

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. SA-45-2011
vs. :
:
KYLE CRAIN, :
Defendant :

OPINION AND ORDER

This matter came before the Court on Defendant's request to suppress all evidence obtained as a result of the police stopping his vehicle at a checkpoint on April 14, 2011.

A hearing was held on October 20, 2011. At the hearing, Corporal Charles Kindlimann of the Pennsylvania State Police testified as a witness for the Commonwealth. Corporal Kindlimann testified that on April 14, 2011 he was assigned to be the supervisor at a checkpoint on Lincoln Drive with three other troopers. The checkpoint was a regulatory checkpoint, i.e., the troopers asked the driver of every vehicle for their driver's license, insurance and registration. Acting Sergeant Darren Farber selected the location, date and times for the checkpoint. Sergeant Farber assigned the officers to the checkpoint and gave them instructions to stop every vehicle going in both directions unless a backlog occurred. Corporal Kindlimann testified that the checkpoint was established based on statistical data regarding crashes and enforcement in Loyalsock Township from PROphecy and TraCS databases. This data was admitted as Commonwealth Exhibits 4 and 5. He also testified that signs were posted advising motorists of the checkpoint before they reached the area where the troopers were making contact with the motorists and requesting information from them.

On April 14, 2011, Defendant Kyle Crain was on a motorcycle when he

approached the regulatory checkpoint. Corporal Kindlimann stopped Defendant, advised him he was at a checkpoint, and asked him for his license, insurance and registration. Defendant was unable to produce a valid photo license, so Cpl. Kindlimann asked for his name and date of birth and had Defendant step off his motorcycle and go to the closest patrol vehicle. Corporal Kindlimann then ran an NCIC check on Defendant, which indicated that Defendant's license was suspended.

When Cpl. Kindlimann told Defendant of his findings, Defendant became "confrontational," claiming his rights were being violated and asking why he was the only one being checked. Cpl. Kindlimann pointed out another vehicle that had been stopped and the driver provided the requested information. He also explained the reason that Defendant was asked to step from his motorcycle and wait near the patrol car was due to the fact he did not produce a valid photo license. Corporal Kindlimann also testified that he patted Defendant down, because he was concerned about safety.¹ Although an average checkpoint stop takes no more than a minute or two, the stop of Defendant took five to ten minutes.

Cpl. Kindlimann did not immediately cite Defendant for driving under suspension. He told Defendant he would look into the suspension and allowed Defendant to leave the checkpoint pushing his motorcycle.

The Commonwealth admitted, as Commonwealth Exhibit 1, the State Police regulations establishing the policies, procedures, and guidelines for conducting Traffic Safety Checkpoints, which includes information on both sobriety and regulatory checkpoints.

The Traffic Safety Checkpoint Report from April 14, 2011 was admitted as

Commonwealth's Exhibit 2. This document shows that the checkpoint was conducted on Lincoln Drive in Loyalsock Township from 10:30 a.m. to 11:00 a.m. and all vehicles were stopped in both directions. The remarks section notes that the site was selected based on PROphecy crash data and TraCS citation data and approved by Patrol Section Supervisor Acting Sergeant D. Farber.

Defendant called his father, Darren Crain, as a witness. Mr. Crain testified that Defendant called him to tell him what happened at the checkpoint and discuss the status of the license. Mr. Crain pointed out that there had been an issue in the past where PennDOT erred and said the license was suspended when it wasn't. Mr. Crain also told Defendant, "I suggest you get on your bike and do what you got to do."

The traffic citation issued to Defendant for driving under suspension states in the comment section: "Stopped on lincoln drive in loyalsock twp. at 1115 hours during a regulatory traffic checkpoint. Operator was advised of oln suspension and was last seen pushing his mc away from the checkpoint. -Kawasaki."

Defendant asserts that the checkpoint was unconstitutional or illegal for the following reasons: (1) there was no prior approval by the District Attorney or a judge; (2) there was no statistical data to support the location or time of the checkpoint; and (3) the police did not follow the field regulation or guidelines for the checkpoint. This last allegation includes, but is not limited to, assertions that: the police posted signs for a DUI checkpoint, not a regulatory checkpoint; the police exceeded the proper scope of a DUI checkpoint; the police stopped Defendant beyond the time for the checkpoint listed on

¹ It was not clear from the record at what point during the stop that the pat down occurred.

Commonwealth Exhibit #2; and the checkpoint was not advertised.

The Commonwealth countered: (1) there was prior administrative approval by Acting Sergeant Farber; (2) Commonwealth's Exhibits 4 and 5 showed the statistical data to support the checkpoint; (3) there is no requirement that the checkpoint must be advertised or approved by the District Attorney or a judge; and (4) the checkpoint substantially complied with the regulations and guidelines, which is all that is required.

