

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**JOSEPH MATTHEW BURKINS,
Defendant**

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CP-41-CR-0000902-2017

SUPPRESSION

OPINION AND ORDER

On August 3, 2017 Defendant's Counsel, filed a Motion to Suppress Evidence. A hearing was held November 16, 2017.

Background

Joseph Matthew Burkins (Defendant) is charged with Driving Under the Influence of Alcohol or Controlled Substance¹, an ungraded misdemeanor; Driving Under Influence with a High Rate of Alcohol², an ungraded misdemeanor; Flashing Signals³, a summary offense; and Careless Driving⁴, a summary offense. The charges arise out of a stop of his motor vehicle in the City of Williamsport on December 29, 2016.

Testimony of Trooper Adam Kirk

Trooper Adam Kirk (Kirk) of Pennsylvania State Police, Montoursville Barracks, testified on behalf of the Commonwealth. Kirk has received training on Driving Under the Influence at the police academy, at ARIDE (advanced roadside impairment detection), and is a Drug Recognition Expert (DRE).

Kirk narrated the motor vehicle recording that shows the initiation of the traffic

¹ 75 Pa.C.S. § 3802(a)(1).

² 75 Pa.C.S. § 3802(b).

³ 75 Pa.C.S. § 3114(a)(1).

⁴ 75 Pa.C.S. § 3714(a).

stop. Commonwealths Exhibit #1. It begins with Kirk traveling west on Fourth Street (one way) in Williamsport, PA. Kirk begins to follow a silver vehicle (determined to be a Kia Optima owned and operated by Defendant). Pine Street becomes one way between Fourth and Third Street.

When traveling south on Pine between Fourth and Third Streets there are a series of traffic lights, two of which in close approximation to each other. The silver vehicle comes to a complete stop at the first set of flashing red traffic lights but fails to come to a complete stop at the second set of flashing red traffic lights an estimated 15 yards from the first before turning left into one-way traffic on Third Street. Kirk initiated a traffic stop based on Defendant's failure to stop at the second set of flashing red lights and for a window tint violation.

Testimony of Defendant

Defendant testified on his own behalf. He identified himself as the driver of vehicle depicted on the video. He testified that though he did make a complete stop at the first flashing red light he did not stop at the second set because he believed he would be stopping in the center of an intersection had he stopped twice. He believed he would be violating the law had he stopped twice.

Defendant testified that he was able to determine that there was no oncoming traffic before making the left turn onto Third Street without coming to a complete stop.

Discussion

I. Probable Cause for Motor Vehicle Stop

When an officer personally observes a violation of the motor vehicle code, he or she has probable cause to conduct a stop of the vehicle observed to be in violation of the code. Commonwealth v. Feczko, 10 A.3d 1285 (Pa.

Super. Ct. 2010). Kirk was able to articulate specific facts possessed by him that were verified by the motor vehicle recording in order to stop Defendant's vehicle.

Section 3114 of the Motor Vehicle Code requires that vehicles come to a complete stop at a flashing red light. The Court finds non persuasive the Defense's argument that Defendant's failure to stop at the second set of flashing red lights comported with the requirements of Section 3323(b) Duties at stop signs. The driver is still required to stop at the red flashing light and then if the driver cannot see may "slowly pull forward from the stopped position to a point where the driver has a clear view of approaching traffic."

Though the Court understands that it is a confusing set of traffic lights (being familiar with the intersection as it is right outside the courtroom), the Court also knows Defendant would not have been blocking an intersection had he stopped at the second set of flashing red lights. The first set of traffic lights allows busses to turn out of the bus station onto Pine Street safely. Busses can then go straight across Third and remain on Pine or turn left onto Third. The second set of traffic lights is to manage the traffic going straight or turning left (the only two options) by busses and cars operated by all drivers including Defendant. The law requires a complete stop at both. If one stops at the second, one is not blocking an intersection. The stop is before the intersection of Pine and Third Streets.

II. Consent to Chemical Test of Blood

The Court remains convinced in its finding as a matter of law that the revised DL26B form comports with the requirements of Birchfield v. North Dakota⁵, and the rights of the people to be free from unreasonable searches and seizures guaranteed by both the US and the Pennsylvania Constitutions. Commonwealth v. Portanova, CP-41-CR-0000200-2017 (decision of Court Nov. 16, 2017); Commonwealth v. Liberti, CP-41-CR-0001933-2016 (decision of Court Oct. 23, 2017); Commonwealth v. Wilt, CP-41-CR-0000251-2017 (decision of Court Oct. 18, 2017); Commonwealth v. Gordon, CP-41-CR-0000393-2017 (decision of Court Sep. 27, 2017).

⁵ 136 S. Ct. 2160, 2185 (2016).

ORDER

AND NOW, this 29th day of January, 2018, based upon the foregoing Opinion, the Motion to Suppress Evidence is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole M. Ippolito, Esquire, ADA
Peter T. Campana, Esquire, Defendant's Counsel
Gary Weber, Esquire