

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-724-2021**  
 v. :  
 :  
 **KENNETH NEWMAN,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Kenneth Newman (Defendant) was charged on June 10, 2021 with Driving Under the Influence (DUI): Controlled Substance – Schedule 1, First Offense,<sup>1</sup> DUI: Controlled Substance – Metabolite, First Offense,<sup>2</sup> DUI: Controlled Substance – Impaired Ability, First Offense,<sup>3</sup> Use/Possession of Drug Paraphernalia,<sup>4</sup> and a summary traffic violation<sup>5</sup>. The charges arise from police pulling over Defendant’s car for a suspected inoperable fog light. Defendant filed this timely Omnibus Pre-trial Motion on August 6, 2021. This Court held a hearing on the motion on October 25, 2021.

In his Motion, Defendant argues that law enforcement lacked reasonable suspicion to conduct a traffic stop of his vehicle because he did not violate the Motor Vehicle Code. As such, Defendant believes all evidence found because of this traffic stop should be suppressed.

**Background and Testimony**

Trooper Paul Beard (Beard) of the Pennsylvania State Police (PSP) testified on behalf of the Commonwealth. Beard testified that he works for PSP in a patrol unit that enforces the Motor Vehicle Code and the Criminal Code. Beard noted that he is very familiar with these codes and with the inspection requirements of vehicles travelling in Pennsylvania. On July 10,

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<sup>1</sup> 75 Pa.C.S. § 3802(D)(1)(i).

<sup>2</sup> 75 Pa.C.S. § 3802(D)(1)(iii).

<sup>3</sup> 75 Pa.C.S. § 3802(D)(2).

<sup>4</sup> 35 Pa.C.S. § 780-113(a)(32).

<sup>5</sup> 75 Pa.C.S. § 4107(b)(2).

2021, Beard was on duty in Loyalsock Township. Specifically, Beard had established a patrol position on Westminster Drive facing south. Beard noticed a Ford Windstar minivan at the red light on Westminster Drive and 3rd Street that had one fog light that was not illuminated. Beard testified that it is an inspection fail if a fog light does not work. Beard observed the Windstar's turn signal activate while the left fog light was on and the right fog light was off from approximately twenty (20) to twenty-five (25) feet away. Based on the unlit right fog light, Beard pulled the vehicle over and made contact with the driver, later identified as Defendant.

Upon approaching the vehicle, Beard detected the odor of burnt marijuana emanating from the Defendant. Defendant admitted to smoking marijuana around 3:30 that afternoon. Beard conducted field sobriety tests on Defendant and ultimately believed that Defendant exhibited signs of impairment. During the exchange between Defendant and Beard, Defendant never mentioned a special feature on his vehicle involving the fog lights. Beard stated that he was not familiar with an operating system that activated different lights when a turn signal was utilized. Beard testified that he perceived the light in question to be a fog light and believed it was not functional because it was off at the time he observed it. Beard admitted that if a factory installed light operates as designed, then it is not a failure, but he was not aware of "corner lights" until the hearing on this motion and believed the unlit light to be a traditional fog light. Beard indicated that he believed these were fog lights and not corner lights because they were in the same position as fog lights and consistent with the required distancing between the two lights. Beard further testified that, if the fog lights are turned on, the Motor Vehicle Code requires both to be illuminated otherwise it is a violation. Beard did not believe fog lights to be ornamental. Beard stated he had never seen this type of corner light before and had no reason to believe these lights were a factory function when one of them was off.

Defendant testified on his own behalf at the hearing on this motion. Defendant testified that he and his wife own the vehicle in question. Defendant stated that he did not purchase this car new, but possesses the owner's manual. Defendant claims the manual references the corner lights. Counsel for both parties stipulated to the fact that the "corner lights" on Defendant's vehicle are factory installed. Defense counsel submitted a map of where the traffic stop occurred that includes Beard and Defendant's locations, marked as Defendant's Exhibit 1. Defense counsel also submitted a map of the intersection that included the location of the traffic stop, marked as Defendant's Exhibit 2. Defense counsel presented a photograph of Defendant's vehicle's lighting system operation, marked as Defendant's Exhibit 3. Defense also presented an additional photograph of the right exterior side of Defendant's vehicle, which includes the light at issue, marked as Defendant's Exhibit 4.

Lastly, defense counsel showed this Court a video of the operation of the lights on Defendant's car, marked as Defendant's Exhibit 5. This video shows the corner lights operating as designed, where the opposing corner light turns off when the opposite turn signal is activated.

### **Analysis**

Defendant is of the position that the police did not have the requisite reasonable suspicion to conduct a traffic stop of his vehicle. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. "A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." Heien v. North Carolina, 574 U.S. 54, 60 (2014); See Brendlin v. California, 551 U.S. 249, 255-259 (2007). 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. Under the Fourth Amendment standard, “a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake.” Heien v. North Carolina, 574 U.S. 54, 57 (2014).

The “ultimate touchstone of the Fourth Amendment is reasonableness.” Brigham City v. Stuart, 547 U.S. 398, 403 (2006). “To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” Heien v. North Carolina, 574 U.S. 54, 60 (2014) *citing* Brinegar v. United States, 338 U.S. 160, 176 (1949). The United States Supreme Court has held that searches and seizures based on mistakes of fact can be reasonable. *See* Illinois v. Rodriguez, 497 U.S. 177, 183-186 (1990). Similarly, a police officer may be reasonably mistaken on the law. *See* Heien v. North Carolina, 574 U.S. 54, 61 (2014).

Defendant asserts that reasonable suspicion was lacking in this case and, as a result, he should not have been subjected to a traffic stop. In particular, Defendant argues that the lights in question were installed properly and working as designed. Defendant further contends that he was not operating the vehicle in an unsafe manner, so no other violation of the Motor Vehicle Code existed to justify a traffic stop. Defendant believes that since the lights were not fog lights and operating properly, all evidence seized because of the traffic stop must be suppressed. The Commonwealth’s position is that Defendant’s argument is hyper-technical after the fact of the incident and that the “corner lights” were in the traditional location of fog lights. The Commonwealth also argues that no evidence was presented that corner lights are a

common function in vehicles that law enforcement should be aware of. Furthermore, the Commonwealth argues that this situation requires common sense, and the police were justified in pulling Defendant over after observing two (2) headlights illuminated and only one (1) fog light. The Commonwealth also argues that the corner light is such an uncommon feature that Beard should not reasonably be expected to know and that he was justified in conducting the traffic stop.

This Court agrees with the Commonwealth on this issue for the following reasons. In the case *sub judice*, Beard testified that if a vehicle's fog lights are turned on, then both lights must be operational or it is considered a violation of the Motor Vehicle Code if only one fog light is illuminated. Beard believed the unilluminated light on Defendant's vehicle to be a fog light because it was positioned in an identical position as a traditional fog light. Beard also testified that at the time he conducted the traffic stop on Defendant, he was unfamiliar with the function articulated by Defendant as a corner light. At the time of the stop, Defendant did not communicate to Beard that the unlit light was a corner light and not a fog light. Beard's misidentification of the light on Defendant's car is reasonable and excuses his mistake of fact in his determination of the type of light on Defendant's car. As such, it was a reasonable mistake for Beard to believe that Defendant was not operating with both fog lights on as required. Thus, Defendant's claim on this issue is unsuccessful and the evidence seized pursuant to the traffic stop shall not be suppressed.

### **Conclusion**

The Court finds that the requisite reasonable suspicion of criminality did exist to justify a traffic stop of Defendant's vehicle despite law enforcement's reasonable mistake. Therefore, the evidence obtained shall not be suppressed.

**ORDER**

**AND NOW**, this 20th day of December, 2021, based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Helen Stolinas, Esquire  
Law Clerk (JMH)