C.S. § 4302. These allegations stem from an incident on May 5, 2017, at approximately 11:57 p.m., at which time Trooper Vincent Morgan and Trooper Adam Kirk observed the Juvenile's vehicle, with its turn signal on but without its headlights on, make a right turn onto Lycoming Creek Road. The Troopers were traveling in the opposite direction and upon passing the vehicle executed a U-turn to commence pursuit of the Juvenile's vehicle. The entire encounter, including the Troopers' initial observation of the Juvenile's vehicle, was

recorded via the police cruiser's dashboard camera, which included audio narrations of the encounter as well.

As the Troopers were executing their U-turn to begin pursuit of the Juvenile's vehicle, the Juvenile had already turned on the vehicle's headlights. The video depicts the Troopers following the Juvenile's vehicle for approximately 15-20 seconds prior to activating their emergency lights and initiating a vehicle stop. Notably absent from both the audio and video recordings are any observations of the Juvenile committing any moving violations, such as erratic driving, crossing the center line, or speeding. Immediately upon noticing the Troopers' emergency lights, the Juvenile activated his turn signal and pulled into a well-lit parking lot, away from the flow of traffic.

As the Troopers exited their patrol car, Trooper Morgan approached the driver's side of the Juvenile's vehicle. He informed the Juvenile that he had been pulled over for driving without headlights. Trooper Morgan asked the Juvenile a few basic questions which he answered satisfactorily. Trooper Morgan asked the Juvenile if he had been drinking, to which he responded "no." As Trooper Morgan was speaking with the Juvenile and obtaining registration and insurance information, Trooper Kirk was conducting a plain-view search of the vehicle from the passenger side. No contraband was observed by either Trooper at this time. Additionally, no odor of marijuana or alcohol was observed by either Trooper at this time.

Without any explanation to the Juvenile other than "[d]o me a favor . . . with your eyes and eyes only, follow this stimulus," Trooper Morgan performed a partial horizontal gaze nystagmus (HGN) test on the Juvenile while he was still seated in the driver's seat. The Affidavit of Probable Cause indicated that the Juvenile exhibited glassy,

bloodshot eyes. Trooper Morgan testified that based upon the partial test, the Juvenile did not exhibit any signs of impairment. However, after conferring with Trooper Kirk, Trooper Morgan asked the Juvenile to step out of the vehicle and proceed to perform a full HGN test on him. As Trooper Morgan was performing the HGN, Trooper Kirk approached him, also looking for the same indicators. Trooper Morgan testified that upon completion of the full HGN he still did not observe anything which would lead him to believe that the Juvenile was under the influence of drugs or alcohol.

Despite the Juvenile exhibiting only signs of glassy, bloodshot eyes and completing the partial and full HGN tests to satisfaction, Trooper Morgan administered two more standard field sobriety tests: the walk and turn and the one leg stand. According to the Affidavit of Probable Cause and Trooper Morgan's testimony, the Juvenile did not complete these two tests to satisfaction. Trooper Morgan administered a breathalyzer test, which had a reading of .000%. Trooper Kirk then had the Juvenile perform the Lack of Convergence Test and the Modified Romberg Balance Test, and it is alleged that the Juvenile did not perform satisfactorily. According to the Affidavit of Probable Cause, at that time Trooper Kirk questioned the Juvenile about smoking marijuana. The Juvenile then admitted to smoking marijuana two hours prior to the traffic stop. As a result of the traffic stop and subsequent admission to the Troopers, the Troopers found probable cause to arrest the Juvenile. The Juvenile was taken into custody and transported to the Williamsport DUI Center where he consented to a blood test, which indicated positive results for the presence of Delta-9 THC. The Juvenile was subsequently charged with the offenses enumerated above.

The Juvenile's Motion to Suppress alleges that the results of all field sobriety

tests, any admissions made by the Juvenile, his arrest and the subsequent results of post-arrest blood testing should be suppressed, as they were the obtained through an unconstitutional seizure of the Juvenile's person. For the reasons set for below, this Court agrees.

The Troopers initiated the traffic stop because they observed the Juvenile operating a vehicle without its headlights in violation of 75 Pa.C.S. §4302. By the time the Troopers had completed the U-turn necessary to allow them to begin pursuing the vehicle, the Juvenile had already turned on his headlights, as evidenced both in the audio and visual recordings of the encounter and the testimony of Trooper Morgan at the hearing. As further evidenced by the audio and video recordings and the testimony of Trooper Morgan, the Juvenile was not driving erratically, crossing the center or fog lines, speeding, or committing any other violation of the motor vehicle code for the duration of the time the Troopers followed him. Because there were no observations of the Juvenile operating the vehicle in a manner which would give rise to probable cause to believe that he was driving under the influence of drugs or alcohol, Troopers had probable cause to stop the Juvenile's vehicle only for the violation of *Periods for Requiring Lighted Lamps* pursuant to 75 Pa.C.S. §4302.

Counsel for the Juvenile, in his Motion to Suppress, cites Rodriguez v. United States, which states “[l]ike a Terry stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's “mission” – to address the traffic violation that warranted the stop, and to attend to related safety concerns.” 135 S.Ct. 1609, 1614 (2015). “Beyond determining whether to issue a traffic ticket, an officer's mission includes ‘ordinary inquiries incident to the traffic stop.’” Id. at 1615. Typically

such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." Id. In the present case, Trooper Morgan testified that the Juvenile's vehicle was pulled over because he was observed driving without headlights. It was evident prior to the stop was even initiated that the Juvenile had turned on the headlights. There was no evidence contained in the Affidavit of Probable Cause, the video recording of the incident, or Trooper Morgan's testimony that any additional infractions of the motor vehicle code were observed between the time the Troopers began pursuing the Juvenile's vehicle and the time they stopped it.

When the Troopers approached the Juvenile's vehicle, he was informed that he was pulled over for driving without his headlights, which, by that point, the Troopers acknowledged had been already activated. The Troopers conducted a plain-view search of the vehicle and found no evidence of contraband or threats to their safety. Trooper Morgan testified that he asked the Juvenile a few basic questions – presumably "ordinary inquiries incident to the traffic stop" and that the Juvenile answered them satisfactorily. There were no allegations in the Affidavit of Probable Cause and no testimony that the Juvenile was noncompliant, aggressive, or fumbled with the documentation the Troopers requested he produce. There were no allegations in the Affidavit of Probable Cause and no testimony that the Troopers detected an odor of drugs or alcohol from the Juvenile or the vehicle. Trooper Morgan testified only that he observed the Juvenile to have "glassy bloodshot eyes."

Based on nothing more than Trooper Morgan's observation of the Juvenile's eyes, the Troopers began a series of standard field sobriety tests. The first test occurred

while the Juvenile was still seated in the vehicle. Trooper Morgan testified that the Juvenile performed satisfactorily on the test. However, the Trooper asked the Juvenile to exit the vehicle and perform a full version of the HGN, which the Affidavit of Probable Cause and Trooper Morgan's testimony confirmed was performed satisfactorily. Despite the Juvenile showing no indications of impairment through his interactions with the Troopers and two field sobriety tests, the Troopers proceeded to administer four (4) more tests before the Juvenile admitted to smoking marijuana earlier in the evening and was subsequently placed under arrest and charged DUI.

We are guided by the holding in Rodriguez v. United States that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." Id. 135 S.Ct. at 1612. In the present case, the infraction which prompted the traffic stop was the Troopers' observation of the Juvenile momentarily driving without his headlights on. Notably, by the time the Troopers had made a U-turn to begin pursuit of the vehicle, the Juvenile had corrected the infraction and was driving with his headlights on. There were no other moving violations observed or alleged by the Troopers, in either the Affidavit of Probable Cause or through testimony at the hearing. Therefore, the Troopers had the authority to extend the seizure no longer than the time necessary to issue a citation for violation of 75 Pa.C.S. §4302 *Periods for Requiring Lighted Lamps*.

Instead, the Troopers impermissibly extended the traffic stop and conducted a lengthy DUI investigation, based solely on the Trooper's observation of the Juvenile's "glassy bloodshot eyes," which resulted in the pending charges. "While there is no set list of behaviors a person must exhibit for an officer to have reasonable grounds for

making an arrest, case law has provided numerous examples of what this court has accepted as reasonable grounds in the past, e.g. staggering, swaying, falling down, belligerent or uncooperative behavior, slurred speech, and the odor of alcohol.”

Stancavage v. DOT, Bureau of Driver Licensing, 986 A.2d 895, 899 (Pa.Cmwlt. 2009).

Neither the Affidavit of Probable Cause nor Trooper Morgan’s testimony alleged that the Juvenile exhibited any of these additional signs in addition to the glassy bloodshot eyes. To the contrary, the audio and visual recordings of the traffic stop and Trooper Morgan’s own testimony indicated that the Juvenile remained calm and complied with the Trooper’s requests without hesitation or difficulty. There were no allegations that the Trooper detected the odor of drugs or alcohol. The sole basis for the Trooper forming probable cause to extend the traffic stop and subject the Juvenile to numerous field sobriety tests was the Trooper’s observation that the Juvenile had glassy bloodshot eyes. As noted in Stancavage, absent at least one other obvious physical condition, “a showing of glassy eyes alone is insufficient to support the conclusion that an officer had reasonable grounds to believe an individual was intoxicated at any given point in time.” Id.

This Court finds that the DUI investigation conducted by Troopers Morgan and Kirk was unrelated to the original seizure, which was a traffic stop for an infraction of 75 Pa.C.S. §4302 *Periods for Requiring Lighted Lamps*. Because there were no additional moving violations observed when pursuing the Juvenile, the scope and length of the seizure should have been limited to issuing a citation for the offense for which he was stopped. We find that there was insufficient evidence to give rise to a reasonable basis to extend the seizure further by conducting a DUI investigation. Therefore, any

and all evidence obtained after the Juvenile satisfactorily completed the partial HGN from the driver's seat of his vehicle, including the results of any field sobriety tests, statements or admissions made by the Juvenile, and results of lab tests, shall be suppressed as the fruit of an impermissible seizure.

ORDER

AND NOW, this **5th** day of **October, 2017**, following a hearing and argument, the Juvenile's Motion to Suppress is **GRANTED**.

By The Court,

Joy Reynolds McCoy, Judge