

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-964-2016
 :
 SHANE KOSTISHAK, : Omnibus Pretrial Motion
 Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on June 17, 2016 with two counts of driving under the influence and a traffic summary. It is alleged that on February 7, 2016, the defendant was driving under the influence of alcohol to the extent he was incapable of safely driving and to the extent that within two hours of the time he was driving, his BAC was a .16 % or greater.

Defendant was initially admitted into the ARD Program but terminated from said program by Order of Court dated January 26, 2017. Defendant subsequently filed an omnibus pretrial motion which included a motion for suppression, habeas corpus and discovery.

The hearing on Defendant's omnibus pretrial motion was held on March 22, 2017. The only issue before the court is Defendant's suppression motion. Defendant contends that the police lacked probable cause to stop him.

At the hearing, Officer Michael Engel of the Old Lycoming Township Police Department testified that he was on patrol on February 7, 2016. Defendant's vehicle drove in front of Officer Engel at a T intersection. Officer Engel noted that the vehicle had tinted windows which may have been illegal. Accordingly, he followed the vehicle.

While he followed the vehicle over some distance, he noticed that the vehicle was driving somewhat erratically. The vehicle drove on the white center line a few times and rode on the center yellow line at least one time.

While following the vehicle, it turned right onto an adjacent roadway and failed to use its turn signal. Officer Engel testified that the failure to use the turn signal caused him to “pull over” the defendant’s vehicle.

Because Officer Engel 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 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).

“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 the 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. § 3334, no person shall turn a vehicle from one traffic lane to another without giving an appropriate signal in the manner provided by law.

Defendant clearly failed to do this. Therefore, Officer Engel clearly had probable cause to stop Defendant's vehicle. See *Commonwealth v. Brown*, 64 A.3d 1101 (Pa. Super. 2013) (citations omitted), *appeal denied*, 79 A.3d 37 (Pa. 2014).

ORDER

AND NOW, this ____ day of April 2017, following a hearing, Defendant's motion to suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony L. Ciuca, Esquire (ADA)
Albert J. Evans, Esquire
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