

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA--

COMMONWEALTH OF PENNSYLVANIA,

v.

HENRY BLACKMAN,
Defendant

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CR: 1581-2013

CRIMINAL DIVISION

OPINION AND ORDER

On March 13, 2014, the Defendant filed a Motion for Reconsideration on this Court's Opinion and Order of March 4, 2014.

Background

On November 19, 2013, Henry Blackman (Defendant) filed a Motion to Suppress Evidence. The Defendant alleged four (4) issues:

- (a) the stop of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot and that the Defendant was involved in said criminal activity.
- (b) the subsequent search of the Defendant was done without reasonable suspicion to believe that criminal activity was afoot and that the Defendant was involved in said criminal activity.
- (c) the subsequent search of the Defendant was done without a warrant, exigent circumstances, or proper consent.
- (d) the questioning of the Defendant was done while he was in custody and without being Mirandized.

(Defendant's Motion to Suppress, p. 2). A hearing on the Motion was held on February 4, 2014.

On March 4, 2014, this Court issued an Opinion and Order finding that the officer lawfully stopped the Defendant's vehicle, however, the officer failed to give the Defendant his Miranda rights before conducting a custodial interrogation.

On March 13, 2014, the Defendant filed a Motion for Reconsideration. Even though the Defendant only alleged that the officer lacked reasonable suspicion in his Motion to Suppress and at the hearing, he argued in the Motion for Reconsideration that the Court erred in using the reasonable suspicion standard. For the first time, the Defendant is alleging that the officer lacked probable cause and that the Court should have applied the probable cause standard.

This Court would normally not address novel issues raised in a Motion for Reconsideration as the Commonwealth did not receive notice of the Defendant's argument and may have had additional testimony/argument at the hearing. The Court, however, will still address the Defendant's issues as it believes it lacks merit. The relevant facts for this case can be found in this Court's Opinion and Order dated March 3, 2014.

Motion for Reconsideration

The first issue raised by the Defendant is that the Court erred when using the reasonable suspicion standard to determine whether the vehicle stop was lawful. In support of his argument, the Defendant cites Feczko, where an officer stopped a vehicle for "reasonable suspicion due to the fact that the individual was weaving within his lane and also crossed out of his lane of travel on numerous occasions." Commonwealth v. Feczko, 10 A.3d 1285, 1286 (Pa. Super. 2010). The officer did not indicate that the stop was conducted on suspicion of DUI. The Superior Court addressed the issue of what quantum of cause is required in order for a law enforcement officer to stop a vehicle for an alleged violation of the Vehicle Code. The Superior Court found that "mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation." Id. at 1291.

The Defendant, however, cites to two cases that apply the reasonable suspicion standard when officers, as in here, conducted vehicle stops for individuals suspected of driving with

suspended operating privileges. See Commonwealth v. Bailey, 947 A.2d 808 (Pa. Super. 2008); Commonwealth v. Andersen, 753 A.2d 1289 (Pa. Super. 2000). In addition, this Court relied on Farnan when determining that the officer in this case had reasonable suspicion:

In Farnan, an officer received information that a defendant was driving on a license that was suspended for a DUI-related matter. Commonwealth v. Farnan, 55 A.3d 113, 114 (Pa. Super. 2012). Within thirty (30) days of learning defendant's current license status, the officer observed the defendant driving and pulled over his vehicle. The defendant argued that the officer could have reconfirmed the status of his license prior to pulling his vehicle over. The Superior Court, however, disagreed and found that the vehicle stop was lawful based on reasonable suspicion. "[A] officer need not delay the interaction until he has acquired the greatest available quantum of information indicating that the defendant is engaged in unlawful conduct." Id. at 118 (citing Commonwealth v. Rogers, 849 A.2d 1185, 1189 (Pa. 2004)).

Commonwealth v. Blackman, CR1581-2013 (P.J. Butts, March 4, 2013). Farnan clearly applied the reasonable suspicion standard despite the holding in Feczko regarding vehicle stops for alleged Motor Vehicle violations.

While the Court believes that the reasonable suspicion standard was correctly applied, it also believes that applying the probable cause standard would not have changed the outcome of this case. The officer testified that prior to conducting the vehicle stop he observed the Defendant and believed one hundred percent that he was Gregory Amos (Amos). The officer had prior contacts with Amos and was familiar with him. The officer further contacted LCCC and was informed that Amos was DUI suspended and had an active bench warrant. The Court believes that the officer had sufficient probable cause before the vehicle stop to believe that operator of the vehicle was Amos and that he was driving with a suspended license.¹

In addition, the Defendant argues that even if the reasonable suspicion standard was applied there was no basis for the vehicle stop. As discussed above, the Court believes probable cause and reasonable suspicion were established by the Commonwealth. The Defendant,

¹ It is clear that probable cause vanished once the officer viewed the operator, however, there was probable cause to conduct the vehicle stop, which is the issue being challenged.

however, relies on Andersen, where an officer knew that the defendant's license was suspended and that his vehicle was being operated. Andersen, 753 A.2d at 1293. The officer did not see the operator of the vehicle prior to the vehicle stop. The Superior Court found that the stop lacked reasonable suspicion because it was based on the assumption that the defendant was operating the vehicle.

Similarly, the Defendant cites to Bailey, where the officer saw a vehicle that looked similar to one owned by an individual with a suspended license. Bailey, 947 A.2d at 812. The officer did not identify that operator of the vehicle prior to the vehicle stop. Based off this knowledge alone, the Superior Court found that the stop was based on a hunch and not reasonable suspicion.

The cases cited by the Defendant are distinguishable from this case. Here, the officer identified an individual who he believed was Amos based on his own observations and experience. The officer did not merely see Amos' vehicle being operated or a vehicle that matched the description of a vehicle owned by Amos prior to the vehicle stop. The officer testified that he was one hundred percent sure that the operator of the vehicle was Amos. To require more of the officer prior to the vehicle stop would require that he not only identify the operator but that he has additional evidence to identify the operator. Such a standard is well beyond reasonable suspicion and probable cause. Based on the officer's testimony, which this Court found credible, the Court believes that the Defendant argument lacks merit.

ORDER

AND NOW, this _____ day of March, 2014, based upon the foregoing Opinion, the Court finds that the officer conducted a lawful stop of the Defendant's vehicle. Therefore, the Defendant's Motion for Reconsideration is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Michael Morrone, Esq.