

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1860-2019**
v. :
 :
DERRICK ERWIN, JR., : **OMNIBUS MOTION**
Defendant :

OPINION AND ORDER

Derrick Erwin, Jr., (Defendant) was charged with Fleeing or Attempting to Elude Officer¹, Resisting Arrest², Driving Under the Influence: General Impairment³, and other related summary offenses⁴. The charges arise from a traffic stop conducted on Defendant. Defendant filed this untimely Omnibus Pre-trial Motion on April 25, 2022. This Court held a hearing on the motion on July 14, 2022. The Commonwealth moved to dismiss Defendant’s motion as untimely, arguing that the motion was approximately two (2) years late and no interest of justice existed to support this late filing. Nevertheless, this Court determined that the interest of justice was present in this case to justify considering Defendant’s issue.

In his Motion, Defendant asserts that the Commonwealth did not have sufficient probable cause to conduct the traffic stop and all evidence seized pursuant to the stop must be suppressed.

Background and Testimony

Officer Michael Corter (Corter) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. On December 1, 2019, Corter was on duty for the early morning shift working in uniform and in a marked patrol unit. Corter was patrolling on Market Street in the

¹ 75 Pa.C.S. § 3733(a).

² 18 Pa.C.S. § 5104.

³ 75 Pa.C.S. § 3802(a)(1).

⁴ 75 Pa.C.S. § 1543(a); 75 Pa.C.S. § 3734; 75 Pa.C.S. § 3362(a)(1-5).

city of Williamsport at approximately 2 a.m. Corter observed two (2) vehicles in a parking lot that turned onto Market Street. One (1) of those vehicles, a 2011 Hyundai Sonata, only had the running lights on instead of the headlights as required at this hour. Corter turned around to follow this vehicle and activated his emergency lights on the patrol unit. Corter stated that he had to travel eighty-five (85) miles per hour in order to catch up to the car. Corter saw this vehicle hit the brakes but did not come to a complete stop and sped up instead. Corter also watched this vehicle roll through a stop sign. At this point, Corter had already activated the siren in addition to the emergency lights.

The Commonwealth presented a photograph of the same model of vehicle as the one in question, marked as Commonwealth's Exhibit 2. Corter identified the daytime running lights and the headlights on this photograph. Corter reiterated that the Sonata had no additional lights illuminated except for the daytime running lights on December 1, 2019. Corter indicated that, when the headlights are on as required, the lights illuminate the road clearly and the Sonata's lights did not illuminate the road.

Defendant testified on his own behalf at the hearing on this motion. Defendant stated that he had turned his headlights on properly while driving the vehicle on that day. The Commonwealth also presented the MVR footage of the traffic stop, marked as Commonwealth's Exhibit 1. This footage shows the following.

Corter's patrol vehicle is driving around the city of Williamsport in the early hours of the morning while it is very dark. Corter approaches a red light and comes to a stop. Approximately one (1) block away, two (2) vehicles turn right to exit a parking lot and enter the opposing lane of travel. The vehicle on the right has its headlights on and these lights illuminate the roadway for several feet. The vehicle on the left has much smaller lights turned

on that have very little reflection on the street. The car on the left travels quickly through the intersection while the light facing Corter is still red. Corter makes a U-turn in the intersection and speeds off after the vehicle while activating the emergency lights. The car is hardly visible, if at all, on the video footage at this point. Corter continues to gain speed and approximately forty (40) seconds lapse before Corter is able to catch up to the vehicle. Corter utilizes the siren on his patrol unit while the car activates its brakes and comes to a rolling stop at a flashing red light and continues through the intersection. Prior to the driver using the brakes, no taillights are visible on the rear of the vehicle. The driver keeps travelling, makes a right turn and eventually pulls over to the side of the road.

Analysis

Defendant challenges the traffic stop of his vehicle asserting that law enforcement did not have sufficient probable cause to conduct the stop. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV. “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure...within the meaning of this provision.” Whren v. U.S., 517 U.S. 806, 809 (1996) (internal quotations omitted). The stop of an automobile “is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” Id. at 810. “As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” Id.; *See Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977). “For a stop based on the observed violation of the Vehicle Code or otherwise non-investigable offense, an officer must have probable cause to make a constitutional vehicle stop.” Commonwealth v. Harris, 176 A.3d

1009, 1019 (Pa. Super. 2017). “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.” *Id.*; *See* 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.” 75 Pa. C.S. § 6308(b).

Defendant’s sole contention is that law enforcement did not have probable cause to justify the traffic stop of his vehicle⁵. Defendant is adamant that there was no traffic violation and that his headlights were on as required. However, the MVR footage clearly showed that Defendant had his running lights activated and not his headlights. In contrast with the other driver that pulled out of the parking lot with him, Defendant’s front lights are much dimmer and hardly reflect on the road. The other driver’s headlights reflect light for several feet on the street and are much brighter. Additionally, during Corter’s pursuit of Defendant in order to conduct the traffic stop, no rear lights are visible on Defendant’s car until the brakes are used at the traffic light. If a driver has activated his headlights, the taillights are also turned on at all times, not just during brake usage. For these reasons, this Court believes that Defendant had his running lights on but did not turn on his headlights. As a result, Corter had sufficient probable cause to conduct the traffic stop on Defendant and no evidence seized during the stop shall be suppressed.

Conclusion

The Court finds that law enforcement had sufficient probable cause to conduct a traffic stop. Therefore, the evidence obtained pursuant to the stop shall not be suppressed.

⁵ At the hearing on this motion, defense counsel attempted to raise an additional issue regarding Defendant’s arrest that was not contained in Defendant’s motion. This Court denied defense counsel’s request to amend the motion to include the arrest argument, finding that this particular issue was not properly preserved. As a result, the Court will only consider the original issue presented in Defendant’s motion.

ORDER

AND NOW, this 8th day of September, 2022, based upon the foregoing Opinion,
Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Peter T. Campana, Esq.
Law Clerk (JH)