

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**DOMINQUE THOMAS,
Defendant**

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CR-895-2015

CRIMINAL DIVISION

OPINION AND ORDER

On August 3, 2015, the Defendant filed a Motion to Suppress. A hearing on the motion was held on November 13, 2015.

I. Background

A. Officer Douglas Litwhiler's Testimony

Douglas Litwhiler (Litwhiler) is an officer with the Montoursville Borough Police Department. On May 20, 2015, Litwhiler was driving a patrol car. At 2:47 p.m., he began following a black Dodge Dart. Litwhiler could see "necklace rosaries things" and two or three square air fresheners hanging from the vehicle's windshield. The air fresheners were each three to four inches, but they were "staggered" and together "took up an area of seven to eight inches." Litwhiler could not see around the air fresheners. He noticed that the vehicle's driver was a "big person." He believed that, because of the objects, the driver could not see out of the "middle right side" of the windshield and "would not be able to see vehicles pulling out" from the right.

As Litwhiler was following, he "saw something thrown out of the [the vehicle's] window." The object was about an inch long, and although it looked like a cigarette butt, Litwhiler was not sure exactly what the object was. Litwhiler stopped the vehicle after the object was thrown out. In total, Litwhiler followed the vehicle for "about a minute, maybe two" before stopping it. The Defendant was the driver.

The object that was thrown out of the vehicle cannot be seen on the video from the camera in Litwhiler's patrol car. The camera in the patrol car is almost on the passenger side, so the camera's angle was different than Litwhiler's angle.

B. Arguments

The Defendant argues Litwhiler did not have the requisite reasonable suspicion to lawfully stop the vehicle because the objects in the windshield were not a material obstruction, and nothing was thrown out of the vehicle. He contends that the video supports this argument because it shows that someone could see around the air fresheners and through the windshield. The Defendant also contends that the video shows that the air fresheners were not as wide as the officer said. Last, the Defendant notes that the video does not show anything being thrown out of the vehicle. The Commonwealth argues that Litwhiler had reason to believe that the driver's vision was being impaired by the objects in the windshield. The Commonwealth asserts that Litwhiler saw something being thrown out of the vehicle.

II. Discussion

"Section 6308(b) [of the Motor Vehicle Code] allows a police officer to conduct a vehicle stop if he has reasonable suspicion to believe that a violation of the Motor Vehicle Code is occurring or has occurred." Commonwealth v. Holmes, 14 A.3d 89, 95 (Pa. 2010). "Reasonable suspicion . . . depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to specific and articulable facts leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that

innocent facts, when considered collectively, may permit the investigative detention. Id. (internal citations and quotation marks omitted).

Under section 4524(c) of the Motor Vehicle Code, “[n]o person shall drive any motor vehicle with any object or material hung from the inside rearview mirror or otherwise hung, placed or attached in such a position as to materially obstruct, obscure or impair the driver’s vision through the front windshield or any manner as to constitute a safety hazard.” 75 Pa.C.S.A. § 4524(c). “[A]n essential element is that the object or material hanging from the mirror materially obstructs, obscures, or impairs the driver’s vision.” Holmes, 14 A.3d at 97. “[T]he officer must articulate at least *some* fact or facts to support his inference or conclusion that the object materially impaired the driver’s view.” Id.

In Holmes, a police officer testified that he stopped a vehicle after he saw it “traveling . . . with objects hanging from the rearview mirror which were obstructing the driver’s view.” 14 A.3d at 93. The Supreme Court of Pennsylvania held that the officer’s testimony “was insufficient to support the . . . finding . . . that [the officer] had reasonable suspicion to stop [the] vehicle for a suspected violation of Section 4524(c).” Id. at 97. The court noted that “[t]here was no testimony as to the size or general description of the objects hanging from the rearview mirror, or how the objects impaired [the driver’s] view.” Id. at 98.

In Commonwealth v. Anthony,¹ a police officer stopped a vehicle after he “just saw an object hanging off the rearview mirror.” 1 A.3d at 921. During the stop, the officer determined that the object was “a gaggle of the ubiquitous pine tree-shaped air fresheners commonly marketed for use in automobiles.” Id. “There were three of [air fresheners], they were flat, and they hung together at the same level; they were not hanging in sequence.” Id. The Superior Court of Pennsylvania held that the officer’s “observations preceding the stop [were] inadequate

¹ 1 A.3d 914 (Pa. Super. 2010).

to demonstrate reasonable suspicion.” Id. at 920-21. The court noted that the officer “did not make detailed observations of the character of the object before making the stop.” Id. at 921.

In Commonwealth v. Shabazz,² a police officer observed multiple air fresheners and a three by three inch foam dice hanging from the rear view mirror of a car. 18 A.3d at 1222. The officer testified that the dice was capable of obstructing the driver’s view when he turned the car. Id. The trial court concluded that “[t]he combination of multiple air fresheners, three by three inch foam dice, and [the officer’s] explanation of how these items might impair a driver’s view made it reasonable for him to suspect the [driver] was in violation of 75 Pa.C.S. § 4524(a) [sic], and justified the traffic stop.” Id. In affirming the trial court, the Superior Court noted that the officer “testified specifically about the size and nature of the objects” and “about his inferences regarding the impact those items would have on a driver’s ability to safely see through the windshield while driving.” Id.

Here, the specific facts articulated by Litwhiler, along with his reasonable inferences, provided him with reasonable suspicion that the Defendant’s vehicle had hanging objects that materially impaired the Defendant’s view out of the right side of the windshield. Like the officer in Shabazz and unlike the officers in Holmes and Anthony, Officer Litwhiler described the objects and the impact the objects would have on the Defendant’s ability to safely see through the windshield. He testified that he saw necklaces and two or three staggered air fresheners hanging in the windshield. He testified that each air freshener was three to four inches and together they “took up an area of seven to eight inches.” He testified that the driver was a “big person,” and he believed that, because of the objects, the driver could not see out of the “middle right side” of the windshield and “would not be able to see vehicles pulling out” from the right. The video shows objects hanging in the windshield. The objects do not take up the entire

² 18 A.3d 1217 (Pa. Super. 2011).

windshield, but the video does not disprove the Litwhiler's testimony that the driver could not see out of the "middle right side" of the windshield and "would not be able to see vehicles pulling out" from the right.

III. Conclusion

The specific facts articulated by Officer Litwhiler, along with his reasonable inferences, provided him with reasonable suspicion that the Defendant's vehicle had hanging objects that materially impaired the Defendant's view through the right side of the windshield. Therefore, the stop was lawful.

ORDER

AND NOW, this _____ day of January, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge