

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : **No. CR-392-2021**
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 vs. :
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 DONTE OUTLAND, : **Omnibus Pretrial Motion**
 Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on March 31, 2021, with possession of a firearm with an altered manufacturer’s number, carrying a firearm without a license, possession with intent to deliver and possession of a small amount of marijuana.

Defendant filed an Omnibus Pre-Trial Motion on June 4, 2021 alleging that the stop of his vehicle was illegal because it was without probable cause related to the alleged vehicle violation(s), and without reasonable suspicion with respect to a narcotics investigation.

Hearings on this motion were held on August 4, 2021 and October 13, 2021. Detective Robert Anderson first testified on behalf of Commonwealth. He was employed by the NEU as a detective and was on duty on March 11, 2021. In the mid-afternoon hours, he was called by other officers and asked to assist in surveilling a silver Kia vehicle that was in the area. He made visual contact with the vehicle on Hepburn Street and started following it. The vehicle was traveling south on Hepburn and stopped at the intersection of Hepburn and West Fourth Street.

Once the light turned green, the vehicle turned left onto West Fourth Street but failed to utilize its turn signal. Detective Anderson relayed this information to Officers Gardner and Bell and continued with the surveillance until the vehicle was stopped.

Detective Kevin Dent next testified on behalf of the Commonwealth. He too was on duty working for the NEU on the date in question.

During the mid-afternoon hours he joined in the surveillance of the vehicle. While it was traveling east on West Third Street, it passed in front of him and he observed that while it was raining and the vehicle was utilizing its windshield wipers, the vehicle did not display its front headlights. He relayed this traffic violation to Officers Gardner and Bell.

With respect to the cross-examination of both detectives, Defendant introduced as Defense Exhibit 1 a written “synopsis” by Detective Anderson.

Detective Anderson noted that he was assisting “Trooper Miller” with surveillance of the Kia vehicle. Trooper Miller saw the vehicle during a controlled buy his unit conducted in Lock Haven the previous day.

On March 11, 2021, Detective Anderson made visual contact with the vehicle while traveling south on Hepburn Street. He observed that the driver was a white female and the front seat passenger was a black male. He observed that the male was sitting extremely low in his seat, appearing to try to conceal himself. He continued following the vehicle and observed the female “constantly checking her mirrors and looking around at her surroundings.”

Further, he was behind the vehicle at the stop light at Hepburn Street and Fourth Street. According to Detective Anderson, once the stop light turned green, the vehicle abruptly traveled onto West Fourth Street. The vehicle then started traveling east and they continued “to tail” the vehicle until it entered the parking lot at Starbucks. Nothing in the written synopsis references any traffic violations observed by any of the NEU personnel.

According to Detective Anderson, once the vehicle left the Starbucks, it started traveling in the opposite direction of its initial route of travel. Based on Detective Anderson's "experience conducting surveillance on persons engaged in criminal activity, primarily drug traffickers", the driving behaviors were "consistent with a person trying to evade police surveillance."

The vehicle eventually travelled onto Route 180 westbound. It was traveling 45 mph in a posted 55 mph zone. Soon thereafter, Detective Anderson observed Officers Bell and Gardner activate their emergency lights to initiate a traffic stop. According to Detective Anderson, he watched as the vehicle continued to drive slowly for approximately 600 feet and he observed both the driver and passenger sitting very rigidly in their seats. He then observed the vehicle come to a stop off of the right shoulder of the roadway at the Route 15 and Route 220 split.

The August 4, 2021 hearing was adjourned and additional testimony was taken on October 13, 2021.

Officer Gardner testified on October 13, 2021. He testified that he was on duty and observed Defendant and a known narcotics user standing on the street in a high drug trafficking area. He observed them get into a silver Kia Sedan and drive away. He asked other undercover officers to maintain visual contact.

Within the next ten minutes, he effected a stop of the vehicle. During that ten-minute time, other officers advised him of the traffic violations that they had observed.

While he followed the vehicle on Route 180 westbound, it braked many times and swerved on numerous occasions onto the fog line and over the fog line in violation of 75 Pa. C.S.A. § 3309(a)(1).

Because of the traffic violations as well as the suspicion of narcotics activity, Officer Gardner initiated a traffic stop.

Officer Gardner approached the vehicle and immediately smelled the strong odor of marijuana emanating from it. He also observed a marijuana package in the front hoodie pocket of the passenger, who was later identified as Defendant. When asked to provide it, Defendant did and it did not have any prescription information on it. Based on his experience, Officer Gardner concluded, from the smell, appearance and the manner in which the contents were packaged, that it was marijuana.

As Officer Gardner opened the door to arrest Defendant for possession of the marijuana, he asked if there were any weapons. Not hearing an answer, he asked again. Defendant indicated “yes.” Officer Gardner then grabbed both hands of Defendant and yelled “gun.” Defendant was taken into custody. Upon being handcuffed, Defendant was found to possess a loaded 9 mm revolver, which was recovered from his waistband. Also recovered from Defendant were two bags of cocaine, two (2) cellular phones, and approximately \$1,000.00 in cash.

Defendant argues that the law enforcement officers had a duty to immediately stop the vehicle upon observing the traffic violations or within a reasonable period of time upon seeing the violation. Defendant argues that law enforcement officers who view a traffic violation

cannot watch it happen, have the ability to stop the motorist and simply relay the information to another officer.

Where a traffic stop is based on an observed violation of the Vehicle Code or an otherwise non-investigable offense, an officer must have probable cause to make a constitutional vehicle stop. *Commonwealth v. Gurung*, 239 A.3d 187, 190-191 (Pa. Super. 2020). 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. *Id.*

The courts have recently confirmed that the quantum of cause a police officer must possess in order to conduct a vehicle stop for a violation of the Motor Vehicle Code is probable cause. *Commonwealth v. Prizzia*, 2021 PA Super 172, 2021 WL 3731896 *4 (Pa. Super. 2021); *Commonwealth v. Tillery*, 249 A.3d 278, 282-283 (Pa. Super. 2021).

Here, the traffic stop was based on both a failure to use a turn signal, the failure of the operator to display lighted headlights, and the failure of the operator to drive the vehicle as nearly as practicable within a single lane. The officers needed probable cause to effectuate the stop. The credible testimony of the officers established such probable cause.

Pursuant to 75 Pa. C.S.A. § 3334, no person is permitted to turn a vehicle or move from one traffic lane to another without giving an appropriate signal. 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. 75 Pa. C.S.A. § 3334(a), (b).

In this particular case, Detective Anderson testified credibly that Defendant was stopped at a red light and, once the light turned green, Defendant turned left without utilizing his turn signal.

Pursuant to 75 Pa. C.S.A. § 4302, the operator of a vehicle upon a highway shall display the lighted headlamps and other lamps and illuminating devices at any time when the windshield wipers are in continuous or intermittent use due to precipitation or atmospheric moisture, including rain or mist. 75 Pa. C.S.A. § 4302(a)(3).

The credible testimony of Detective Dent establishes that when he viewed the vehicle, its windshield wipers were in use because of precipitation but its headlamps were not lighted. Defendant testified as well that the operator would intermittently turn on the windshield wipers due to the accumulation of mist on the windshield.

Pursuant to 75 Pa. C.S. § 3309(1) a vehicle shall be driven as nearly as practicable entirely within a single lane.

The credible testimony of Officer Gardner supported the fact that the operator of the vehicle violated this provision by swerving on and over the marked fog line on several occasions.

Defendant has provided no authority to support his assertion that the stop must occur immediately upon the officer viewing the offense. Moreover, Defendant has provided no authority to support his assertion that any stop must be within “a reasonable time” after viewing the violation. Regardless, this Court concludes that the officers who viewed the first two traffic violations could not legally stop the vehicle because they were not in vehicles equipped or

authorized to do so. Furthermore, the stop of the vehicle for the violations was within 10 minutes of the first offense and within a “reasonable” time.

Despite withdrawing his contention that the search of his person was illegal (See Court Order dated 8-4-2021), Defendant argued at the October 13, 2021 hearing that the search was unlawful because there was no basis to arrest him.

Contrary to Defendant’s assertion, his arrest was lawful and the search was lawful as incident to the lawful arrest.

A police officer may arrest an individual if the police officer has probable cause to believe that the individual is committing a crime.

Defendant argues that Officer Gardner did not know for certain that the item he observed on Defendant was illegal marijuana. Defendant’s argument distorts the law. Probable cause does not require certainty. *Commonwealth v. Goldman*, 353 A.3d 668, 677-678 (Pa. Super. 2021); *Commonwealth v. Dommel*, 885 A.2d 998, 1002 (Pa. Super. 2005).

Defendant was placed under arrest based upon probable cause to believe that he was in possession of marijuana.

Officer Gardner noticed the marijuana package in plain view in Defendant’s front hoodie pocket where it was visible. Officer Gardner asked Defendant to remove the marijuana and place the marijuana on the dash of the car. Defendant reached into his pocket and removed the marijuana. Based on Officer Gardner’s training and experience, he noted the item to be marijuana as it was consistent with the odor, look, and packaging of marijuana. Officer Gardner

also testified that the marijuana was not in an authorized packaging that is required under the Medical Marijuana Act. See 35 P.S. §§ 10231.303(b)(6)(Medical marijuana that has not been used by the patient shall be kept in the original package in which it was dispensed), 10231.801(i)(Medical marijuana shall be dispensed by a dispensary to a patient or caregiver in a sealed and properly labeled package).¹ Therefore, Officer Gardner had probable cause to believe Defendant was in possession of illegal marijuana.

Because Officers Bell and Gardner had probable cause to stop the vehicle in which Defendant was a passenger for the aforesaid traffic violations, Defendant's motion to suppress based on an alleged illegal stop shall be denied. Further, because the officers legally arrested the defendant and searched him incident to said arrest, the motion to suppress based on an illegal search shall be denied.

ORDER

AND NOW, this 22nd day of October 2021, following hearings and arguments, Defendant's Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Williams, Esquire (ADA)
Michael C. Morrone, Esquire
Gary Weber, Esquire
Judge Marc F. Lovecchio

¹ The Medical Marijuana Act also limits medical marijuana to certain forms. 35 P.S. §10231.303(b)(2).