

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-58-2017**
 v. :
 :
 DAVID RICE, : **MOTION TO SUPPRESS**
 Defendant :

OPINION AND ORDER

David Rice (Defendant) was charged on October 6, 2016 with Driving under the Influence of a Controlled Substance,¹ Possession of Drug Paraphernalia,² Turning Movements and Required Signals,³ and Careless Driving.⁴ The charges arise from a traffic stop that occurred on Broad St. in Montoursville, Pennsylvania, in Lycoming County. Defendant filed this Motion to Suppress Evidence on February 23, 2017. A hearing on the Motion was held by this Court on April 22, 2019. Defendant raises two issues in his Motion: Whether police have probable cause of a vehicle violation to conduct a traffic stop; and Whether Defendant’s submission of blood was knowing, intelligent, and voluntary based upon the use and application of the current DL-26B form. Based on the following opinion this Court will grant Defendant’s Motion to Suppress Evidence.⁵

Background and Testimony

Deputy Chief Jason Bentley (Bentley) of the Montoursville Police Department testified on behalf of the Commonwealth. The Commonwealth also submitted the Motor Vehicle

¹ 75 Pa. C.S. § 3802(d)(1)(i).

² 35 P.S. § 780-113(a)(32).

³ 75 Pa. C.S. § 3334(a).

⁴ 75 Pa. C.S. § 3714(a).

⁵ The Court will not address the issue of whether Defendant’s consent to a blood draw was knowing, voluntary, and intelligent as the issue is moot, since the evidence will be suppressed as a result of the impermissible traffic stop. *But see Commonwealth v. Garman*, CR 1888-2018, at 2-3 (Lyco. Ct. Com. Pl. 2019) (this Court ruled that use and application of DL-26B form is a knowing, voluntary, and intelligent waiver of a defendant’s rights).

Recording (MVR) from Bentley's vehicle and the DL-26B form signed by Defendant as exhibits. Based on this evidence the following was established. On October 6, 2016 at approximately 8:45 p.m., Bentley was acting in his official capacity as a police officer in a marked patrol unit when he witnessed a truck pass a vehicle to its left on Broad St. without signaling. MVR at :26. Bentley then activated his emergency lights and performed a three point turn to effectuate a stop of the vehicle. *Id.* at :30. Bentley conducted a traffic stop of the vehicle that had already pulled into a PennDot parking lot. *Id.* at 1:01. As a result of that stop Defendant was arrested for Driving under the Influence and Possession of Drug Paraphernalia. He was then transported to the hospital where Bentley read him the DL-26B form verbatim prior to Defendant signing and consenting to a blood draw. The results of the blood draw of Defendant indicated 2.8ng/mL of 11-Hydroxy Delta-9 THC, 73ng/mL of Delta-9 Carboxy THC, and 13ng/mL of Delta-9 THC was in his system.

Analysis

Police officers are granted the authority to effectuate stops pursuant to violations of the Motor Vehicle Code. 75 Pa. C.S. § 6308(b). "Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle." *Id.* "Traffic stops based on a reasonable suspicion: either of criminal activity or a violation of the Motor Vehicle Code under the authority of Section 6308(b) must serve a stated investigatory purpose." *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010). In contrast, a vehicle stop that does not require further investigation to determine whether a violation has occurred requires an officer to "have probable cause to make a constitutional vehicle stop." *Commonwealth v. Chase*, 960 A.2d 108, 116 (Pa. 2008). Under 75 Pa. C.S. § 3303(a)(1), "[t]he driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the

left of the other vehicle at a safe distance and shall stay to the left of the other vehicle until safely clear of the overtaken vehicle.” Legislators additionally placed limitations on 75 Pa. C.S.

§ 3303(a)(1):

No vehicle shall be driven to the left side of the center or marked center line of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within 200 feet of any approaching vehicle.

75 Pa. C.S. § 3305.

Under a separate section a driver is required to use a turn signal when he/she “turn[s] a vehicle or move[s] from one traffic lane to another or enter[s] 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.” 75 Pa. C.S. § 3334(a). Additionally, a violation of the Motor Vehicle Code occurs when a “person [] drives a vehicle in careless disregard for the safety of persons or property.” 75 Pa. C.S. § 3714(a). The above provisions of the Motor Vehicle Code require no further investigation to determine a violation. Therefore probable cause must be present to effectuate a stop for any of the above provisions. *Feczko*, 10 A.3d at 1292.

Defendant argues that he was improperly stopped and this Court agrees. Both parties stipulate to the facts and MVR demonstrates the same. Defendant passes the vehicle in front of him to the left without signaling, but also without leaving the traffic lane. This action does not violate any portion of the Motor Vehicle Code. Bentley testified that he stopped Defendant for not signaling to pass the vehicle in front of him, but a signal was not required as Defendant did

not leave his traffic lane. *See* 75 Pa. C.S. § 3334(a). Commonwealth alternatively argues that even if there is not a violation for a failure to signal the conduct clearly falls under 75 Pa. C.S. § 3714(a) regarding careless driving. This Court disagrees. First, Defendant's conduct is expressly permitted under 75 Pa. C.S. § 3303(a)(1) and does not fall under the defined limitations of 75 Pa. C.S. § 3305, which would constitute a violation. Additionally the Pennsylvania Supreme Court has previously held Careless Driving did not exist under a similar factual situation:

[Defendant] was behind another vehicle as the two cars approached a point on the Susquehanna River Bridge where two lanes of traffic merged into a single lane. [The officer] then saw [Defendant] drive over a solid white line and pass the vehicle in front of him before that vehicle merged into the same lane. There was no evidence, however, that [Defendant] operated his vehicle in a careless or reckless manner or that he interfered with any other vehicle on the road.

Commonwealth v. Whitmyer, 668 A.2d 1113, 1114 (Pa. Super. 1995).

The Court finds Defendant's driving was not careless and is conversely expressly permitted under the Motor Vehicle Code. Therefore Bentley did not have probable cause of a motor vehicle violation to conduct a permissible traffic stop.

Conclusion

Bentley did not have the requisite probable cause to stop Defendant for a motor vehicle violation and therefore, Defendant's Motion to Suppress Evidence shall be granted.

ORDER

AND NOW, this 8th day of May, 2019, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **GRANTED**. It is **ORDERED** and **DIRECTED** that any information gathered by officers as a result of Defendant's traffic stop shall be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (TB)
Peter Campana, Esquire

NLB/kp