

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1043 – 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
STEPHEN ANDREW DINCHER,	:	
Defendant	:	Omnibus Pre-trial Motion

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pre-trial Motion, filed August 29, 2007. A hearing on the motion was held November 30, 2007.

Defendant was charged with possession with intent to deliver a controlled substance and related offenses after a traffic stop on April 14, 2007, led to the discovery of marijuana in his vehicle. In the instant motion, Defendant contends the stop was pretextual and thus, that any evidence obtained as a result of the stop must be suppressed. The Court is constrained to agree.

At the hearing, the Commonwealth presented the testimony of Trooper Tyson Havens of the Pennsylvania State Police, who testified that he noticed Defendant's pick-up truck driving westbound on Rose Valley Road in Cascade Township as he was on his way home and near his residence. He indicated his attention was drawn to the vehicle because it was unfamiliar to him in that area (near his home), it was late at night, and there had been a rash of burglaries in the area for which they had no leads. Trooper Havens testified that he began following the vehicle and attempted to run the registration in order to have an identification of the vehicle in case it would turn out that there had been another burglary that evening. According to the trooper, he was unable to discern the first of the four digits inasmuch as a wire hanging from under the tailgate of the truck¹ hung in front of the registration plate and partially blocked the digit and the ball of a trailer hitch extended up in front of the plate, also partially blocking the digit.² Trooper Havens testified that he guessed at the digit, ran the plate using

¹ It appears this wire was an electrical connection from the truck to any trailer which might be towed behind the truck.

² The evidence showed that there were three letters followed by a space and then four numbers, and thus the first digit was located in approximately the center of the license plate.

that guess, but was given in response the description of a vehicle which did not match Defendant's pick-up, and thus concluded he had not guessed correctly. He then stopped Defendant because, in his own words, he could not "get a good identification" on the vehicle. While speaking to Defendant, Trooper Havens noticed an odor of marijuana emanating from the vehicle, which led to the seizure of marijuana and the instant charges. Defendant was also charged with violating Section 1332 of the Vehicle Code, Display of Registration Plate.

Section 1332 provides, in pertinent part: "It is unlawful to display on any vehicle a registration plate which: ... (3) ... is obscured in any manner." 75 Pa.C.S. Section 1332(b)(3). Inasmuch as Trooper Havens testified that he was unable to discern one of the numbers on Defendant's registration plate, Defendant may very well have violated a provision of the Motor Vehicle Code, and had Trooper Havens stopped Defendant because of that perceived violation, the stop would be legitimate. It is clear to the Court, however, that Trooper Havens did not stop Defendant because he was concerned about the Vehicle Code violation but, rather, because he was concerned about the unsolved burglaries in that area and wanted to identify Defendant's vehicle in the event he might need that information in the future with respect to any investigation of the burglaries. As the Court stated in Commonwealth v. Benton:

An officer may not make a traffic stop based on improper reasons. We recognize that in making traffic stops the police act to keep the highways safe and minimize accidents on the roads. However, in carrying out this important function an officer does not have unfettered discretion to stop cars for further investigation. He cannot use pretextual reasons for the stop. The law does not permit an officer to stop a vehicle *based on reasons other than the officer's reasonable belief that a violation of the Motor Vehicle Code has occurred.*

655 A.2d 1030, 1034 (Pa. Super. 1995)(emphasis added). In the instant case, since the stop was based on reasons other than a belief that a violation of the Vehicle Code had occurred, the Court finds the stop unlawful and thus any evidence obtained as a result of that stop must be suppressed.

ORDER

AND NOW, this 4th day of December 2007, for the foregoing reasons, Defendant's Omnibus Pre-trial Motion is hereby GRANTED. Any evidence or statements obtained as a result of the vehicle stop on April 14, 2007, shall not be admitted into evidence at any trial in this matter.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Richard Callahan, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson