

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-481-2015
v.	:	
	:	
DALE THOMAS BONNELL SR.,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On May 12, 2015, the Defendant filed a Motion to Suppress. A hearing and argument on the motion was held on July 10, 2015. After the July 10 hearing, the Defendant received additional discovery, so another hearing occurred on September 14, 2015. Further argument on the motion occurred on November 5, 2015.

I. Background

A. Officer Jeffrey Hughes' Testimony on July 10, 2015

Officer Jeffrey Hughes (Hughes) is a police officer with the Old Lycoming Township Police Department. He has been a police officer with that department for twelve years. Hughes has completed the standard field sobriety practitioner and instructor schools, and he has taught standard field sobriety classes. Hughes has also completed the Advanced Roadside Impairment Driving Enforcement (ARIDE) course and has taught ARIDE classes. He has been involved in over 500 DUI arrests and has worked at the Lycoming County DUI processing center for ten years.

At 12:55 a.m. on January 25, 2015, Hughes was driving a marked patrol car in a northbound lane of Lycoming Creek Road. He saw a vehicle approaching him and traveling in Lycoming Creek Road's southbound curb lane, which is one of two southbound lanes on the road. The vehicle was in a curve, which was lit by street lights and security lights from buildings

near the road. As the vehicle approached Hughes, he did not see any other vehicles. The vehicle appeared to be traveling at an unsafe speed, and Hughes moved his patrol car because he thought the vehicle could not negotiate the curve and “may go over the median,” which is concrete and about a foot tall. As the vehicle passed Hughes, it abruptly swerved into the southbound passing lane, which is separated from the southbound curb lane by a dotted line. The vehicle straddled the lanes as at least half of it went into the southbound passing lane. Hughes could hear the vehicle’s tires screeching, and he did not see a turn signal when the vehicle entered the passing lane.

As Hughes made a U-turn, he saw the vehicle return to the southbound curb lane. He did not see a turn signal when the car returned to the curb lane. Hughes had to drive faster than the posted speed limit to catch up to the vehicle. Once Hughes caught up, the vehicle moved into the southbound passing lane with a turn signal. From the passing lane, the vehicle turned left onto Kenyon Avenue with a turn signal. The vehicle stopped on Kenyon.

Hughes asked the Defendant, who was the driver, for his license. The Defendant did not initially provide his license, so Hughes asked a second time. The Defendant did not locate his license the first time he searched for it. The Defendant located his license the second time he searched for it. The Defendant’s movements were slow, and his eyes were bloodshot and glassy. Hughes noticed a strong odor of alcohol in the vehicle. The Defendant said that he had two beers at home and had some at his friend’s house.

Hughes returned to his patrol car, which still had its emergency lights activated. He wanted to conduct field sobriety tests, but the Defendant drove away. Hughes pursued as the Defendant turned onto Cottage and then turned left into his house’s driveway, where he stopped. Hughes stopped the patrol car close to the driver’s door of the vehicle, so the Defendant would

not have room to exit the vehicle. The Defendant opened the driver's door, which hit one of the patrol car's tires. As the Defendant exited the vehicle, Hughes exited the patrol car with his service weapon drawn. The Defendant was not paying attention to Hughes, who holstered his weapon when he realized that the Defendant did not have a weapon. Hughes then pulled out his Taser and ordered the Defendant to stop. Hughes fired his Taser, which initially had no effect because it struck the Defendant's coat. The Taser eventually forced the Defendant to the ground when the coat "went up against" the Defendant's body. After the Defendant repeatedly said he was sorry, Hughes transported him to the Lycoming County DUI processing center.

B. Officer Hughes' Testimony on September 14, 2015

Hughes saw a vehicle traveling in the curb southbound lane of Lycoming Creek Road, which did not have any obstructions. Hughes had twelve years of experience patrolling Lycoming Creek Road, and he thought that the vehicle was traveling at a high rate of speed. Hughes did not think the vehicle was going to be able to stay in the southbound lanes, so he made a "jerky motion." He heard the vehicle's tires screech and saw the vehicle straddle the dotted line that separates the southbound curb lane from the southbound passing lane. Hughes did not see a turn signal when the vehicle entered the passing lane. As the vehicle passed Hughes, he decided that he was going to stop it. Hughes watched the vehicle return to the curb lane.

C. Video from Hughes' Patrol Car

The video shows that Hughes activated the patrol car's emergency lights when the Defendant's vehicle was in southbound passing lane and decelerating to turn onto Kenyon Avenue.

D. Arguments

The Defendant argues that Officer Hughes had neither reasonable suspicion nor probable cause to initiate the traffic stop. He argues that, under Commonwealth v. Whitmeyer,¹ the vehicle's speed cannot be the basis for the stop since Hughes could not judge the vehicle's speed. He also argues that the brief straddle of dotted line was not enough to provide Hughes with a basis to stop the vehicle. The Defendant contends that there was no lane change which required a turn signal. In addition, he argues there was nothing unsafe or erratic about his driving. He asserts that tires squeak all the time. In support of his arguments, the Defendant cites Commonwealth v. Hamilton,² Commonwealth v. Garcia,³ and Commonwealth v. Gleason.⁴ The Defendant also argues that Hughes did not have probable cause to arrest him.

The Defendant argues that Hughes is not credible because Hughes' testimony during the July hearing is different than the content in the affidavit of probable cause and his testimony during the September hearing. According to the Defendant, in the July hearing, Hughes testified that the Defendant's vehicle was completely in passing lane, but in the affidavit and the September hearing, Hughes said that the vehicle was straddling lanes. In addition, the Defendant argues that Hughes is not credible because the video shows that Hughes did not have to maneuver away from the Defendant's vehicle. Last, the Defendant argues that Hughes is not credible because the video shows neither that the Defendant's vehicle abruptly swerved nor that Hughes saw a swerve before he started his U-turn.

