

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-48-2019  
 :  
 SAMUEL HIRAM HARRIS, :  
 :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

For what seems to be fifty plus year, motorists have disputed the right of law enforcement officers to stop and detain them. The courts have carefully balanced the competing interests and rights. While the legal standards have been refined, each case is largely dependent on the factual circumstances.

In this case, Williamsport police officers, Clinton Gardner and Joshua Bell were previously patrolling the 600 block of Andrews Place at approximately 9:00 p.m. on December 16, 2018 when they noticed the defendant exiting 652 Andrews Place and start walking down the street. Defendant was observed walking past a white sedan vehicle while “looking in their direction.” The officers subsequently pulled their vehicle next to Defendant. A conversation ensued after which the defendant was frisked. Nothing illegal was found on him and he was released.

Approximately four days later on December 20, 2018, the officers were patrolling the area of Diamond and Linn Streets in the Newberry section of Williamsport. At approximately 9:40 p.m. they noticed the same white sedan legally parked on Diamond Street facing north but with its engine running. Being somewhat suspicious, they traveled east on Linn Street, passed the intersection and circled back to the south of the white sedan.

They located themselves at the intersection of an alleyway and Diamond Street approximately 100 yards away from the sedan. They were facing west approximately one car length from the intersection so as not to be detected by any occupants of the white sedan.

While observing the white sedan, the officers saw that it exited from its parked position into the roadway traveling north but without using its turn signal. Concluding that they had probable cause to stop the vehicle for a violation of 75 Pa. C.S.A. § 3334 (a), turning movements and requested signals, they proceeded to follow, catch up to, and stop the vehicle. Defendant was determined to be the driver.

Defendant alleges that the stop of his vehicle was illegal. The Commonwealth concedes that if the stop of the vehicle is determined to be illegal, all of the evidence subsequently seized from Defendant and the vehicle should be suppressed.

If a traffic stop is not necessary in order to determine whether a violation of the Vehicle Code occurred, the officer must possess probable cause to stop the vehicle. *Commonwealth v. Salter*, 121 A.3d 987, 993 (Pa. Super. 2015).

The officers asserted that they stopped Defendant's vehicle for a turn signal violation. Therefore, in this particular case, for the stop of the vehicle to be constitutionally valid, the law enforcement officers must articulate specific facts possessed by them, at the time of the questioned stop, which would provide probable cause to believe that the driver was in violation of some provision of the Vehicle Code. *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010).

“Probable cause is made out when the facts and circumstances which are

within the knowledge of the officer at the time of the stop, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.” *Commonwealth v. Calabrese*, 184 A.3d 164, 166 (Pa. Super. 2018).

In this case, Defendant argues that the violation at issue was momentary and minor and accordingly does not establish probable cause. See *Commonwealth v. Garcia*, 859 A.2d 820, 823 (Pa. Super. 2004).

In *Garcia*, however, the violations alleged were moving violations that involved a more subjective analysis. *Commonwealth v. Bozeman*, 2019 PA Super 70, 2019 WL 1088257, \*7 (March 8, 2019). Specifically, the driver in *Garcia* briefly crossed over the right berm line. According to the Vehicle Code at issue in *Garcia*, 75 Pa. C.S. § 3309, a vehicle had to be driven “as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.” The defendant in *Garcia*, who briefly crossed the right berm line as cars approached in the opposite lane “may have ascertained she could do so with safety.” *Bozeman, id.*

In this case, as in *Bozeman*, to characterize a defendant’s action as “momentary and minor” would be to undermine the Motor Vehicle Code which includes minor traffic offenses. “Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense.” *Commonwealth v. Harris*, 176 A.3d 1009, 1019 (Pa. Super. 2017)(citation

omitted).

Defendant's vehicle was stopped based upon probable cause for violating 75 Pa. C.S.A. § 3334 (a). This provision of the Vehicle Code states that upon a roadway no person shall enter the traffic stream from a parked position unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in this section.

Although it was established that the entering the roadway from the parked position did not endanger anyone and was made with reasonable safety, it was without giving an appropriate signal in the manner provided. Under § 3334 (b), it is specifically required for a signal to be given prior to the entry of the vehicle into the traffic stream from a parked position.

Accordingly, the court finds that the officer possessed probable cause to stop the vehicle and Defendant's motion to suppress will be denied.

Defendant's motion also contained a motion to dismiss in which Defendant asserted that the evidence was insufficient to show that he possessed controlled substances with the intent to deliver them. Although titled a motion to dismiss, this motion is actually a petition for habeas corpus relief with respect to Counts 1 and 2.

After the officers stopped Defendant's vehicle, they approached the vehicle. Defendant leaned over to reach the glove box. When he did so, the officers observed a blue circular pill on the seat. The officers asked Defendant to step outside the vehicle. They retrieved the pill and asked Defendant if he knew it was an oxycodone pill. Defendant

noded in the affirmative. The officers searched the vehicle but did not find any other controlled substances in the vehicle. Defendant did not have a prescription for oxycodone in the vehicle or on his person. The officers took Defendant into custody and transported him to City Hall where they conducted a thorough search of his person incident to his arrest. As a result of the search of Defendant's person at City Hall, the officers found 37 oxycodone pills with a street value of \$1,100, two bags of crack cocaine, and \$437 in U.S. currency. The pills were similar to the one located on the seat near Defendant.

The controlled substances were located in two separate distribution bags which were "well worn" indicating frequent use. A few days earlier, Defendant was observed attempting to "disassociate" himself from the vehicle. Consistent with "drug dealers", the defendant had a Philadelphia address on his driver's license but was "staying with a female" in Williamsport. Also, "common with drug dealers", the white sedan was registered to a third party. The defendant did not have a valid prescription for the pills. Finally, the manner in which the controlled substances were hidden on the defendant evidenced intent to distribute.

Based on the totality of the circumstances, as set forth above, which included the quantity of the substances, the street value of the pills, the currency in Defendant's possession, and the lack of the valid prescription for the substances, the court finds the evidence is sufficient for a jury to infer that Defendant possessed the controlled substances with the intent to deliver them. Despite the allegations in Defendant's motion, there is nothing in the record to show that Defendant was a drug user or that he possessed these controlled substances for personal use. Even if such evidence had been presented, it would

create a factual issue for the jury; it would not entitle Defendant to dismissal of the charges.

**ORDER**

**AND NOW**, this \_\_\_ day of April 2019 following a hearing and argument, the court DENIES Defendant's motion to suppress and Defendant's motion to dismiss.

By The Court,

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Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire (ADA)  
Andrea Pulizzi, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File