

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

|                              |   |  |
|------------------------------|---|--|
| COMMONWEALTH                 | : | No. CR-23-2016                           |
|                              | : |  |
| vs.                          | : |  |
|                              | : |  |
|                              | : |  |
| JONATHAN REUSS,<br>Defendant | : | Omnibus Pretrial Motion<br>Nunc Pro Tunc |

**OPINION AND ORDER**

Defendant is charged with driving under the influence of alcohol and related traffic summaries arising out of an incident that allegedly occurred on September 13, 2015, after Defendant’s vehicle was stopped by Trooper Tyler Morse of the Pennsylvania State Police.

On April 28, 2016, Defendant filed an omnibus pretrial motion nunc pro tunc in which he sought suppression of all evidence discovered as a result of the unlawful stop of his vehicle. The court held a hearing on May 18, 2016 on Defendant’s motion.

At said hearing, the Commonwealth argued that Defendant’s Motion should be dismissed as untimely. Defendant concedes that the Motion was untimely filed but argues that the Court should nonetheless consider it in the interest of justice.

Rule 581 of the Pennsylvania Rules of Criminal Procedure governs the timeliness of suppression motions. Unless the opportunity did not previously exist, or the interest of justice otherwise require, a suppression motion must be made in an omnibus pretrial motion as set forth in Rule 578. If a timely motion is not made, the issue of suppression is deemed waived. Rule 581 (B). An omnibus pretrial motion must be filed within 30 days after the arraignment unless the opportunity therefore did not exist or the

defendant, defense attorney or the attorney for the Commonwealth was not aware of the grounds for the motion or unless the time for filing has been extended by the court for cause shown. Rule 579 (A).

Simply put, Defendant's Omnibus Pretrial Motion which consists solely of a Motion to Suppress must have been filed within 30 days of Defendant's arraignment unless the interest of justice otherwise require it to be heard after the 30-day period.

At the hearing in this matter, defense counsel argued that Defendant was previously represented by George Lepley, Esquire. Defendant's arraignment was scheduled for January 25, 2016. The case was not scheduled for a plea but instead placed on the March pretrial list with the call of the list scheduled for March 22, 2016. Mr. Lepley had previously entered his appearance on behalf of the Defendant on January 20, 2016.

Defendant's present counsel, James Protasio entered his appearance on behalf of Defendant on April 28, 2016 along with the withdrawal of appearance by Mr. Lepley. Incidentally, the Court notes that Mr. Lepley did not obtain leave of court to withdraw his appearance until the hearing on May 18, 2016.

Mr. Protasio argued that Mr. Lepley "erred." Specifically, he argued that Mr. Lepley failed to file the Motion to Suppress in a timely manner. Once Mr. Lepley realized that it was not timely filed, he elicited the services of Mr. Protasio to enter his appearance on behalf of the Defendant and to then file it.

The Motion was filed on April 28, 2016, three months after Defendant's arraignment and two months after it should have been filed.

A trial judge may excuse a Defendant's tardy presentation of a suppression

motion when required in the interest of justice. *Commonwealth v. Johonoson*, 844 A.2d 556, 561 (Pa. Super. 2004).

Under the circumstances in this particular case, the Court declines to conclude that the interest of justice require that the suppression motion be heard at this time.

First, Defendant clearly had knowledge of the facts in support of the Motion at the time he received a copy of the criminal complaint and supporting affidavit on October 29, 2015. Mr. Lepley represented the Defendant at his preliminary hearing on December 31, 2015 and presumably had knowledge as well.

Second, as early as the preliminary hearing on December 31, 2015, it was apparent that Defendant would be fighting the case and was not going to accept any plea agreement recommended at that time. Although the preliminary hearing was waived, a pretrial date was requested. Clearly, once the arraignment was waived and the case was placed on the pretrial list, Defendant and defense counsel were preparing for trial. Defense counsel even filed a pretrial request for discovery on January 20, 2016.

Next, Defendant was represented by Mr. Lepley from the inception of the case and technically through the filing and hearing of the Motion. Mr. Lepley's attempt to circumvent the rules by transferring Defendant's representation to another attorney cannot be sanctioned.

Finally, and perhaps determinatively, the merits of the underlying suppression motion are not so apparent that the interest of justice require it to be heard.

According to the affidavit Trooper Morse and Trooper Kirk were on patrol in a police unit in full uniform on September 13, 2015. They were traveling east on West

Church Street in the city of Williamsport and at approximately 2:20 a.m. they observed a black Dodge Ram traveling in front of their patrol vehicle. The vehicle turned south on Market Street from West Church Street without using a right turn signal. As a result, the troopers conducted a traffic stop.

Defendant contends that there was insufficient probable cause to support the traffic stop. Defendant argues that he was only able to turn right as he was entering onto a one-way street and that all traffic is required to turn right. Accordingly, Defendant argues that he was not required to use a right-turn signal. Because Trooper Morse stopped Defendant's vehicle for a violation of the Motor Vehicle Code that was not capable of being investigated further, he needed probable cause. "It is incumbent 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 Motor Vehicle Code. *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010), quoting *Commonwealth v. Gleason*, 567 Pa. 111, 785 A.2d 983, 989 (2001).

Pursuant to 75 Pa. C.S.A. § 3334, no person shall turn a vehicle from one traffic lane to another without giving an appropriate signal in the manner provided by law. Regardless of what Defendant claims, his vehicle was moved and/or turned from one traffic lane to another. The fact that it was a one-lane road and Defendant had no other choice is not relevant to his obligation to provide an appropriate signal. See *Commonwealth v. Brown*, 64 A.2d 1101 (Pa. Super. 2013)(officer had probable cause to stop appellant's vehicle for failure to use a turn signal in violation of 75 Pa.C.S. §3334, despite appellant's argument he was in a left turn only lane, which gave him no other option than to turn left), appeal denied, 79 A.3d

1096 (Pa. 2013).

Accordingly, it is clear to this court that probable cause likely existed to stop Defendant's vehicle.

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of June 2016, following a hearing and argument, Defendant's Omnibus Pretrial Motion nunc pro tunc is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)  
James Protasio, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)