

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. SA-62-2010**
 :
THOMAS BECK, :
Defendant :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress. Defendant was previously convicted before a Magisterial District Judge (MDJ) of Driving under Suspension (DUI related) in violation of 75 Pa. C.S.A. § 1543 and unlawful activities (improper tint) in violation of 75 Pa. C.S.A. § 4107. Defendant filed a timely Appeal and the matter is presently scheduled for a de novo hearing on December 16, 2010.

Following the filing of the Appeal, Defendant filed a Motion to Suppress requesting that the Court suppress all of the evidence obtained following the stop of Defendant's vehicle. More specifically, Defendant argues that the arresting Pennsylvania State Trooper did not possess the requisite reasonable suspicion to enact a traffic stop as required by law.

The suppression hearing was held on November 5, 2010.

Corporal Curtis Albaugh of the Pennsylvania State Police first testified on behalf of the Commonwealth. He has been employed by the Pennsylvania State Police for over 22 years in the Patrol Unit. Additionally, he is a Motor Carrier Inspector. He has had extensive training and experience with respect to the proper tint of motor vehicle windows. Corporal Albaugh detailed the standards applicable to the tinting of motor vehicle windows noting that under present Pennsylvania law, the standards require that 70 to 100 % of the available light

outside of a motor vehicle must be able to get through the windows to the inside of the vehicle in order for the vehicle to be in compliance. He noted that on his Patrol Unit the tint percentage is 72.

While on patrol on July 25, 2010 at approximately 12:00 noon, Corporal Albaugh noticed a vehicle driving in front of him with tinted windows. He initially noted to himself that the window tint was dark. The closer he got to the vehicle the more he noticed the tint and the fact that all of the windows were tinted. There was no doubt in his mind that the tint was illegal. He could not see “much into the vehicle at all” and could not see the driver at all.

As a result, Corporal Albaugh decided to effectuate a traffic stop on the vehicle. Following the stop, among other things, Corporal Albaugh identified the Defendant and gathered evidence upon which the Defendant was convicted by the MDJ of the two charged offenses.

A law enforcement officer may initiate a vehicle stop when that officer has reasonable suspicion to believe a violation of the Motor Vehicle Code is occurring or has occurred. Commonwealth v. Bailey, 947 A.2d 808 (Pa. Super. 2008); 75 Pa. C.S. § 6308.

In determining whether reasonable suspicion exists, the Court must consider the totality of the circumstances. Bailey, supra. “Reasonable suspicion exists when an officer is able to articulate specific observations which, when considered with reasonable inferences derived therefrom, lead to a reasonable conclusion, in light of the officer’s experience, that criminal activity is afoot and the person seized was engaged in the criminal activity”. Bailey,

supra at 811, citing Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007), appeal denied, 934 A.2d 72 (Pa. 2007).

Corporal Albaugh stopped Defendant's vehicle believing that it was being driven in violation of 75 Pa. C.S.A. § 4107 (b) (2). This statute precludes an individual from operating on any highway in this Commonwealth a vehicle which is not equipped as required under the Department regulations. The transmittance of light through tinted windows is governed by 67 Pa. Code § 175.67, which through a referenced Table X requires passenger cars to have a light transmittance level of 70 % or greater.

In support of his argument, Defendant relies upon the Court of Common Pleas decision in Commonwealth v. Hatzas, 2007 Pa. Dist. & Cnty. Dec. Lexis 93 (2007). Such reliance, however, is misplaced. First, the law enforcement officer in Hatzas stopped the Defendant's vehicle for allegedly violating 75 Pa. C.S. § 4524 which does not contain either explicitly or by reference the 70 % transmittance standard. Commonwealth v. Brubaker, 2010 PA Super. 116 (June 29, 2010). Moreover, and determinatively, the Court in Hatzas concluded that the law enforcement officer's testimony was "somewhat embellished" and did not provide under the totality of the circumstances the requisite reasonable suspicion necessary to initiate the traffic stop. The Court noted that the law enforcement officer's observations were made at night with minimal lighting and made while the Defendant's vehicle was traveling past the law enforcement officer's stationary location.

In this case, however, the Court finds Corporal Albaugh's testimony entirely credible. His observations were made while his patrol unit was following Defendant's vehicle, at 12:00 noon in daylight and over an extended period of time and distance. Based upon his

years of experience, the fact that he had actually used the tint meter 200 to 300 times, the fact that he knew the percentage with respect to his vehicle and could compare it with the Defendant's vehicle, the fact that he could not see the driver at all and the fact that he could not see "much into the vehicle at all," clearly Corporal Albaugh had reasonable suspicion to believe that the Defendant's vehicle was being driven in violation of the light transmittance levels prescribed under Department regulations, and accordingly in violation of 75 Pa. C.S.A. § 4107 (b) (2).

ORDER

AND NOW, this ____ day of November 2010, following a hearing, the Court **DENIES** Defendant's Motion to Suppress.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Robert Cronin, Esquire
DA
Gary Weber, Esquire (Lycoming Reporter)
Work File