

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-11,518
:
vs. : CRIMINAL
:
THOMAS McPHERSON, : Suppression Motion
Defendant :

ORDER

AND NOW, this ___ day of March 2004, the Court GRANTS the defendant's motion to suppress evidence. It appears that the defendant's conduct was lawful under 75 Pa.C.S.A. §3304(a)(2). Although Sgt. Aldenderfer believed the defendant did not make his turn with safety, see 75 Pa.C.S.A. §3304(b), he did not charge the defendant under this subsection or mention any safety issues in his affidavit. Even if the proximity of the vehicles had been mentioned in the affidavit, however, there was no contact between the vehicles. It appears the width of the roadway was sufficient for a vehicle to make a right turn on red. It was mere happenstance that the side mirrors of the police vehicle and the defendant's vehicle were the same height so that they were within a couple of inches of each other when the defendant's vehicle was next to Sgt. Aldenderfer's.¹ Sgt. Aldenderfer testified the defendant's vehicle crept by. There was no evidence that the "near miss" was the result of speeding or erratic driving on the part of the defendant. Since the evidence did not show sufficient reasonable and articulable grounds to believe the defendant violated Section 3304, the stop of the defendant's vehicle was impermissible and any evidence gathered as a result of the vehicle stop must be suppressed.

¹ Both parties were driving sport utility vehicles.

By The Court,

Kenneth D. Brown, P.J.

cc: Donald Martino, Esquire
Charles Hardaway, Esquire (ADA)
Work file
Gary Weber, Esquire (Lycoming Reporter)