



## **B. Trooper Adam Kirk's Testimony**

At the time of the hearing, Kirk had been a PSP trooper for more than eight years. On April 11, 2014, Kirk was on patrol with Golla. At approximately 2:00 A.M., Kirk saw two vehicles exit the parking lot of J.P.'s Bar. One of the vehicles was a blue truck; the other was a maroon Mitsubishi Eclipse. Kirk followed the truck on State Route 654. The maroon Eclipse was in between the patrol car and the truck. The truck turned right onto Valley Street and then left onto Brook Street. Kirk saw the truck's turn signal on both turns.

While on Brook Street, Golla said "that guy is not using a signal." Kirk looked at the truck before it completed the turn onto Arch Street. He had a clear view of the right side of the truck. Kirk did not see the truck's turn signal. On a bend on Arch Street, the truck crossed the fog line. The truck turned left, and then turned right. Its turn signal was activated on both of these turns. As the truck was turning right, Kirk activated the patrol car's lights and initiated a traffic stop. This was the first safe opportunity for Kirk to make the traffic stop. The Defendant was driving the truck.

There was a camera and recording system in the patrol car that Kirk was driving. When the patrol car's lights are activated, the system creates an event that typically includes video of the 90 seconds before the lights were activated. Kirk thought that the Defendant's turn onto Arch Street was going to be in the 90-second jump back. However, in this case, the system jumped back only 42 seconds, so the turn was not included in the event. Kirk cannot manipulate the recording system.

While Kirk is logged into the patrol car, he can view video that was not included in the event. At the end of his shift on April 11, 2014, Kirk did not view the video to make sure that the Defendant's turn onto Arch Street was included in the event. After the shift, the video is

removed from the patrol car and stored on another system. Once the video is removed from the car, Kirk cannot view the video in the car.

Within 24 hours of the Defendant's turn onto Arch Street, Kirk made a request to his supervisor to view the event. On April 13, 2014, Kirk viewed video of the event at the PSP barracks. When Kirk viewed the video, he realized that the turn was not included in the event. There is a "record after the fact" function that makes it possible to retrieve video not included in the event, but Kirk was told in training that the "record after the fact" function is a "supervisory function only." Kirk has never used "record after the fact" function. Getting video not included in the event takes the patrol car out of service, so PSP gets video of more than 90 seconds prior to the activation of lights only for "serious crimes" and not "standard traffic stops." In this case, Kirk did not ask his supervisor for more video than what was included in the event.

### **C. Clair Kerstetter's Testimony**

Clair Kerstetter (Kerstetter) worked with the Defendant. On April 11, 2014, Kerstetter met the Defendant in the parking lot of J.P.'s Bar. She had a normal conversation with the Defendant. There was another person named Jake in the parking lot. Jake was drunk and stumbling. Kerstetter offered to give Jake a ride home, but Jake argued with Kerstetter for 25 minutes. The Defendant said that he would take Jake home. Jake got into the Defendant's truck, and Kerstetter began to follow the truck to Jake's home.

Kerstetter thought that the Defendant was driving in the appropriate lanes and at the appropriate speed. The Defendant used a turn signal on all turns. Kerstetter did not know the specific location of Jake's home and was just following the truck. She testified that "if [the Defendant] did not have his [turn signal] on, I would not have mine on." Kerstetter specifically remembered that the Defendant used a turn signal at the intersection of Brook Street and Arch

Street. On cross examination, Kerstetter initially testified that the signal “was on the entire time during the turn.” However, she later testified that the turn signal was on when the Defendant stopped at the intersection, but she was not sure when the Defendant turned off the signal. She did not recall whether the turn signal was on throughout the entire turn. Kerstetter knew the signal was activated but did not know how many times it blinked.

#### **D. Arguments**

The Defendant argues that the stop of his truck was illegal because the troopers did not have probable cause. He notes that the trooper’s testimony is contrary to the unbiased and credible Kerstetter. In addition, the Defendant notes that another car was in between the patrol car and the truck, so it is possible that the car blocked the officers’ view of the truck’s signal.

The Defendant also argues that the Kirk failed to preserve evidence and that this failure is a violation of Pennsylvania Rule of Criminal Procedure 573(b). The Defendant notes that Kirk could have viewed the video after his shift and seen that the turn was not included in the event. According to the Defendant, Kirk should have used the “record after the fact” function or at least asked a supervisor to save more than 42 seconds before the activation of the lights.

The Commonwealth argues that the troopers did have probable cause to stop the Defendant because they saw the truck turn without a signal. It notes that Kirk cannot manipulate the video and submitted a request to view the event. It also notes that getting more video than what is included in the event does not typically occur because it takes the patrol car out of service.

## **II. Discussion**

### **A. The Stop of the Defendant's Truck was Lawful Because the Troopers Articulated Specific Facts, Which were Sufficient to Warrant a Reasonable Person in the Belief that the Defendant Violated 75 Pa.C.S. § 3334, a Provision of 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 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)).

“The Fourth Amendment does not prevent police from stopping and questioning motorists when they witness or suspect a violation of traffic laws, even if it is a minor offense.” Commonwealth v. Chase, 960 A.2d 108, 113 (Pa. 2008). “Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.” Whren v. United States, 517 U.S. 806, 813 (1996).

“Upon a roadway no person shall turn a vehicle or move from one traffic lane to another . . . without giving an appropriate signal in the manner provided in this section.” 75 Pa.C.S. § 3334(a).

Here, the troopers articulated specific facts, which were sufficient to provide a person of reasonable caution in the belief that the Defendant violated 75 Pa.C.S. § 3334. Trooper Golla was behind the Defendant’s truck. He did not see the truck’s turn signal as it turned right onto Arch Street. Golla’s testimony is supported by Trooper Kirk, who testified that he saw the truck before it completed the turn but did not see a turn signal. The Defendant argues that the car in between the patrol car and the Defendant’s truck may have prevented the troopers from seeing the turn signal. However, this argument is not supported by the troopers’ testimony; both troopers testified that they had a clear view of the right side of the Defendant’s truck. After examining the totality of the circumstances, the Court finds that the troopers had probable cause to stop the Defendant.

**B. The Defendant has not Supported His Allegation that the Video was Exculpatory.**

“[T]he critical distinction for purposes of the Constitutional right to preservation of evidence [is] between ‘potentially useful evidence’ – evidence ‘of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant,’ and ‘materially exculpatory evidence.’” Commonwealth v. Snyder, 963 A.2d 396, 403 (Pa. 2009) (citation omitted). There must be “support for an allegation that destroyed evidence was exculpatory.” Id. at 405. A “mere assertion” that the evidence was exculpatory is not enough. Id.

In Commonwealth v. Spotti,<sup>1</sup> a police officer was in his patrol car when he saw the defendant's vehicle swerve into another lane, brake suddenly, and cause an accident. 94 A.3d at 369. The patrol car "was fitted with an onboard camera which was recording at the time of the accident." Id. at 382. The officer did not preserve the video from the camera because he "determined that . . . it did not depict the accident, which occurred . . . outside the field of vision of the camera, and . . . that it was of poor quality due to the presence of other cars between his vehicle and [the defendant's], and due to the glare from oncoming headlights." Id. The defendant argued that the video was materially exculpatory evidence because it "may have provided evidence regarding whether [another person] was operating his vehicle in a dangerous manner." Id. at 383. The Superior Court of Pennsylvania held that the recording was not materially exculpatory evidence. Id. The court wrote, "The 'mere possibility' that the recording 'might have' depicted events differently does not establish 'materiality.'" Id.

Here, the Defendant did not present any credible evidence that he used a signal during the turn onto Arch Street. Kerstetter initially testified that the signal was on the entire time during the turn. However, she later testified that she did not recall whether the signal was on throughout the turn and was not sure when the signal turned off. Without credible evidence that he used a signal during the turn, the Defendant merely asserts that the video was exculpatory. A mere assertion does not establish that the video was exculpatory.

### **C. The Defendant has not Shown that Trooper Kirk Acted 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." Snyder, 963 A.2d at 404. Here, the Defendant has not shown that Kirk acted in bad faith. Kirk testified that he thought the turn

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<sup>1</sup> 94 A.3d 367 (Pa. Super. 2014).

would be included in the event. He testified that he cannot manipulate the recording system, so he could not have purposefully excluded 48 seconds from the event. Kirk requested to view the video of the event. He testified that getting video from before the event takes the patrol car out of service, so the PSP does not get more video for every traffic stop.

### **III. Conclusion**

The stop of the Defendant was lawful because the troopers had knowledge of facts which were sufficient to warrant a reasonable person in the belief that the Defendant violated 75 Pa.C.S. § 3334. The Defendant has not supported the allegation that the video was exculpatory. The Defendant has not shown that Trooper Kirk acted in bad faith.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of May, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge