

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-342-2015
	:
vs.	:
	:
	: Omnibus Pretrial Motion
TIMOTHY JOINER,	:
Defendant	:

OPINION AND ORDER

By Information filed on March 20, 2015, Defendant is charged with Driving Under the Influence and related traffic summaries. He was allegedly driving his vehicle on August 3, 2014 in the borough of Duboistown under the influence of alcohol to the extent he was incapable of safely driving. In addition, it is alleged that within two hours of the time that he was driving his BAC was a .17%.

Defendant pled guilty to driving under the influence with the highest rate of alcohol, a misdemeanor of the first degree, on August 10, 2015. Defendant was scheduled for sentencing but on August 15, 2015, filed a petition to withdraw his plea of guilty alleging that he was “not guilty of one of the above offenses.”

A hearing was subsequently held on Defendant’s petition to withdraw his plea. On November 20, 2015, the Court granted Defendant’s motion finding that he had asserted a colorable demonstration of innocence and/or a fair and just reason for withdrawing his guilty plea. More specifically, Defendant contended that he had two witnesses “now” available to him that may support his claim that his arrest was illegal. Defendant asserted that there were two witnesses who would support his assertion that he did not go through two stop signs and further that the arresting officer could not view the stop signs from his vantage

point.

Defendant's motion to suppress was previously filed on June 15, 2015. A hearing on the motion was held on May 10, 2016. Defendant argues that the stop of his vehicle on the evening in question by Chief Norman Hager of the Duboistown Police Department was without probable cause to believe that he violated any of the provisions of the Motor Vehicle Code. Defendant argues that Chief Hager was a significant distance away from Defendant and could not have possibly observed Defendant commit any motor vehicle violations whatsoever.

Chief Hager testified on behalf of the Commonwealth. He indicated that he was on duty on August 3, 2014 in the Borough patrolling. At approximately 2:00 a.m., he was traveling eastbound on Highland Avenue. He observed a white GMC Envoy traveling in front of him approximately a block away. As the vehicle approached the intersection with Clarendon Street, it did not come to a full stop at the stop sign. Instead it "rolled through the stop sign."

The Chief did not recall if the vehicle utilized its brakes. Although he had arrested Defendant approximately a year and a half earlier on a DUI offense and thereafter he had contacts with Defendant for unrelated matters, he was not aware that the white GMC Envoy was Defendant's vehicle or was being driven by Defendant that evening until after the stop.

Despite the vehicle rolling through the stop sign at Clarendon Street, the Chief was not going to initiate a traffic stop. Essentially, he decided to "let it go." He determined that it was a minimal traffic violation and at the time there were no other vehicles around and

the traffic violation did not endanger anyone.

Both vehicles continued in an easterly direction. Chief Hager got to approximately one block away from the vehicle at the intersection of Highland Avenue and Gordon Street. Again, however, the vehicle “rolled through” the stop sign and did not come to a complete stop. It turned left onto Gordon Street traveling in a north direction. The Chief could not recall if the driver utilized his brakes or indicator.

Because of the violation on Gordon Street, the Chief initiated a stop of the vehicle and identified Defendant as the driver.

Contrary to what Defendant indicated at the hearing on his petition to withdraw his guilty plea, he presented the testimony of only one witness who was available to Defendant two or three days after the incident allegedly occurred. Specifically, Brandon Tedesco, a friend of Defendant for the past 15 years, testified that he was with Defendant outside of his brother’s house on Summer Street near the intersection of Highland Avenue at approximately 1:30 a.m. on August 3, 2014 smoking a cigarette.

While they were standing outside, he noticed a black sedan “cop car” slowly drive by. He indicated that it looked like a Mustang type of vehicle. The vehicle drove by at approximately 10 miles per hour and eventually stopped a considerable distance away. No estimate of the distance was ever provided but it was two long borough blocks and based upon a photograph approximately 25 car lengths or more away.

Once the “cop car” drove by and then stopped, Mr. Tedesco and Defendant were discussing it. Mr. Tedesco was trying to convince Defendant that the cop wasn’t there for them.

The “cop car” was stopped for approximately one to two minutes. Defendant then got in his car, drove up to Highland Avenue and turned toward Clarendon Street and Gordon Street. The cop car then turned in the same direction on Riverside Drive. Mr. Tedesco estimated that Defendant left the house at approximately 1:45 a.m. Mr. Tedesco could not identify who was driving the “cop car” and indicated that he “sees” cop cars “drive by a lot.”

Once Mr. Tedesco found out that Defendant had been arrested that evening, he let Defendant know right away what he knew.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” *Commonwealth v. Bryant*, 866 A.2d 1143, 1145 (Pa. Super. 2005) (quoting *Commonwealth v. DeWitt*, 608 A.2d 1030, 1031 (Pa. 1992)); see also PA. R. CRIM. P. 581(H)(“The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant’s rights.”).

In order to make a constitutional vehicle stop for a Motor Vehicle Code offense that is not “investigatable,” such as a stop sign violation, 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)).

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 that defendant has committed it.” *Commonwealth v. Griffin*, 24 A.3d 1037, 1042 (Pa. Super. 2011) (citations omitted). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. *Id.*

Pursuant to 75 Pa. C.S.A. § 3323 (b), every driver of a vehicle approaching a stop sign shall stop. Chief Hager credibly testified that he observed Defendant commit this traffic violation. He was unequivocal in his testimony. There were no obstructions to his view. He was certainly close enough to view the offense and had many years of experience in investigating and prosecuting traffic violations.

Defendant’s contention that the Chief was mistaken and/or fabricating the incident begs logic. Mr. Tedesco could not identify the law enforcement officer who passed him. The timing, even using Mr. Tedesco’s estimations, could still result in the Chief confronting Defendant. Furthermore, it is inexplicable that Defendant would get in his vehicle and leave Mr. Tedesco’s brother’s residence when Defendant knew he had been drinking and was allegedly concerned that the police officer who passed by the residence “was there for them.”

ORDER

AND NOW, this ___ day of May 2016 following a hearing and argument, the Court **DENIES** Defendant’s motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)

Gary Weber, Esquire (Lycoming Reporter)
Work file