

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1461-2014
	:	
vs.	:	
	:	
	:	
MARY ANNE V. COLLING, Defendant	:	Omnibus Pretrial Motion
	:	

**OPINION AND ORDER**

By Information filed on September 26, 2014, Defendant was charged with driving under the influence of alcohol (DUI) and related traffic summaries. The incident leading to the charges occurred on July 11, 2014 when Defendant’s vehicle was stopped by Trooper Adam Kirk of the Pennsylvania State Police. Defendant allegedly exhibited signs of intoxication, was taken into custody and refused a blood test.

Defendant filed a motion to suppress on December 1, 2014, in which she alleges that the stop of her vehicle was not supported by the requisite probable cause. A hearing on the motion to suppress was held before the court on January 2, 2015.

Trooper Kirk testified that he has been employed by the Pennsylvania State Police for the last 8 ½ years. He was working on July 11, 2014. While traveling west on Fourth Street in Williamsport, he saw a vehicle make a left turn onto Maynard Street traveling in a southerly directly. He testified that as the vehicle approached the next intersection, it moved into the turning lane and then back to the right lane in order to go straight. He testified that about halfway through the movement, the operator turned on her right turn signal for a few seconds.

As a result of this driving, he decided to stop the vehicle. After stopping the vehicle, he identified Defendant as the operator.

The Commonwealth admitted Trooper Kirk's "in-car video" depicting the entire incident as Commonwealth's Exhibit 1. The court extensively reviewed the video.

The video begins with Trooper Kirk traveling westbound on Fourth Street. The rear taillights of Defendant's vehicle are noticeable. The vehicle appears to be approximately 300 yards from Trooper Kirk's vehicle, traveling in the same direction.

Trooper Kirk follows the vehicle on West Fourth Street for approximately 15 seconds before the vehicle turns on its left turn signal in order to turn left southbound on Maynard Street. Up to that point, the video depicts no evidence of improper driving or the violation of any traffic laws.

The vehicle slows down while its turn signal is activated and makes a proper left-hand turn southbound onto Maynard Street. Trooper Kirk testified and the video confirms that he was approximately 200 yards away when then vehicle turned left onto Maynard Street.

Upon turning left onto Maynard Street, the vehicle proceeded southbound toward the next intersection. The video depicts Trooper Kirk's vehicle following the other vehicle turning left southbound onto Maynard Street. Upon entering onto Maynard Street, the video depicts the vehicle approximately 300 to 400 yards away, as testified to by Trooper Kirk.

The roadway leading to the next intersection is essentially a two-lane roadway with one lane for traffic going in opposite directions. Approximately 50 feet south of the

West Fourth Street and Maynard Street intersection, there were two vehicles parked on the right side of the roadway.

Upon Trooper Kirk's vehicle making the left-hand turn and beginning to travel south on Maynard Street approximately five seconds passed before the rear taillights brighten on Defendant's vehicle indicating usage of the back brakes. Up to that point, the vehicle is traveling straight and has not committed any traffic violations nor exhibited any improper driving. Approximately one second after the rear taillights brighten, Defendant's vehicle moves very slightly to the right, perhaps a foot or so, then proceeds straight for a second or two before stopping at a red light.

Prior to the intersection on Maynard Street and Third Street where Defendant stopped, her lane of travel splits into two lanes, the left lane is for a left turn only while the right lane is apparently to go straight or turn right. While stopped at the red light, Defendant's vehicle was located in the right lane. After the light turned green, Defendant proceeded forward in a southerly direction through the intersection on Maynard Street before being pulled over by Trooper Kirk on Second Street after she turned right.

As Trooper Kirk's vehicle approached Defendant's vehicle while the Defendant's vehicle was stopped at the intersection of Maynard Street and Third Street, the video clearly depicted in the right portion of the roadway at least three manhole covers and several areas of patched asphalt. In fact as Trooper Kirk's vehicle approached the intersection, it appears that Trooper Kirk drives around these impediments and as he approaches the split lane he actually veers to his right behind Defendant's vehicle. The video depicts Trooper Kirk's driving on that roadway to be exact to that of Defendant's when it

approached the intersection via the split roadway.

Trooper Kirk testified that he stopped Defendant's vehicle because as it approached the intersection it "swerved to the left and then moved back to the right lane." He indicated that as the vehicle turned back to the right lane, the right turn signal was activated but it was not used "properly" because it had not been activated 100 feet prior to turning. As well, he indicated that he believed that the driver was impaired because the driver swerved, then turned back, signaled "late" and it was 2:00 in the morning after the bars "let out." Trooper Kirk indicated that, in his training and experience of being involved in "over 100 DUI stops", that all of the circumstances were "indicative of impaired driving."

