

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : **No. CR-567-2016**
 :
 TIMOTHY EASTER, : **Omnibus Pretrial Motion**
 Defendant :

OPINION AND ORDER

By way of background, Officer Andrew Stevens of the Williamsport Bureau of Police filed a criminal complaint on February 2, 2016, charging Defendant Timothy Easter with three counts of driving under the influence of a controlled substance, one count of possession of a small amount of marijuana for personal use, and one count of possession of drug paraphernalia, as a result of a traffic stop on November 8, 2015.

On May 16, 2016, Easter filed an omnibus pre-trial motion. In his motion, Easter asserted that his registration lamp was operable and he used proper turn signals; therefore, his stop and arrest were unconstitutional and pretextual.

On August 23, 2016, the court held a hearing on Easter's motion. At the hearing, the Commonwealth presented the testimony of Officer Stevens and Officer Justin Geesey. The Commonwealth also admitted as Commonwealth Exhibit 1 the video from the dash camera of the officers' patrol vehicle.

Officer Geesey testified that he has been a police officer for about a year and a half. On November 8, 2015 at approximately 1:04 a.m., he was on patrol in full uniform and in a marked vehicle with Officer Stevens. They were driving on Campbell Street when they

observed a vehicle parked in the lane of travel with its hazard lights on. The “flashers” were being used properly. When they got behind the vehicle, the vehicle began to proceed north on Campbell Street. They followed the vehicle because it did not appear that the license plate light was illuminated. As they followed the vehicle, the driver did not use his turn signal for 100 feet before turning from Fifth Avenue onto High Street. They stopped the vehicle on High Street. As they got close to the vehicle, they realized that the registration plate light was on but it was covered in dirt and not lighting the plate properly. Officer Geesey explained that the light must be able to be seen from 50 feet away. Officer Geesey made contact with the driver of the vehicle, who was identified as Defendant Timothy Easter.

Although there was no other traffic on the roadway and Officer Geesey testified on cross-examination that the flashers were being used properly, when the court asked if stopping in the lane of travel with the flashers constituted a violation, Officer Geesey testified that he believed it was a violation and a hazard because the driver could have pulled off to the side and not blocked the roadway. When asked why, if that was the case, they did not pull over the vehicle immediately, Officer Geesey responded that they were “looking for more infractions.”

Officer Stevens testified that he has been a Williamsport police officer for a little over a year and that he was an officer in Bradford County for approximately 3 years before being hired in Williamsport. Officer Stevens testified that he and Officer Geesey were traveling in the 700 block of Campbell Street when they noticed an SUV “parked” in the northbound lane. There was no reason that the vehicle could not have been parked off the

roadway. They drove past the vehicle, went around the block, and came back around onto Campbell Street. The vehicle was driving on Campbell Street. They tried to run the plate, but they could not make it out. They shut off their headlights, but still could not see the license plate. According to Officer Stevens they were about 20 feet away from Defendant's vehicle when they turned off their lights, but they were still unable to see the registration plate, even though the registration plate light is supposed to illuminate the plate from 50 feet away. Defendant used his turn signal correctly on a number of occasions, but on one occasion he failed to use his turn signal for at least 100 feet before turning. The reason for the vehicle stop was the registration plate light and the turn signal; they would not have stopped Defendant's vehicle for stopping or parking in the lane of travel on Campbell Street with its flashers activated. Officer Stevens also indicated that the summary violations occurred; he just chose not to charge Defendant with them.

Officer Stevens admitted on cross-examination that he had pulled over Defendant's vehicle on September 13, 2015 and charged Defendant with driving under the influence of marijuana. Defendant was driving the same vehicle on November 8, 2015. Officer Andrews stated he did not recognize the vehicle or realize that Defendant was the driver of it until after they stopped the vehicle and Defendant stepped out of it.

Officer Stevens narrated the DVD (Commonwealth's Exhibit 1) as it was being played for the court. He initially claimed that the turn signal violation occurred during a turn depicted on the video prior to the vehicle turning onto High Street, but then changed his testimony to indicate that the alleged violation occurred when the vehicle turned right

from Fifth Avenue onto High Street. Although it could not be seen on the video, Officer Stevens testified that he could see the vehicle outside the angles of the camera and that Defendant did not activate his turn signal until after he stopped at the stop sign on Fifth Avenue.

After a review of the officers' testimony and Defendant's driving as depicted on Commonwealth's Exhibit 1, the court finds that the Commonwealth failed to meet its burden of proof to show that the stop of Defendant's vehicle was lawful. In general, the officers' testimony is not supported by the video evidence of Defendant's driving.

The video fails to show that the officers had reasonable suspicion or probable cause to believe that the registration plate lamp was inoperable. The registration plate lamp is only required to make the registration plate visible from a distance of 50 feet to the rear of the vehicle. 67 Pa.Code §175.66. Officer Stevens' testimony that they were within 20 feet of Defendant's vehicle prior to stopping it and observed that the registration plate lamp was inoperable or not functioning properly simply is not supported by the images depicted on the DVD. In fact, it does not appear that the officers were within 50 feet of Defendant's vehicle at any time prior to the stop.

For the vast majority of the video, the officers are anywhere between a half of a block and a block behind Defendant's vehicle. The officers turn off their headlights twice after Defendant turns off of Campbell Street. The first time they turn off their lights, Defendant's vehicle is about a half a block ahead of them.¹ The second time they turn off

¹ The first time the officers turn off their lights is about 25 seconds after the video begins (or 1:02:18 on the time

their lights they are closer than a half of a block but even then the officers are not within 20 feet (or 50 feet for that matter) of Defendant's vehicle.² At that point, the officers are about three car lengths from an intersection with another street and Defendant's vehicle is about two car lengths on the other side of the intersection. The distance just to cross the intersecting street is probably 25 feet. When you add the car lengths that the officers' patrol car and Defendant's SUV are from the intersection, there is probably at least 75 feet between the two vehicles.

The court also finds that the evidence was insufficient to satisfy the Commonwealth's burden of proof to show a turn signal violation as a basis for the stop. The video shows that Defendant used his turn signal before he made any turn. The officers contended that Defendant failed to use his turn signal for at least 100 feet before turning from Fifth Avenue onto High Street. The court does not accept this testimony. The video shows that the officers are just turning onto Fifth Avenue as Defendant is turning onto High Street.

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of September 2016, the court GRANTS Defendant's omnibus pretrial motion and suppresses any and all evidence seized as a result of the traffic stop of Defendant's vehicle.

stamp on the video). Their lights are off for about 9 seconds.

²The second time the officers turn off their lights is about 43 seconds after the video begins (or 1:02:36 on the

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Joshua Bower, Esquire (APD)
Work File
Gary Weber, Esquire (Lycoming Reporter)

time stamp on the video).