

COMMONWEALTH : No. CP-41-CR-0001976-2017
:
vs. :
: Defendant's Omnibus Pretrial Motion
TYRONE SIMS : (Evidentiary Hearing)

OPINION AND ORDER

Defendant was charged by Information filed on December 15, 2017 with possession with intent to deliver and related counts. Defendant filed an Omnibus Motion, nunc pro tunc on July 30, 2018. Following argument on the timeliness of the motion, the court entered an Order on October 18, 2018 granting Defendant's nunc pro tunc request. The evidentiary hearing on the Omnibus Motion was held on December 6, 2018.

The sole issue raised by Defendant relates to the stop of his vehicle. Defendant asserts that the stop of his vehicle was without probable cause "of a violation of Title 75" and in particular 75 Pa. C.S.A. § 3334.

The evidence for purposes of Defendant's motion is undisputed. Officer Clinton Gardner of the Williamsport Bureau of Police was on duty on October 28, 2017. He was patrolling the area of High Street and Sixth Avenue near the Uni-Mart in the city of Williamsport. He observed the defendant enter a silver Camry automobile and then exit the Uni-Mart parking lot turning south onto Sixth Avenue.

He began following the vehicle. The defendant brought his vehicle to a stop at the intersection of Sixth and Park Avenues. After he came to a stop, the defendant activated his turn signal and turned onto Park Avenue. The vehicle had stopped completely at the intersection and then signaled. Officer Gardner immediately initiated a traffic stop in the 800

block of Park Avenue because Defendant “failed to signal at least 100 feet from his turn at Sixth and Park.”

The Commonwealth contends that Officer Gardner had probable cause to believe that the defendant violated 75 Pa. C.S.A. §3334 (b). Under this provision of the Vehicle Code, “at speeds of less than 35 mph, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.” It add that “[t]he signal shall also be given prior to entry of the vehicle into the traffic stream form a parked position.

The parties agree that the matter before the court involves one of statutory interpretation. When interpreting a statute, the court must ascertain and effectuate the intent of the legislature and give full effect to each provision of the statute if at all possible.

Commonwealth v. Kitchen, 2018 Pa. Super. 52 (March 9, 2018), citing *Commonwealth v. Lopez*, 663 A.2d 746, 748 (Pa. Super. 1995); 1 Pa. C.S.A. § 1921 (a).

The best indication of the general assembly’s intent may be found in the plain language of the statute. *Commonwealth v. Glass*, 2018 Pa. Super. 328 (December 3, 2018); citing *Commonwealth v. Popielarcheck*, 190 A.3d 1137, 1140 (Pa. 2018). When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa. C.S.A. § 1921 (b).

Furthermore, when construing one section of a statute, the courts must read that section not by itself, but with reference to, and in light of, the other sections because there is a presumption that in drafting the statute, the general assembly intended the entire statute to be effective. 1 Pa. C.S.A. § 1922, *Lopez* at 748. As well, statute headings may be considered in construing a statute. 1 Pa. C.S.A. § 1924; *Lopez* at 748.

In this particular case, the defendant was stopped at an intersection and was turning his vehicle to travel on a different road. The statute heading specifically addresses “turning movements and required signals.” The subheading is specifically entitled “Signals on Turning and Starting.” Clearly these titles would govern the situation at hand.

The language of the statute is as well fairly clear. At any speed of less than 35 mph, an appropriate signal of intention to turn shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The fact that Defendant was stopped at an intersection before turning does not negate his responsibility to signal his intention while he was traveling less than 35 mph and approaching the intersection during the last 100 feet traveled before turning.

Defendant’s argument requests the court to ignore the clear and unambiguous statutory language in pursuit of Defendant’s perceived purpose of the statute. Defendant argues that subsection (a) should apply analogizing a stopped vehicle to a vehicle being parked or in a parked position. A “parked car cannot be equated with a “stopped” car. Being parked infers the car being positioned off of the traveled portion of the roadway, turned off with its occupants no longer in it, with an intent that it remain there for more than a brief period of time. A stopped car infers a car being in the lane of traffic for a very brief period of time with the driver in control and ready to move the car once the reason for the stop has abated.

Despite Defendant arguing that there were no cases addressing this argument, the court has found at least a few that apply through indirect if not direct reasoning. In *Commonwealth v. Brown*, 64 A.2d 1101 (Pa. Super. 2013), the court held that the officer had probable cause to stop the defendant’s vehicle for failure to use a turn signal in violation of 75

Pa. C.S. § 3334, despite the defendant's argument that he was in a left-turn only lane which gave him no other option than to turn left.

In *Commonwealth v. Edwards*, 834 2018 (Lycoming County), while not specifically addressing this issue in detail, President Judge Butts concluded that Officer Gardner witnessing a similar "turn signal violation" had probable cause to effectuate a stop.

In *Commonwealth v. Voron*, 1876 WDA 2013 (Pa. Super. 2014), the defendant was convicted of among other things, failure to use a turn signal in violation of 75 Pa. C.S.A. § 3334 (b). The defendant's vehicle was traveling on Main Street in Manor Borough. The officer testified that the vehicle operated by the defendant stopped at the stop sign and then proceeded to make a left-hand turn from Main Street onto State Route 993. He turned the vehicle without the use of turn signal.

On appeal, defendant argued that a driver is not required to indicate his intention to turn left or right. Defendant argued that because the legislature has set forth the duties of a driver at a stop sign, the court could not read the requirements of § 3334, turning movements and required signals, to require a driver to activate his turning signals. The Superior Court disagreed noting that based on the plain language of § 3334, "the use of an appropriate signal is required any time someone is turning." The court further noted that the specific language of the statute "makes clear the manner in which a turn signal is to be used." More specifically, a vehicle traveling at speeds less than 35 mph must give an appropriate signal of intention to turn right or left continuously during not less than the last 100 feet traveled by the vehicle before turning." The court noted that "it is obvious that a vehicle approaching a stop sign is traveling less than 35 mph. Therefore, a driver must signal not less than 100 feet before turning."

“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. Feszko*, 10 A.3d 1285, 1291 (Pa. Super. 2010).

In this case, such as in *Voron*, the officer testified that he witnessed the defendant fail to employ his turn signal in violation of § 3334. It is clear that Officer Gardner had articulable and reasonable grounds to suspect that the defendant violated § 3334 pertaining to turning movements and required signals. There is no question that he had probable cause to stop the defendant for a violation of the Motor Vehicle Code.

ORDER

AND NOW, this 18th day of December 2018, following a hearing and argument, Defendant’s Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron S. Biichle, Esquire
Kenneth Osokow, Esquire, District Attorney
Gary Weber, Lycoming Reporter
Work File