

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-968-2014
 :
 WILLIAM J. REILLY, IV, : Omnibus Pretrial Motion
 Defendant : Motion for Suppression

OPINION AND ORDER

Defendant is charged by Information with four counts of Driving Under the Influence of a Controlled Substance, one count of Possession of a Small Amount of Marijuana and one count of Possession of Drug Paraphernalia. Defendant's preliminary hearing was scheduled for June 2, 2014. At said time, Defendant waived his preliminary hearing and reached a tentative plea agreement with the Commonwealth.

Despite agreeing to plead guilty, Defendant waived his arraignment and proceeded to actively defend against the charges. Defendant submitted a request for pretrial discovery. Defendant, without opposition from the Commonwealth obtained an extension of time within which to file pretrial motions. Defendant subsequently filed an omnibus pretrial motion on August 20, 2014, which included a motion to suppress.

The hearing on the motion to suppress was held on September 30, 2014.

At said hearing, Defendant was represented by a different attorney than the attorney who had previously entered an appearance on behalf of the Defendant and filed the motion to suppress. Defendant's argument at the hearing was different than that as set forth in the motion to suppress.

In the motion to suppress, Defendant asserted that the evidence obtained

against him following his traffic stop should all be suppressed because the stop effectuated by law enforcement and the subsequent search of Defendant were allegedly conducted in violation of the Defendant's constitutional rights. Defendant asserted in the motion to suppress that the stop of his vehicle was allegedly done because Defendant's "dome light came on and off several times." Defendant also asserted that there were no traffic infractions or anything unlawful or inappropriate about the manner in which Defendant operated his vehicle; therefore, there was no probable cause to believe that Defendant was acting in any illegal manner.

At the hearing on the motion, Defendant argued instead that the stop of his vehicle was in violation of his constitutional rights because Defendant was not aware and was not notified that his vehicle was parked in the borough park complex at a time in violation of the Borough Ordinance.

Candidly, the assertions set forth by the Defendant in the written motion to suppress, and as argued during the hearing, are inexplicable. The written motion to suppress ignores the clear statements in the affidavit of probable cause that Defendant's vehicle was stopped because it was parked in the park complex in violation of Borough Ordinance, § 16-103. Defendant's arguments during the hearing that the failure of the Borough to post the park or the failure of the Defendant to have actual notice of the Borough Ordinance may be defenses to the Ordinance violation, but they are not a valid reason to suppress.

Devin Thompson, a patrolman with the South Williamsport Police

Department was on duty on March 14, 2014. At approximately 11:15 p.m. he was on patrol near the Borough of South Williamsport Park Complex when he observed a Ford Ranger parked in the park complex for several minutes. It was obviously night time.

Section 16-103 of the Borough Ordinance prohibits persons and vehicles in the park complex between sundown and 8:00 a.m. Officer Thompson explained that at the time he observed the Defendant's vehicle parked in the complex, it was been between sundown and 8:00 a.m.

The vehicle then pulled out. Officer Thompson followed it for approximately 7/10 of a mile and then pulled the vehicle over because of the Borough Ordinance violation.

Upon his initial contact, Officer Thompson immediately detected the odor of burnt marijuana coming from inside the vehicle. He identified Defendant as the driver of the vehicle. Officer Thompson also made additional observations of Defendant that led him to believe that Defendant was violating the law by operating a vehicle under the influence of marijuana.

When asked about the odor of burnt marijuana, Defendant admitted that he possessed marijuana and gave consent to Officer Thompson to search the vehicle. Officer Thompson discovered marijuana and drug paraphernalia as a result of the search of the vehicle and the search of Defendant's person incident to arrest.

On cross-examination, Officer Thompson conceded that the park may not have been posted and that Defendant may not have been aware that he was not permitted in the park complex between sundown and 8:00 a.m. the following day.

In recent years, the applicable standard for traffic stops has evolved. In order to make a constitutional vehicle stop for a violation of the Motor Vehicle Code or the violation of a law to which further investigation is not warranted, an officer must have probable cause. Commonwealth v. Feczko, 10 A.3d 1285, 1290 (Pa. Super. 2010) (citing Commonwealth v. Chase, 960 A.2d 108, 115-116 (Pa. 2008)).

As stated by the Feczko Court:

A vehicle stop based solely on offenses not “investigatable” cannot be justified by 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.

* * *

Mere reasonable suspicion will not justify a vehicle stop when the driver’s detention cannot serve an investigatory purpose relevant to the suspected violation. In such an instance, “it is incumbent [sic] 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 Code.*

10 A.3d at 1290 (citations omitted).

The violation of the Borough of South Williamsport Ordinance is a non-investigatory traffic stop because once an officer pulls over a driver for such a violation, there is nothing remaining to investigate. Thus, in order for the traffic stop in this case to be valid, Officer Thompson had to have probable cause to believe that Defendant was violating the Ordinance.

“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 that the defendant has committed it.” Commonwealth v. Griffin, 24 A.3d

1037, 1042 (Pa. Super. 2011)(citations omitted). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. Id.

Clearly in this particular case, probable cause existed to stop Defendant's vehicle. Officer Thompson observed Defendant's vehicle parked in the park complex in violation of the Borough Ordinance. It was parked in the complex after sundown at approximately 11:15 p.m. Officer Thompson articulated specific facts possessed by him, at the time of the questioned stop, which provided probable cause to believe that Defendant was in violation of the Borough Ordinance.

Defendant's argument that the stop was unlawful because the park hours were not posted is waived because Defendant failed to raise this issue in his motion. In the alternative, Defendant's argument lacks merit. Defendant's argument is not supported by any law whatsoever. Probable cause is determined by the facts within the officer's knowledge at the time of the stop. It is not determined by whether a defendant has notice or is aware that he is violating a particular law or ordinance. Indeed, following the hearing, the Court provided defense counsel with an opportunity to present case law in support of his argument. Not unexpectedly, no case law was presented.

Defendant could have a defense to the Ordinance violation based on a due process argument that he was not adequately put on notice of the offense because the park hours were not adequately posted. An actual violation of the Ordinance, however, need not ultimately be established to validate the vehicle stop; rather, the police officer only needs the

requisite reasonable suspicion or probable cause. See Commonwealth v. Muhammed, 992 A.2d 897, 901 (Pa. Super. 2010)(“While an actual violation need not be established, a reasonable basis for the officer’s belief is required to validate the stop”) ; Commonwealth v. Spieler, 887 A.2d 1271, 1275 (Pa. Super. 2005)(an actual violation need not be established; probable cause does not require certainty but exists when criminality is but one reasonable inference); Commonwealth v. Snell, 811 A.2d 581, 584-585 (Pa. Super. 2002)(while an actual violation need not be established, a police officer must have a reasonable and articulable belief that a vehicle or driver is committing a violation); Commonwealth v. Wituszynski, 750 A.2d 349, 352 (Pa. Super. 2000)(same). Here, Officer Thompson clearly had probable cause to believe that Defendant was violating the Borough Ordinance when he observed Defendant’s vehicle parked in the park complex at 11:15 p.m. at night.

Defendant chose not to argue any issues related to the search; therefore, these issues also are waived. Moreover, under the facts of this case, Defendant clearly consented to the search. In addition, the search of his person was also incident to a legal arrest.

ORDER

AND NOW, this ___ day of October 2014, following hearing and argument, the court DENIES Defendant's Omnibus Pretrial Motion and Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Linhardt, Esquire (DA)
George Lepley, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file