

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
vs. : **No. CR-561-2014**
: **Motion to Suppress**
CALVIN TERRELL CHARLES :
Defendant

OPINION AND ORDER

On April 25, 2014, Defendant was charged by Information with count 1- possession of a controlled substance (contraband by inmate prohibited), a felony 2 offense; count 2- possession of a controlled substance, an ungraded misdemeanor offense; count 3- possession of marijuana, (small amount for personal use), an ungraded misdemeanor offense; count 4- possession of drug paraphernalia, an ungraded misdemeanor offense; and count 5- possession of drug paraphernalia, an ungraded misdemeanor offense. The charges resulted from evidence obtained during a search of the Defendant's vehicle after South Williamsport police effectuated a traffic stop.¹

On June 23, 2014, Defendant filed a Motion to Suppress the evidence obtained during the search of Defendant's vehicle. The Defendant avers that South Williamsport Police officers had an insufficient legal basis to effectuate a traffic stop. Specifically, Defendant argues that the officers lacked reasonable suspicion to believe that a violation of the Motor Vehicle Code had occurred.

A suppression hearing was held on July 29, 2014. At the hearing, Officer Jacob Summers testified on behalf of the Commonwealth. Officer Summers has been employed

¹ Following the stop, and upon running the Defendant's license plate number through the patrol unit's computer system, the officers arrested the Defendant pursuant to an outstanding bench warrant. The Defendant and his vehicle were then searched incident to arrest.

by the South Williamsport Police Department as a patrolman for almost two years. His testimony indicated the following.

At approximately 6:30 pm on March 27, 2014, Officer Summers and Officer McInnis were patrolling traffic near the intersection of Market Street and East Southern Avenue in South Williamsport. The officers were in a marked police vehicle in a bank parking lot and were facing on-coming traffic. During the patrol, officers noticed a white Mercury Grand Marquis that allegedly exhibited numerous inspection violations.

Officers initially noticed the vehicle as it traveled toward them on Market Street because the vehicle's front windshield wipers were in an upright 10 o'clock position. At the time that officers observed the white Mercury Grand Marquis it was not raining or snowing.

Officers continued to observe the vehicle for approximately 15-20 seconds while it stopped at a red traffic light at the intersection of Market Street and East Southern Avenue. At this time the vehicle was approximately 25 feet from the officers.

In addition to the upright position of the vehicle's windshield wipers, officers also noticed four air fresheners hanging from the vehicle's rearview mirror. Moreover, the officers saw that the vehicle's rear windshield, as well as the rear wing windows were darkly tinted. Officer Summers noted during his testimony that he was "very confident" that the window tinting violated §4524(e)(1) of the Motor Vehicle Code² because the tinting was so dark and opaque that it looked as though a black garbage bag had been put over the windows.

² "No person shall drive any motor vehicle with any sun screening device or other material which does not permit a person to see or view the inside of the vehicle through the windshield, side wing or side window of the vehicle." 75 Pa. C.S.A. §4524(e)(1).

At this point, the officers pulled out of the bank parking lot and began to follow the white Mercury. After following the vehicle for nearly eight blocks, the officers effectuated a traffic stop.

According to Officer Summers, the officers stopped the Defendant's vehicle because they believed that the vehicle's upright windshield wipers and numerous air fresheners obstructed a significant amount of the windshield and created a safety concern. However, Officer Summers clearly indicated during his testimony that the officers' "primary impetus" for stopping the Defendant's vehicle was having observed numerous Motor Vehicle Code violations while the Defendant's vehicle was stopped at the red traffic light at the Market Street and East Southern Avenue intersection.

"[W]here a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible." Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. 2005)(quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

In determining whether the Commonwealth has met its burden to overcome Defendant's Motion to Suppress, the Court must first determine whether reasonable suspicion or probable cause is the proper standard for determining the lawfulness of the stop of Defendant's vehicle.

The Pennsylvania Supreme Court explained in Commonwealth v. Chase:

a vehicle stop based solely on offenses not 'investigatable' cannot be justified by a mere reasonable suspicion because the purposes of a *Terry* stop do not exist—maintaining the *status quo* while investigating is inapplicable where there is nothing further to investigate. An officer must have probable cause to make a constitutional vehicle stop for such offenses.

599 Pa. 80, 960 A.2d 108, 118 (2008). Although the Defendant avers that officers lacked reasonable suspicion to effectuate a traffic stop of Defendant's vehicle, Officer Summers indicated during his testimony that the officers stopped the Defendant's vehicle after already observing several Motor Vehicle Code violations. Therefore, because the stop of the Defendant's vehicle served no investigatory purpose, the appropriate standard is not reasonable suspicion, but rather probable cause.

“Probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and the defendant has committed it.” Commonwealth v. Griffin, 2011 Pa. Super. Ct. 138 (citing Commonwealth v. Stewart, 740 A.2d 712, 715 (Pa. Super. Ct. 1999)). “It is incumbent upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the [Motor Vehicle] Code.” Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010). “Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.” Commonwealth v. Lindbloom, 2004 PA Super 270, 854 A.2d 604, 607 (Pa. Super. 2004).

Section 4524(e)(1) of the Motor Vehicle Code prohibits a person from driving a motor vehicle with any sun screening device or other material that disables a person from seeing or viewing the inside of the vehicle through the windshield, side wing or side window of the vehicle. 75 Pa. C.S.A. §4524(e)(1). Section 4524(e)(1) does not explicitly require or reference a specific degree of light transmittance through a vehicle's windows.

Commonwealth v. Brubaker, 2010 PA Super. 116 (2010). Rather, §4524(e)(1) requires only general visibility into the vehicle. Id.

Officer Summers testified that he was “very confident” in light of his training and experience that the windows on Defendant’s vehicle allowed no visibility into the vehicle and therefore violated §4524(e)(1) of the Motor Vehicle Code. Specifically, Officer Summers articulated that the Defendant’s rear wing windows were so darkly tinted that they were opaque and looked as though a black garbage bag had been placed over them.

The Court accepts Officer Summers’s testimony as credible. Officer Summers made his observations during daylight hours, approximately 20-25 feet from the Defendant’s vehicle. In addition to initially facing the vehicle head-on, officers observed the Defendant’s vehicle while it was stopped at a red traffic light for approximately 15-20 second, and then followed the vehicle for a significant period of time, over the course of 7-8 blocks.

Based on the testimony of Officer Summers, the court finds that the officers had a sufficient legal basis to effectuate a traffic stop of Defendant’s vehicle because the officers had probable cause to believe that the window tinting on Defendant’s vehicle violated §4525(e)(1) of the Motor Vehicle Code. Accordingly, the Defendant’s Motion to Suppress will be denied.

ORDER

AND NOW, this 5th day of August 2014, following a hearing and argument, the Defendant’s Motion to Suppress is denied.

By the Court:

Marc F. Lovecchio, Judge

cc: DA (MW)
PD (KG)
Gary Weber (Lycoming Reporter)
Judge Lovecchio (Attn: Elizabeth Gula, Intern)
Work File