

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**FRANK MCAFEE,
Defendant**

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**No. 88-2008
CRIMINAL**

OPINION AND ORDER

On March 12, 2008, Defendant filed an Omnibus Pre-Trial Motion. A hearing on the Motion was held on February 6, 2009.

Background

The following is a summary of the facts presented at the Suppression hearing. Sometime shortly after midnight on November 1, 2007, Trooper Tyson Havens (Havens) and Corporal Michael Simpler of the Pennsylvania State Police were traveling south in a marked State Police cruiser on Campbell Street in the vicinity of Fourth Street. As the troopers crossed Fourth Street¹, going towards Third Street they observed a white sedan on Third Street parked under the traffic light in the crosswalk facing north, which appeared to be running and had its lights on. As the troopers neared Third Street, they observed two vehicles approach, stop, and go through the blinking red light at the intersection of Third Street and Campbell Street. After the vehicles went through the light, the troopers noticed the white sedan still had not moved out of the crosswalk. Havens turned on the spotlight to see if anyone was in the vehicle and observed a male, later identified as Frank McAfee (Defendant). The vehicle stayed in the same position for approximately another five seconds before it proceeded through the intersection.

¹ Havens testified he activated the in-car camera at this point.

As the Troopers did not see any passengers in the vehicle, or anyone get in or out, the Troopers conducted a traffic stop on the Defendant's vehicle. When Havens approached the Defendant he detected an odor of alcohol on his breath. The Defendant then admitted to drinking that night. A Portable Breath Test (PBT) was conducted, showing a reading above the .08 level. Defendant was charged with Driving Under the Influence of Alcohol and Illegal Park on Crosswalk.

Defense Counsel presented the testimony of Desiree Cummings (Cummings) who testified that she, along with her son and her friend Maya, were in the Defendant's vehicle on the night of the incident. Cummings related the Defendant was taking her to a college party on Third Street, but they could not find the house so the Defendant pulled over to let them out. Cummings explained that she saw the police cruiser when it was near the light at the intersection of Campbell and Fourth Streets' as she and her friends got out of the vehicle. She related that they left immediately after getting out of the vehicle.

The Defendant also testified at the hearing. He explained that he pulled over to the curb, a little over the crosswalk for about twenty to thirty seconds in order to let his friends out of the car to go to a college Halloween party. He explained that he saw the police at the intersection of Campbell and Fourth Streets' when his friends were getting out of the vehicle. The Defendant related he paused before proceeding through the intersection because first another vehicle passed him and then because the police had a yellow light and he had a red light. Defendant also explained that his friends were out of view before the troopers shined their spot light on his vehicle.

Discussion

Defendant alleges that the traffic stop was illegal because Havens lacked the requisite level of suspicion to support a valid traffic stop. The Commonwealth asserts in opposition that Havens had reasonable suspicion that a violation of the vehicle code was occurring when the Defendant's vehicle was parked in the crosswalk.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)). Police officers are authorized to stop a vehicle whenever they have “reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred.” Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) (citing 75 P.S. § 6308(b)). According to the Pennsylvania Motor Vehicle Code, “no person shall: (1) Stop, stand or park a vehicle: . . . 75 Pa.C.S. § 3353(a). Section 3353(a)(1)(i)(B) also provides, “Standing or parking for the purpose of loading or unloading persons or property may be authorized by local ordinance . . .”

Defendant relies on Commonwealth v. Chase to support his assertion that the traffic stop was illegal. 960 A.2d 108 (Pa. 2008). In Chase, the Court held that “if the officer has no . . . expectations of learning additional relevant information concerning the suspected criminal activity, the stop cannot be constitutionally permitted on the basis of mere suspicion.” Id. at 115. This Court finds the Defendant's reliance on that case misplaced. Havens did not have mere suspicion, he at least had reasonable suspicion to believe that a violation of the Motor Vehicle Code had occurred. Havens observed the Defendant's vehicle parked in the crosswalk under a traffic light. Havens related two other vehicles stopped at the red light and proceeded before the

Defendant moved his vehicle. Although, the Defendant and Cummings testified the vehicle was parked in the crosswalk to allow Cummings and others to exit the vehicle, Havens related he never observed any other occupants of the vehicle or any other people near the vehicle. Therefore, as the vehicle was parked in a crosswalk, Havens had not observed passengers exiting or entering the vehicle, and the lateness of the hour, he had reasonable suspicion to stop the vehicle. As such, the traffic stop was lawful and the Motion shall be denied.

ORDER

AND NOW, this ____day of March 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Omnibus Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (KO)
Peter T. Campana, Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)