

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-53-2017
 :
 SHANE KOSTISHAK, : Omnibus Pretrial Motion
 Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on June 27, 2017 with one count of possession of a small amount of marijuana, one count of possession of drug paraphernalia, two counts of driving under the influence of a controlled substance and related traffic summaries. The Commonwealth contends that on October 9, 2016, the defendant was in possession of a small amount of marijuana along with related marijuana paraphernalia and was driving his vehicle while under the influence of marijuana.

Defendant filed an omnibus pretrial motion which included a petition for writ of habeas corpus and a motion for suppression of evidence, on February 17, 2017. The hearing was held on March 22, 2017. Subsequent to the hearing, the parties submitted written legal memoranda in support of their respective positions.

The only pending issue before the court is Defendant's motion to suppress. Defendant contends that the police did not have probable cause to stop his vehicle "merely for briefly flashing its high beams at the oncoming police vehicle." To the contrary, the Commonwealth contends that the police did have probable cause to believe that the defendant violated section 4306 of the Vehicle Code by flashing his high beams.

There is no dispute as to the facts.

On October 9, 2016, just prior to 1:00 a.m., Trooper Ross Morse and Trooper Robert Williamson of the Pennsylvania State Police were in a vehicle traveling south on Campbell Street, in the area of Grace Street in Williamsport, on patrol, when they observed an approaching vehicle. When the approaching vehicle was approximately 100 feet away, it flashed its high beams one time. The troopers turned around and immediately stopped the vehicle

The in-camera video from the Troopers' vehicle showed the incident.

As the vehicles were approaching each other, the vehicle determined subsequently to be driven by Defendant, flashed its high beams for approximately one second. As a result of this, the troopers decided to stop defendant's vehicle for allegedly violating section 4306 of the Vehicle Code. 75 Pa. C.S.A. § 4306.

Defendant testified that, on the date in question, he saw an approaching vehicle and believed that the vehicle had its high beams on. Trooper Morse testified that he did not utilize his high beams. Defendant indicated that he flashed his high beams very briefly. Defendant indicated that this was something that he had always done and that he had learned to do as early as when he was studying for and received his driver's license. He referred to a provision of the Pennsylvania Driver's Manual which indicated that a vehicle's use of high beams in an oncoming lane can "blind" the driver in the opposing lane and that a driver should flash his high beams a few times in order to let the opposing driver know of the dangerous situation.

Here, the basis for the traffic stop was a violation of the Vehicle Code.

Accordingly, the applicable standard is probable cause. *Commonwealth v. Feczko*, 10 A.3d 1285, 1290 (Pa. Super. 2010).

“Probable cause exists where the facts and circumstances within the officer’s knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it.” *Commonwealth v. Griffin*, 24 A.3d 1037, 1042 (Pa. Super. 2011) (citations omitted). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. *Id.*

Additionally, it is essential to note that an actual violation of the law need not ultimately be established to validate the vehicle stop; rather, the police officer only needs the requisite probable cause. *Commonwealth v. Spieler*, 887 A.2d 1271, 1275 (Pa. Super. 2005) (an actual violation need not be established; probable cause does not require certainty but exists when criminality is but one reasonable inference); *Commonwealth v. Snell*, 811 A.2d 581, 584-585 (Pa. Super. 2002) (while an actual violation need not be established, a police officer must have a reasonable and articulable belief that a driver is committing a violation).

The question before this court is whether Defendant flashing his high beams once for a second while within 100 feet of the troopers’ oncoming vehicle was sufficient to warrant a prudent individual in believing that an offense was committed.

Section 4306 of the Vehicle Code requires a driver to use “the low beam of light” whenever the driver approaches an oncoming vehicle within 500 feet. 75 Pa. C.S.A. § 4306 (a). There is a statutory exception to this rule, however, which permits flashing high

beams as a warning of roadway emergencies or other dangerous or hazardous conditions ahead. 75 Pa.C.S.A. §4306(c)(2).

This court cannot conclude that the troopers had probable cause to stop Defendant's vehicle. While Defendant flashed his high beams within 100 feet, doing so was a momentary and brief act. Defendant did not leave his high beams on or incessantly flash his high beams. Moreover, Defendant reasonably believed that there was a dangerous condition ahead. Believing that the troopers had their high beams on which could have blinded him, Defendant flashed his high beams.

The law is not such that it permits a law enforcement officer to stop a vehicle whenever that officer subjectively believes a violation of the Vehicle Code occurs. The law requires some level of objectiveness. Indeed, the law requires that the court review a stop to determine if the facts were "sufficient to warrant a prudent individual in believing that an offense was committed." *Griffin*, supra.

This court cannot conclude that the facts were sufficient to warrant a prudent individual in believing that an offense was committed. The use of flashing one's high beams at oncoming vehicles is common place. Drivers often times mistakenly flash their high beams at other vehicles believing in error that the vehicles are utilizing their high beams. In fact, it is not uncommon for opposing drivers to flash their high beams at each other to let each other know that they are not using their high beams.

Prudent means well judged, wise and sensible. Under these circumstances, the court cannot conclude that a sensible person would even suspect that the opposing driver was

violating the law. A sensible person would understand that the opposing driver erroneously believed that he was using his high beams. The opposing driver certainly flashed his high beams for a reason. They were flashed for a very brief one second. Realizing that the opposing vehicle did not have its high beams on, the driver continued driving and did not flash his high beams again or keep them on.

In conclusion, given the extremely minor nature of the violation and the extremely brief duration, the court cannot conclude that the stop was lawful. See *Commonwealth v. Gleason*, 567 Pa. 111, 785 A.2d 983 (2001); *Commonwealth v. Garcia*, 859 A.2d 820 (Pa. Super. 2004).

ORDER

AND NOW, this ____ day of April 2017, following a hearing, the court GRANTS Defendant's Motion to Suppress. All the evidence obtained against Defendant following his stop is suppressed and may not be utilized against Defendant at trial.

By The Court,

Marc F. Lovecchio, Judge

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