In order to be constitutionally acceptable, the Pennsylvania Supreme Court has found checkpoints should be evaluated based on the following five criteria: (1) vehicle stops must be brief and must not entail a physical search; (2) there must be sufficient warning of the existence of the checkpoint; (3) the decision to conduct a checkpoint, as well as the decisions as to time and place for the checkpoint must be based on local experience as to where and when intoxicated drivers are likely to be traveling or license, equipment, and inspection violation are likely to be discovered; and (5) the decision as to which vehicles to stop at the checkpoint must be established by pre-fixed, objective standards, and must not be left to the unfettered discretion of the officers at the scene. Commonwealth v. Worthy, 598 Pa. 470, 957 A.2d 720, 725 (2008); Commonwealth v. Blouse, 531 Pa. 167, 611 A.2d 1177, 1180 (1992); Commonwealth v. Tarbert, 517 Pa. 277, 535 A.2d 1035, 1043 (1987).

The checkpoint need not be advertised. Commonwealth v. Pacek, 456 Pa. Super. 578, 691 A.2d 466, 471 (1997)(“Neither *Blouse* nor *Tarbert* mandate that the police must place advance notice, of the DUI checkpoint, in any local or regional publication”). All that is required is that the existence of the roadblock be ascertainable from a reasonable

distance or otherwise knowable in advance. Blouse, 611 A.2d at 1180. Similarly, there is no case law requiring approval by a judge or district attorney; all that is required is prior administrative approval regarding the time and place of the roadblock, accompanied by pre-fixed objective standards regarding which vehicles to stop, so that these decisions are not left to the unfettered discretion of the police officers at the scene. Id.; Tarbert, 535 A.2d at 1043.

The Court also agrees with the Commonwealth's assertion that "substantial compliance" with the *Tarbert/Blouse* guidelines is all that is necessary. Unfortunately, what constitutes "substantial compliance" has not been precisely defined. See Worthy, 957 A.2d at 729 (concurring opinion by Eakin, J.)("Further, the majority apparently concludes 'substantial compliance' with the guidelines occurs when all five factors are met. If all five factors must be met, this would be '*complete* compliance' with the guidelines, not merely '*substantial* compliance' as *Blouse* requires. As each checkpoint is necessarily unique, 'substantial compliance' will vary with each case; in some cases, meeting four of the five factors could be 'substantial compliance.' In other cases, substantially, but not completely, meeting all five factors could be deemed 'substantial compliance.'").

The Court finds, under the unique facts and circumstances of this case, that the stop of Defendant at the checkpoint did not substantially comply with the guidelines and factors set forth in Tarbert, Blouse, and Worthy.

First, the stop of Defendant included a pat down search. Although Defendant may have disagreed with the stop and expressed an opinion that the police were violating his constitutional rights, there is nothing in the record to indicate the police ever observed any

facts to indicate that Defendant was armed and dangerous to justify a pat down search.

Second, the exhibits that allegedly supplied the statistics or local experience for the time and place of the checkpoint did not contain information to show why Lincoln Drive and the time of 10:30 a.m. were selected. The exhibits showed crash and citation data for Loyalsock Township in general, but the exhibits did not indicate the time of day that any of the crashes or violations occurred or that any such incidents occurred on Lincoln Drive.

Finally, and perhaps most importantly, the on-site troopers conducted the checkpoint beyond the administratively approved time frame. Commonwealth's Exhibit 2 shows that Acting Sergeant Farber approved a checkpoint on Lincoln Drive from 10:30 a.m. to 11:00 a.m. Defendant, however, was not stopped on Lincoln Drive until 11:15 a.m. It is clear from the record that this was not a situation where Defendant was in a backlog of traffic at the checkpoint prior to 11:00 a.m., because Corporal Kindlimann testified that no backlog occurred and this testimony was corroborated by the remarks in Commonwealth Exhibit 2. No evidence was presented that would explain why the checkpoint continued beyond the authorized time frame. Thus, it appears that the stop of Defendant was based not on prior administrative approval, but the unfettered discretion of the on-site officers.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of January 2012, the Court GRANTS Defendant's request to suppress all evidence obtained from the stop and DISMISSES the citations issued against him for driving under suspension, 75 Pa.C.S.A. §1543 and operating a vehicle without the proper class of license, 75 Pa.C.S.A. §1504.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire
Kyle Crain, pro se
Work file
Gary Weber, Esquire (Lycoming Reporter)
Prothonotary