

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH**

vs.

**ERNEST PEPPERMAN,
Defendant**

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: No. CR-2125-2012

OPINION AND ORDER

This matter came before the Court on July 3, 2013 for a hearing and argument on Defendant's motion to suppress evidence. The relevant facts follow.

At approximately 7:30 p.m. on August 30, 2012, Corporal Derron Farber of the Pennsylvania State Police was traveling east on SR 654 in Bastress Township in an unmarked unit. In this area, SR 654 is a two-lane, winding mountain roadway. The land on either side of the roadway is fairly steep and heavily wooded.

As Corporal Farber was driving down the mountain, a black pick-up truck was traveling in the opposite direction without having its headlights illuminated. The combination of the topography of the area and the fact that it was dusk made it very difficult for Corporal Farber to see the vehicle. It immediately struck Corporal Farber that the vehicle needed its lights on, so he turned around to stop the vehicle and inform the driver that he needed to turn his lights on. As Corporal Farber was trying to catch up to the truck, he noticed that its left tires were about six inches across the double yellow lines in the oncoming lane of travel the entire time it was traversing a left-hand, uphill curve. As soon as the

vehicle came out of the curve, Corporal Farber initiated a traffic stop.

Defendant was the driver of the vehicle and his wife was the only other passenger. Corporal Farber told Defendant that he was stopping his vehicle because Defendant crossed into the oncoming lane of travel and he needed to turn his headlights on. Corporal Farber noticed that Defendant's eyes were bloodshot and glassy and there was a moderate odor of alcohol coming from the vehicle. Corporal Farber asked Defendant to exit the vehicle and perform standard field sobriety tests on a nearby paved driveway. Defendant failed the walk-and-turn test by missing his heel to toe in both phases as well as making an improper turn, but he satisfactorily performed the one-leg stand test. In Corporal Farber's opinion, Defendant was under the influence of alcohol to a degree which rendered him incapable of safe driving.

Corporal Farber took Defendant into custody and transported him to the Williamsport Hospital where his blood was drawn at 8:35 p.m. His blood alcohol content was .125%.

Defendant filed a motion to suppress evidence in which he alleged that Corporal Farber lacked probable cause to stop his vehicle and he lacked probable cause to arrest Defendant for DUI.

At the hearing on Defendant's motion, Defendant and his wife testified that Corporal Farber told them that he had pulled their vehicle over because they were going 55 mph in a 45 mph zone and they did not have the headlights on. They testified that the area where they were stopped was a 55 mph zone. They also testified that it was still daylight and the sun was shining through the trees. There was ample light so that if it were not for the curves in the roadway other vehicles were discernible at a distance of at least 1,000 feet, and no other vehicle on that roadway except Corporal Farber's vehicle had its lights on. Defendant also testified that he found it hard to believe that he traveled outside of his lane, because it is his driving practice to use the fog line as a guide when he is driving on a curve. He also indicated that his eyes were always bloodshot due to his long work hours.

Corporal Farber testified that he pulled the vehicle over because its headlights were not illuminated and it crossed into the oncoming lane of travel. Although he believed the area where the vehicle was stopped was a 45 mph zone, he did not recall saying that he stopped the vehicle for traveling 55 mph in a 45 mph zone. He also did not have anything about that in his notes, and Defendant was not charged with speeding. Furthermore, there were other vehicles on the roadway, all of which had their headlights on.

Upon consideration of all the facts and circumstances in this case, the Court

finds that Corporal Farber had probable cause to stop Defendant's vehicle and his observations made after the stop gave him probable cause to arrest Defendant for DUI.

Probable cause is made out when "the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." The question is not whether the officer's belief was 'correct or more likely true than false.' Rather, we require only a 'probability, and not a prima facie showing, of criminal activity.' In determining whether probable cause exists, we apply a totality of the circumstances test.

Commonwealth v. Thompson, 604 Pa. 198, 985 A.2d 928, 931 (2009)(citations omitted).

Section 4302(a)(2) of the Vehicle Code states:

The operator of a vehicle upon a highway shall display the lighted head lamps and other lamps and illuminating devices required under this chapter for different classes of vehicles, subject to exceptions with respect to parked vehicles at the following times:

(2) Any time when the operator cannot discern a person or vehicle upon the highway from a distance of 1,000 feet due to insufficient light or unfavorable atmospheric conditions, including rain, snow, sleet, hail, fog, smoke or smog.

75 Pa.C.S. §4302(a)(2).

The Court accepts the credibility of Corporal Farber's testimony and rejects the credibility of the testimony of Defendant and his wife. Corporal Farber credibly testified that the sun was setting and it was dusk. The Court is familiar with the area in question and Corporal Farber's testimony that headlights were needed is consistent with the Court's experience. The stop occurred shortly before sunset, and the trees and terrain cast shadows on the roadway and the leaves of the trees filter out some of the light. While a driver might

not need his headlights illuminated before sunset in the more open areas of the roadway near the village of Nesbit where Defendant and his wife testified that they observed other vehicles without their lights on, in the more mountainous and wooded areas of the roadway headlights are necessary even before the sun completely sets. Defendant and his wife were traveling up Bastress Mountain. Corporal Farber testified that it was very dim and it was difficult to see Defendant's truck. Therefore, the Court accepts Corporal Farber's testimony that Defendant needed to have his headlights illuminated due to insufficient light and finds that he had probable cause to believe Defendant was violating 75 Pa.C.S. § 4302(a)(2).¹

The Court does not believe that Corporal Farber stopped Defendant's vehicle on the basis of speeding. Defendant was not charged with speeding and Corporal Farber testified that he did not have anything in his notes to indicate that Defendant was traveling 55 mph in a 45 mph zone. Therefore, the speed limit in the area of the stop is irrelevant.

¹ The Court did not consider Commonwealth's exhibit 1, which was a printout from Weather Underground's website listing, among other things, the time for sunset on August 30, 2012. The Court is not familiar with Weather Underground and there was no certification or testimony to authenticate the document. Even if the Court would have considered the document, it would not have established a violation of 75 Pa.C.S. §4302(a)(1) which requires an operator to display his head lamps between sunset and sunrise, because the document indicates that sunset was at 7:42 p.m. and Corporal Farber testified that he encountered Defendant's vehicle between 7:30 and 7:40 p.m.

Once Corporal Farber stopped Defendant's vehicle, he noticed a moderate odor of alcohol emanating from the vehicle and he observed that Defendant had bloodshot and glassy eyes. Defendant also failed the walk and turn field sobriety test. These facts and circumstances led Corporal Farber to reasonably believe that Defendant was under the influence of alcohol and gave him probable cause to arrest Defendant and ask him to submit to a blood test. The results of the blood test confirmed Corporal Farber's opinion that Defendant was committing the offense of driving under the influence of alcohol.

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of July 2013, the Court DENIES Defendant's motion to suppress evidence.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalaus, Esquire (ADA)
Ronald Travis, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file