The Commonwealth argues that the Defendant was driving erratically and was violating 75 Pa.C.S. § 3309, so the stop was justified. To support its argument, the Commonwealth cites

¹ 668 A.2d 1113 (Pa. 1995).

² 673 A.2d 915 (Pa. 1996).

³ 859 A.2d 820 (Pa. Super. 2004).

⁴ 785 A.2d 983 (Pa. 2001).

Commonwealth v. Feczko.⁵ The Commonwealth also argues that the video shows that Hughes is credible. In arguing that Hughes had probable cause to arrest the Defendant, the Commonwealth notes that the Defendant drove away and was not paying attention to Hughes.

II. Discussion

A. Officer Hughes is Credible.

The Court finds Officers Hughes credible. During the July hearing, Hughes testified that the vehicle was straddling lanes. The video from Hughes' patrol car supports Hughes' testimony that the vehicle was moving at an unsafe speed. It confirms Hughes' testimony that the vehicle swerved into the passing lane without a turn signal. When Hughes began the U-turn is irrelevant because subjective intentions play no role in probable cause analysis, and the stop was not initiated until after the alleged traffic violation.

B. The Traffic Stop was Lawful Because Officer Hughes had Probable Cause to Believe that the Defendant Violated the Motor Vehicle Code.

“Where a vehicle stop has no investigatory purpose, the police officer must have probable cause to support it.” Commonwealth v. Enick, 70 A.3d 843, 846 (Pa. Super. 2013) (citing Commonwealth v. Feczko, 10 A.3d 1285, 1291 (Pa. Super. 2010) (en banc)). “The police have probable cause where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed. [Courts] evaluate probable cause by considering all relevant facts under a totality of circumstances analysis.” Commonwealth v. Brown, 64 A.3d 1101, 1105 (Pa. Super. 2013) (quoting Commonwealth v. Hernandez, 935 A.2d 1275, 1284 (Pa. 2007)). “The officer must be able to articulate specific facts possessed by him at the time of the questioned stop, which would

⁵ 10 A.3d 1285 (Pa. Super. 2010).

provide probable cause to believe that the vehicle or the driver was in some violation of some provision of the Vehicle Code. Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference.” Enick, 70 A.3d at 846, n.3 (quoting Commonwealth v. Lindblom, 854 A.2d 604, 607 (Pa. Super. 2004)). “[A] police officer’s experience may fairly be regarded as a relevant factor in determining probable cause.” Commonwealth v. Thompson, 985 A.2d 928, 935 (Pa. 2009). “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” Whren v. United States, 517 U.S. 806, 813 (1996).

“A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.” 75 Pa.C.S. § 3309(1). “[Section] 3309(1) of the Vehicle Code requires motorists to maintain a single lane ‘as nearly as practicable.’ Thus, the statutory language does not foreclose minor deviations.” Enick, 70 A.3d at 847 (quoting § 3309(1)).

Here, the facts and circumstances within Officer Hughes’ knowledge were sufficient to warrant a person of reasonable caution in the belief that the Defendant violated 75 Pa.C.S. § 3309(1). Hughes testified that he had twelve years of experience patrolling the relevant portion of Lycoming Creek Road. He thought the Defendant’s vehicle was moving at an unsafe speed for that portion of the road, which was lit and without obstructions. Hughes heard the vehicle’s tires screech. He saw at least half of the Defendant’s vehicle cross the dotted line and enter the passing lane. He did not see a turn signal when the vehicle entered the passing lane. Given the unsafe speed, the screeching tires, and the lack of obstruction in the road, Hughes had probable cause to believe that the Defendant’s vehicle had not been driven as nearly as practicable within a single lane. Thus, the traffic stop was lawful.

C. The Arrest was Lawful Because Hughes had Probable Cause to Believe the Defendant Committed DUI and Fled from a Police Officer.

“To be constitutionally valid, a warrantless arrest must, of course, be supported by probable cause.” Commonwealth v. Evans, 685 A.2d 535, 537 (Pa. 1996). “Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances. Furthermore, probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent [persons] act.” Commonwealth v. Williams, 941 A.2d 14, 27 (Pa. Super. 2008) (citations and quotation marks omitted).

“An individual may not drive . . . after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving . . .” 75 Pa.C.S. § 3802(a)(1). “Any driver of a motor vehicle . . . who . . . flees or attempts to elude a pursuing police officer, when given a visual and audible signal to bring the vehicle to a stop, commits an offense.” 75 Pa.C.S. § 3733(a).

Here, the facts and circumstances within Officer Hughes’ knowledge were sufficient to warrant a person of reasonable caution in the belief that the Defendant committed DUI and fled from the police. The Defendant’s vehicle was moving at an unsafe speed and abruptly swerved into the lane adjacent to its lane of travel. The Defendant did not respond to Hughes’ first request for his driver’s license. The Defendant did not find his license the first time he searched for it. There was a strong odor of alcohol in the vehicle. The Defendant’s movements were

slow, and his eyes were bloodshot and glassy. He admitted to having two beers at home and having some at his friend's house. The Defendant drove to his house's driveway after Hughes had stopped him and while the patrol car's emergency lights were activated. While in the driveway, the Defendant did not pay attention to Hughes. Such facts and circumstances provided Hughes with probable cause to believe that the Defendant committed DUI and fled from police.

III. Conclusion

The traffic stop was lawful because Officer Hughes had probable cause to believe that the Defendant violated the Motor Vehicle Code. The arrest was lawful because Hughes had probable cause to believe that the Defendant committed DUI and fled from a police officer.

ORDER

AND NOW, this _____ day of December, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge