

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-303-2015**
 v. :
 :
 :
 LAMAR L. DAVIS, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

The Defendant is charged with Possession of a Controlled Substance with Intent to Deliver,¹ False Identification to Law Enforcement,² and General Lighting Requirements – Rear Lighting.³ On April 15, 2015, the Defendant filed a Motion to Suppress. A hearing on the motion was held on May 14, 2015.

I. Background

A. Officer Robert Brown’s Testimony

Robert Brown (Brown) has been an officer with Williamsport Bureau of Police since December 5, 2011. On February 12, 2015, Brown was driving a patrol car. At 12:20 a.m., he stopped the Defendant’s vehicle after observing that the vehicle’s center brake light and registration light were not functioning.

When the stop occurred, the Williamsport Bureau of Police was transitioning to a new video system in patrol cars. Some patrol cars did not yet have the new system, which automatically transfers video from the car’s camera to a database. With the “old” video system, an officer had to insert an “SD” card. The camera in the patrol car would start recording when the officer activated the car’s emergency lights. At the end of a shift, the officer would remove the SD card, take it into police headquarters, and transfer the video from the card to a database.

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa.C.S. § 4914.

³ 75 Pa.C.S. § 4303(b).

After the Defendant's preliminary hearing on February 17, 2015, Brown checked for video of the stop, but there was no video. Brown does not know why there is no video. He could have forgotten to insert the SD card at the beginning of his shift, or he could have forgotten to remove the card at the end of the shift. Sometimes an SD card cracks or "just does not work." Around the date of the stop, Brown lost an SD card and had to buy a new one. Brown has never purposefully kept an SD card out of the video system so that a traffic stop would not be recorded.

B. Arguments

The Defendant argues that Brown did not have probable cause to stop his vehicle. During argument after the hearing, Defense Counsel stated that the probable cause determination was based on the Court determining whether Brown was credible. The Defendant also argues that video of the stop is potentially useful evidence and the circumstances, including the loss of an SD card around the date of the stop, show that video was discarded in bad faith. The Commonwealth emphasizes that Brown has never purposefully kept an SD card out of the video system so that a traffic stop would not be recorded.

II. Discussion

A. Officer Brown had Probable Cause to Believe that the Defendant was Violating the Motor Vehicle Code.

"At the suppression hearing, the Commonwealth has the primary burden of both production under 581(H) and persuasion (as the official comment instructs) to convince the court that the evidence was legally obtained." Commonwealth v. Enimpah, 62 A.3d 1028, 1031 (Pa. Super. 2013). "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)). A traffic stop solely for a nonfunctioning brake light does not serve an investigatory purpose. See Feczko, 10 A.3d at 1291, n.2. ““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 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)).

Section 4303 of the Vehicle Code states that “[e]very vehicle operated on a highway shall be equipped with a rear lighting system including, but not limited to, rear lamps, rear reflectors, stop lamps and a license plate light, in conformance with regulations of the department.” 75 Pa.C.S. § 4303(b). Section 4303(b) subjects the plate light to regulatory provisions of section 175.80(a)(9)(i), which states that a vehicle is not in compliance with the Vehicle Code if “[a]n exterior bulb or sealed beam, if originally equipped or installed, fails to light properly,” 67 Pa. Code § 175.80(a)(9)(i), and Section 175.66(k), which requires that “the registration plate lamp shall emit white light and make the registration plate visible from [a] distance of 50 feet to the rear of the vehicle.” Id. § 175.66(k).

Here, Brown possessed facts sufficient to warrant a person of reasonable caution in the belief that the Defendant was violating the Motor Vehicle Code. Brown noticed that the registration light on the Defendant's vehicle was not functioning. Since Brown observed that the registration lamp was failing to light properly, he had probable cause to believe that the Defendant was violating Section 4303(b) of the Vehicle Code.

B. The Circumstances do not Show that Video of the Stop was Discarded in Bad Faith.

“[B]ad faith is required for a due process violation where merely potentially useful evidence is destroyed, no matter how useful to the prosecution.” Commonwealth v. Snyder, 963 A.2d 396, 404 (Pa. 2009). Bad faith is shown where evidence is discarded under circumstances “in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant.” Arizona v. Youngblood, 488 U.S. 51, 58 (1988). Here, Brown testified that, after the preliminary hearing, he checked for video of the stop, but there was no video. He testified that he did not know why there was no video. Brown further testified that, around the time of the stop, he lost an SD card and had to buy a new one. The Court finds Brown credible, so the circumstances do not show bad faith. Since the circumstances do not show bad faith, there is no due process violation.

III. Conclusion

Brown possessed facts sufficient to warrant a person of reasonable caution in the belief that the Defendant was violating Section 4303 of the Vehicle Code. Since the circumstances do not show that the prosecution discarded video in bad faith, there is no due process violation.

ORDER

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

By the Court,

Nancy L. Butts, President Judge