Defendant testified on her own behalf. She testified that she has driven that roadway thousands of times. On that evening, she was going straight and chose the right lane. She denied using her right turn signal because she intended, and she in fact continued, to go straight. She knew that once she approached the intersection she had to make a choice between going into the left turn only lane or the right lane in order to go straight.

The video does not depict Defendant's vehicle utilizing a turn signal while approaching the intersection of Maynard Street and Third Street. Trooper Kirk explained that the video was "not zoomed in that well", that he had a "way better view than the camera does" and that the video was "washed out" near the intersection such that the right turn signal could not be viewed.

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 a violation of the 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: “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 driver was in violation of some provision of the Code.*’” Feczko, 10 A.3d at 1291 (emphasis original and citations omitted).

“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, 24 A.3d 1037, 1042 (Pa. Super. 2011). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. “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, 854 A.2d 604, 607 (Pa. Super. 2004), citing Commonwealth v. Stroud, 699 A.2d 1305, 1308 (Pa. Super. 1997).

In the affidavit of probable cause attached to the criminal complaint, Trooper Kirk stated that he observed “a white vehicle move from the left turn only lane into the right lane to go straight without using a signal until halfway into the right lane.” During his testimony, he testified that he stopped Defendant’s vehicle for failing to properly use the turn signal.

The video belies Trooper Kirk's representations. There is absolutely no violation of the Vehicle Code depicted on the video. The court does not find credible the Commonwealth's assertion that the video does not "fully" depict the driving in question which justified the stop. To the contrary, the video is crystal clear.

Further, the court does not find credible the Commonwealth's assertion that Defendant improperly used her right turn signal. Throughout the video when Defendant utilized her turn signal, it was obvious on the video. One could see the pulsating lights. It begs logic to suggest that one could not see the pulsating lights on the video only at the intersection in question. One could certainly see the pulsating lights being used when the vehicle turned at intersections both prior to and after the intersection in question.

Moreover, Defendant does not drift or swerve from one lane into another lane. While approaching the divided roadway, the Defendant moves her car slightly to the right in order to stay in her lane and go forward. Indeed, a close review of the video shows Trooper Kirk driving in the exact same manner. Given the condition of the roadway on the far right of the traveling lane, it is entirely reasonable to anticipate this type of driving.

In addition, however, to its probable cause argument, the Commonwealth also argues that the stop was justifiable because Trooper Kirk had reasonable suspicion to believe that Defendant was "an impaired driver."

If a police officer is making a traffic stop for an offense where he has a reasonable expectation of learning additional evidence related to the suspected criminal activity, the stop needs to be supported by reasonable suspicion. Feczko, 10 A.3d at 1290-91.

In order to establish reasonable suspicion, the officer must be able to point to specific and articulable facts and reasonable inferences drawn from those facts that lead the officer to believe that criminal activity is afoot. See Commonwealth v. Cook, 558 Pa. 50, 735 A.2d 673, 677 (1999). Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest. Commonwealth v. Brown, 606 Pa. 198, 996 A.2d 473, 477 (2010). “In order to determine whether the police had a reasonable suspicion, the totality of the circumstances-the whole picture-must be considered. Based upon that whole picture the detaining officer must have a particularized and objective basis for suspecting the person stopped of criminal activity.” In the interest of D.M., 566 Pa. 445, 781 A.2d 1161, 1163 (2001)(citation omitted).

Trooper Kirk’s particularized basis for stopping the vehicle was that it was two o’clock in the morning when the bars just closed, the vehicle swerved or drifted from one lane to another, and the driver used its turn signal improperly by activating it later than required. While these observations were properly articulated by Trooper Kirk, they are not reasonable in light of the clear evidence as set forth on the video.

The entire time that the video was operating prior to Defendant’s stop was close to a minute and a half. Defendant’s vehicle traveled many city blocks and hundreds of yards if not close to a mile. Defendant’s vehicle traveled through two intersections over three separate roadways. The video depicts not one traffic violation or improper driving movement. While the court appreciates and understands Trooper Kirk’s suspicions, the court cannot conclude that they were reasonable.

“An individual operating or traveling in an automobile does not lose all

reasonable expectation of privacy simply because the automobile and its use are subject to governmental regulation.” Delaware v. Prouse, 440 U.S. 648, 662 (1979). Defendant’s reasonable expectation of privacy must be protected against unreasonable stops.

**ORDER**

**AND NOW**, this \_\_\_ day of January 2015 following a hearing and argument, the court **GRANTS** Defendant’s motion to suppress. All of the evidence obtained by the Commonwealth following the stop of Defendant’s vehicle is hereby **SUPPRESSED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)  
Michael Morrone, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file