

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1533-2009
vs. :
: CRIMINAL DIVISION
: KHALID Q. BARNES,
: Defendant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order dated December 15, 2009. The relevant facts follow.

On July 2, 2009 at approximately 4:38 p.m., Officer Dustin Reeder of the Williamsport Police observed a silver Pontiac sedan with multiple air fresheners hanging from its rearview mirror in the 700 block of West Edwin Street. Officer Reeder turned his vehicle around and stopped the Pontiac. Officer Reeder noted that it is a violation of the Vehicle Code to have anything hanging from the rearview mirror that would obstruct the driver's field of vision. It also had been his experience that drug users and drug dealers use air fresheners to cover up the scent of narcotics. Officer Reeder identified the driver, but did not issue her a citation. He also sought identification from the other occupant of the vehicle for "officer safety reasons" and because the vehicle was first observed in a high crime area where drugs are prevalent. Defendant was the front seat passenger. He told Officer Reeder his name was Troy Anderson and his date of birth was 6/11/86. Officer Reeder returned to his patrol vehicle and ran the information Defendant provided on his computer through the

driver's license center and J-NET, but no record was found for the name and date of birth he provided. Officer Reeder then returned to the vehicle and again asked Defendant who he was. This time Defendant stated he had a Pennsylvania ID card but he did not have it with him. Officer Reeder told him to spell out his name. Defendant spelled out T-R-Y Anderson and gave his date of birth as 6/23/86. Officer Reeder returned to his patrol vehicle and ran that information, but no record was found. Officer Reeder returned to the Pontiac a third time and advised Defendant he was the subject of an official investigation and any of his information that was not correct from here on out would be a violation. Defendant still provided the name Troy Anderson and the date of birth of 6/23/86.

Officer Reeder placed Defendant under arrest and searched him. Officer Reeder discovered a small, clear glass bottle with the remnants of a brown leafy substance that the officer suspected was marijuana. The substance was not field-tested because there was no way to get into the bottle to retrieve the leafy substance. Defendant told Officer Reeder that the bottle was used for smoking wet. Officer Reeder could not recall whether the glass bottle appeared to be burnt.

Officer Reeder charged Defendant with false identification to law enforcement authorities and possession of drug paraphernalia.

On October 5, 2009, Defendant filed a petition for habeas corpus, in which he asserted the Commonwealth did not present a prima facie case at the preliminary hearing for the charge of false identification. A copy of the preliminary hearing transcript was attached to the petition, along with a copy of Judge Anderson's decision in *Commonwealth v. Summers* (CR-975-2007), a Lycoming County case from 2007 concerning the false identification statute. An argument was held on December 10, 2009 on Defendant's petition.

The Court granted the motion on December 15, 2009, relying on Judge Anderson's decision in *Summers*.

The Commonwealth filed a notice of appeal, arguing the Court erred in granting Defendant's motion and finding that there must already be a crime or violation of the vehicle code by the person who gives the false identification before the statute comes into play. The Court cannot agree.

Section 4914 of the Crimes Code defines the offense of false identification as follows:

A person commits an offense if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.

18 Pa.C.S. §4914(a). In this case, the officer did not have any basis to believe Defendant was committing a violation of law. The only arguable violation of the law in this case was that the **driver** of the vehicle was violating 75 Pa.C.S. §4524(c).¹

The Commonwealth argues that once the police believed the information Defendant provided was false, he became the subject of an official investigation for providing false information to law enforcement. The Court agrees with Judge Anderson's

¹ Even that violation is questionable in this case. In light of the fact the driver was never charged, the objects hanging from the mirror were a couple of tree air fresheners which due to their size (approximately 2 ½" x 4 ½") generally do not materially obstruct the driver's view, see *Commonwealth v. Thomas*, 18 Pa.D.& C. 4th 660 (Lycoming County, 1992) and the officers testified that air fresheners are used by drug users and drug dealers to mask the scent of narcotics, it appears the stop may have been a pretext to look for drug activity.

decision in *Summers*, that this argument by the Commonwealth would be putting the cart before the horse. The first two times Defendant provided the name and date of birth information, he was neither the subject of an investigation nor had the officer informed him that he was the subject of an investigation.

The Commonwealth's argument that it need not show a violation of law other than providing false identifying information essentially re-writes the statute so it would simply state a person commits an offense if he furnishes law enforcement authorities with false information about his identity and renders the rest of the statutory language meaningless. The Court cannot adopt such an interpretation of the statute as it would violate the Statutory Construction Act, 1 Pa.C.S. §1922(2). Moreover, this is a criminal statute which must strictly be construed. 1 Pa.C.S. §1928(b)(1).

For the foregoing reasons, the Court found the Commonwealth did not present a prima facie case of false identification and granted Defendant's petition for habeas corpus relief.

DATE: _____

By The Court,

Kenneth D. Brown, Senior Judge

cc: Paul Petcavage, Esquire (ADA)
Robert Cronin, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)